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**Comments of James C. Turner, Executive Director, and Thomas M. Gordon,  
Associate Counsel, HALT – *An Organization of Americans for Legal Reform* ,  
before the Office of Special Education and Rehabilitative Programs,  
Department of Education**

With over 50,000 members nationwide, HALT – *An Organization of Americans for Legal Reform* pursues an aggressive education and advocacy program to open up the legal system and make it more accessible and affordable for ordinary Americans. HALT has long advocated reforms to unauthorized practice of law statutes and other regulations that restrict legal services provided by non-lawyers and lawyers working in non-traditional settings.

We hope that as part of the reauthorization of the Individuals with Disabilities in Education Act (“IDEA”), the Department of Education will push for amendments that would make clear its desire for qualified lay people to represent parents in IDEA hearings. In *In re Arons* (756 A.2d 867 (2000)), the Delaware Supreme Court held that the federal IDEA provision allowing lay representation did not preempt its state prohibitions on lay practice. Consequently, the Delaware Office of Disciplinary Counsel has been able to prevent lay people from assisting parents in need of their services by threatening to prosecute such lay people for the unauthorized practice of law.

An amendment to the IDEA is the only way of ensuring that parents of children with disabilities can receive the assistance they need when they are unable to afford an attorney. The United States Supreme Court has refused to take up the *Arons* case, so the ruling by the Delaware Supreme Court will stand. Furthermore, other states may become emboldened by the Delaware decision and use it as the basis for prohibitions against lay practitioners in IDEA hearings in their states. This denial of justice can only be averted by clarifying the IDEA's intent that its provision allowing representation by lay practitioners should preempt state legislation to the contrary.

Children with disabilities and their parents should be entitled to use any qualified representatives they want in IDEA hearings. In a free country, consumers have the right to make informed decisions about who will provide services for them. In this instance, parents who use a non-lawyer representative are more than competent to make the decision that using such a representative is the best option for their case. Giving a consumer of legal services this freedom is consistent not only with the principles of a free economy, but also with the decisions of every state but Delaware not to interfere with a parent's freedom to be represented by a non-lawyer in IDEA proceedings.

Often the most qualified representative in such cases will be a non-lawyer specialist in special education, since such specialists have greater familiarity with

the substantive issues in such hearings. Even those opposed to non-lawyer representatives have conceded that such advocates “must be familiar with, and able to understand, the clinical aspects of the condition -- skills and training which lawyers ordinarily lack.” (Stipulation of Facts in *In re Arons*, No. UPL-4, 1996, ¶ 14) Advocates such as Marilyn Arons have shown their qualifications through numerous victories on behalf of the families they have represented. To allow a state to prevent parents from enlisting such a successful advocate for their children is at odds with the spirit of access which motivates the IDEA.

There is an additional problem with allowing state statutes regulating the unauthorized practice of law to trump the federal permission of non-lawyer representation in IDEA hearings. Doing so allows unhappy losers in litigation to launch collateral attacks on their opponents to reach victory.

Prosecutions for the unauthorized practice of law have not been brought by the people who are represented by non-lawyers, even though these people are the alleged victims of unauthorized practice. After all, these people are more than happy to be represented by the Marilyn Aronses of the world. Why wouldn't they be? Such representatives are more effective than attorneys and provide their services at little or no cost.

Instead, it is lawyers, and not the “victims” of unauthorized practice, who bring complaints about non-lawyer practitioners. The reason for this is clear; it is

the lawyers, not the clients, who have lost the most to these lay practitioners, and it is the lawyers who fear they have the most to lose.

Attorneys for state and local governments are one group trying to stop non-lawyers from practicing. These attorneys often lose in hearings against parties represented by non-lawyers. While losing to a non-lawyer must no doubt make an attorney wonder about the value of a formal legal education, one hopes that attorneys are not trying to eliminate their competition in an attempt to assuage their bruised egos. A more charitable explanation for unauthorized practice complaints brought by these lawyers is that they are simply trying to protect their client, the school board, from suffering a financial loss because of the additional costs of providing special education. It is unacceptable, however, to put the interests of one's client in front of the interests of justice. Denying your opponent legal representation in order to benefit your client is doing exactly that.

Attorneys who fear a loss of business to non-attorneys also are opposed to non-lawyer practice. To use the unauthorized practice laws, supposedly a consumer protection measure, as a means of eliminating economic competition is unconscionable. The impropriety of doing so is magnified when the economic competition in question is perceived, not real. The overwhelming majority of clients of non-lawyer practitioners are unable to afford an attorney at \$200 per hour. Denying these people the right to use a lay practitioner will not drive them to

hire an attorney. It will, unfortunately, leave them without any representation at all.

This, sadly, is the fundamental problem with the failure to protect the right of parents and children to be represented by non-lawyers. The non-lawyers are filling a gap in legal services that the high-priced legal monopoly has failed to address. Rather than embracing these service providers, the legal establishment attacks them. The result is that children are denied the necessary education to which they are entitled. Lest this shunning of our children continue in Delaware and expand to other states, the Department should support an amendment to the IDEA affirming the right to be represented by non-lawyers in IDEA hearings.