

WEBINAR MATERIALS

"Ethics in Special Education Advocacy"

April 14, 2010

Presenters:

Kayla A. Bower, Esq., and Joy J. Turner, Esq.



Joy Turner (left) Kayla Bower (right)

ABOUT THE PRESENTERS:

Kayla A. Bower, Esq., is the senior litigation attorney for the Oklahoma Disability Law Center, Inc. and has been its director since 1996.

Joy J. Turner, Esq., is a staff attorney at the law center and has handled special education cases since 2000.

The law center is the protection and advocacy system for Oklahomans with disabilities and is a member of the National Disability Rights Network and the Council of Parent Attorneys and Advocates. Bowers and Turner are members of the Oklahoma Bar Association and are licensed to practice in Oklahoma state court, federal court and the Tenth Circuit Court of Appeals. Ms. Bower is licensed to practice at the U. S. Supreme Court. They have made presentations to national, state and local special education organizations and governmental agencies, including the Oklahoma Childrens' Court Improvement Program.

They are founders of the Partners in Education Advocacy (PEA) training program for non-lawyer advocates and have authored an article, "Ethics in Special Education Advocacy," which includes a proposed ethics code for special education lay advocates. Ms. Bower received her J.D. from the University of Oklahoma School of Law, and Ms. Turner received her J.D. from Oklahoma City University School of Law.

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Ethics in Special Education Advocacy

Kayla A. Bower, JD & Joy J. Turner, JD
Oklahoma Disability Law Center, Inc.
protection and advocacy system



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About Standards

- ▶ Ethics is about standards of conduct and moral judgment.
- ▶ Both organizations and individuals must have values that guide the way they operate and do their work.
- ▶ Ethics is the most challenging part of decision making.

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Components

- ▶ Ethics involves two key components – the approach to substantive issues and the method by which one achieves an outcome.
- ▶ An advocate must be able to: identify key ethical issues, articulate guidelines for decision making and develop a process for applying to the advocate's activities.

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**What advocates are not
(in most states)**

- ▶ are not a recognized profession
- ▶ are not certified or licensed
- ▶ have no enforceable ethics code
- ▶ have no statutory confidentiality privilege
- ▶ have no educational or competence standards
- ▶ may not practice law

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**Serious consequences for
special education advocates**

- ▶ *In the Matter of Marilyn Arons et al.*, UPL No. 4-1996, Supreme Court of Delaware (July 6, 2000)
http://www.wrightslaw.com/law/caselaw/DE_aron.pdf
- ▶ Different result for Lilliam Rangel-Diaz in Florida because of Florida administrative code
<http://www.wrightslaw.com/news/05/diaz.upl.0307.htm>
- ▶ Different result in New Jersey, *Arons v. New Jersey State Board of Education*, 842 F.2d 58 (3rd Cir. 1988)

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Know your state law

For example, in Oklahoma . . .

- ▶ Representation of families in IDEA due process is prohibited, 2006 OK AG 27 (July 19, 2006).
- ▶ Giving advice related to preparation of IEP is problematic, *R. J. Edwards, Inc. v. Hert*, 504 P.2d 407 (1972).
- ▶ May represent families where permitted by statute or administrative code - federal benefits due process hearings such as food stamps, Medicaid, etc.

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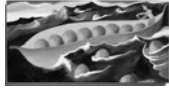
Google Search for Ethics in Special Education Advocacy

- ▶ Partners in Education Advocacy (PEA)
<http://www.peapods.us>
- ▶ Council of Parent Attorneys and Advocates (COPAA) <http://www.copaa.org>
- ▶ Today's webinar
<http://www.advocacyinstitute.org>
- ▶ Some individual authors, such as Andrew Cuddy, JD in "Special Education Battlefield"

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Voluntary Codes of Conduct

- ▶ Partners in Education Advocacy (PEA), *see "ethics" section of* <http://www.peapods.us>



- ▶ Council of Parent Advocates and Attorneys (COPAA), <http://www.copaa.org/codeofethics.php>



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Existing Ethics Codes for Non-Lawyers

- ▶ National Federation of Paralegal Associations (NFPA)
- ▶ American Bar Association (ABA)
- ▶ National Association of Legal Assistants (NALA)
- ▶ American Association for Paralegal Education (AAfPE)

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Organizations & Agencies – Examples

- ▶ Working with licensed professionals will require that a special education advocate follow their rules – psychologists, social workers, lawyers, etc.
- ▶ Some organizations have issue papers explaining obligations, http://www.nls.org/conf2004/practical_ethics.htm

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Common Elements of Model Codes

- ▶ Competence
- ▶ Professional Integrity
- ▶ High Standard of Professional Conduct
- ▶ Conflicts of Interest
- ▶ Communication

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Competence

- ▶ What education, training and work experience level achieved? What is continuing?
- ▶ How well informed about applicable law in jurisdiction?
- ▶ How well informed about culturally and educationally appropriate services?
- ▶ How are work standards evaluated?
- ▶ Share information regarding current local, state, regional and national resources for parents and students and current trends and practices in special education, as well as a referral list of professional contacts.

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Minimum Resources

- ▶ U. S. Department of Education
 - <http://www.ed.gov>
 - <http://idea.ed.gov>
 - <http://www.pbis.gov>
 - OCR, <http://tiny.cc/49dh4>
 - Contractors, <http://www.nichcy.org>, <http://www.pacer.org>, etc.
- ▶ State Department of Education
- ▶ Others
 - <http://www.wrightslaw.com>
 - <http://www.behaviordoctor.org>
 - <http://www.advocacyinstitute.org>
 - <http://www.copaa.net> (locate lawyers & advocates)
 - <http://www.ndrn.org> (locate lawyers & advocates at P&A agency)
 - <http://www.peapods.us> ("resource" section)

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Professional Integrity

- ▶ Never knowingly mislead others
- ▶ Are any billing practices fraudulent – inflating hours, misrepresenting nature of tasks, submitting false documentation?
- ▶ Treat all parties subject to a dispute with candor, fairness and civility

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Professional Conduct

- ▶ Familiar with rules for conduct in jurisdiction? What offends or is improper? What may be done?
- ▶ Familiar with reporting requirements?
- ▶ Do not engage in unauthorized practice of law.
- ▶ Act within the bounds of the law.

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Conflicts of Interest

- ▶ Avoid conflicts of interest
- ▶ Act solely for benefit of student and be free of compromising influences and loyalties
- ▶ What about previous student(s) or employer(s)?
- ▶ What about advocate's family and personal/business interests?
- ▶ Shall disclose any possible conflict
- ▶ Make referrals based solely on needs of student

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Communication

- ▶ Advocate's title clearly disclosed
- ▶ Cannot create fraudulent impression
- ▶ Preserve all confidential information of student/family (clearly disclose what cannot be protected in jurisdiction)
- ▶ Shall not use confidential information to advantage of advocate or a third person
- ▶ Keep student/family fully informed

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Substantive Issues

- ▶ Equality, Equity and Fairness
- ▶ Meaningful Choice and Empowerment
- ▶ Supports and Participation
- ▶ Independence
- ▶ Cultural Competency
- ▶ What are advocate's core beliefs?

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What an advocate can do

- ▶ Correct individual situations by ensuring that a student is receiving supports he or she requires to receive an education and prevent segregation
- ▶ Can assist states and districts by pointing out practices and policies that appear to achieve wrong results

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Contact Presenters

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