

**THE PROFESSIONAL ETHICS COMMITTEE
FOR THE STATE BAR OF TEXAS**

Opinion No. 710

February 2026

QUESTION PRESENTED

If a school's lawyer attends an ARD meeting between a representative of the school and parents who are accompanied only by a nonlawyer advocate, and the school's lawyer knows the parents are represented by a lawyer regarding the subject of the meeting, may the school's lawyer communicate with the parents during the meeting without the consent of the parents' lawyer?

STATEMENT OF FACTS

Under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1482 (IDEA), schools and students' parents meet to formulate education plans for students with disabilities. The meetings are known as Admission, Review, and Dismissal (ARD) meetings. The Department of Education's rules promulgated under IDEA discourage but permit both schools and parents to have their lawyers accompany them at the ARD meetings. *See generally* authorities cited in Texas Professional Ethics Opinion 703 (September 2024).

It is common for parents to attend ARD meetings without a lawyer but with a nonlawyer advocate, as the law allows. *See* 20 U.S.C. § 1414(d)(1)(B)(vi) (attendees may include "other individuals who have knowledge or special expertise regarding the child," at the discretion of the parent or the agency). A nonlawyer advocate might be a professional special education advocate, a paralegal employed by the parents' lawyer, or simply a friend or relative of the parents.

In this case, a school's lawyer knows that the parents are represented by a lawyer regarding the subject of the ARD meeting. The school's lawyer attends the ARD meeting with a representative of the school. The parents attend the ARD meeting without their lawyer but with a nonlawyer advocate. The school's lawyer would like to communicate with the parents during the ARD meeting, provided that doing so will not violate the Texas Disciplinary Rules of Professional Conduct. The school's lawyer has not sought or obtained the consent of the parents' lawyer to communicate with the parents.

DISCUSSION

Rule 4.02(a) of the Texas Disciplinary Rules of Professional Conduct states:

In representing a client, a lawyer shall not communicate or cause or encourage another to communicate about the subject of the representation with a person, organization or entity of government the lawyer knows to be represented by another lawyer regarding that subject, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

Opinion 703 addressed, in the context of ARD meetings, whether a school's lawyer may communicate with parents who are known to be represented by a lawyer regarding the subject of the ARD but who attend the ARD meeting without their lawyer. The committee concluded that a school's lawyer may attend such meetings as an observer and as an advisor to the school's representative but, absent the parents' lawyer's consent, "will violate Rule 4.02(a) if he or she communicates directly with the parents about the subject matter of the ARD, or if he or she causes or encourages the school's representative to deliver to the parents what is in essence a communication from the lawyer."

Opinion 703 did not expressly address the circumstance here, in which parents known to be represented by a lawyer attend an ARD meeting with a nonlawyer advocate. In the opinion of the Committee, the parents' decision to bring a nonlawyer advocate does not change the result. Rule 4.02(a) prohibits the school's lawyer from communicating or causing or encouraging another to communicate with the parents about the subject matter of the ARD without the parents' lawyer's consent. The fact that the parents choose to bring a nonlawyer advocate is not a substitute for, and does not imply, the consent of the parents' lawyer. This is true even if the nonlawyer advocate is an employee of the lawyer or an independent professional retained by the lawyer. A lawyer's decision to send a nonlawyer employee or professional to an ARD meeting is not a waiver of Rule 4.02(a) and does not constitute consent to communications with the lawyer's client.

If the school's lawyer wishes to communicate with parents known to be represented by a lawyer regarding the subject of the ARD, the school's lawyer should simply seek the consent of the parents' lawyer. Absent such consent, the school's attorney will violate Rule 4.02(a) if he or she communicates directly with the parents

about the subject matter of the ARD, or if he or she causes or encourages the school's representative to deliver to the parents what is in essence a communication from the lawyer.

The Committee believes the answer would differ in the unique context of special education "due process" hearings conducted under 20 U.S.C. § 1415. Texas law allows a duly qualified nonlawyer to function as a quasi-lawyer in a due process hearing. *See* 19 Tex. Admin. Code § 89.1175(a)(2) (providing that an individual may be represented at a special education due process hearing by "an individual who is not an attorney licensed in the State of Texas but who has special knowledge or training with respect to problems of children with disabilities and who satisfies the qualifications of this section."). If a hearing officer determines that a nonlawyer representative "is qualified to represent the party in the hearing," then that nonlawyer representative may "file pleadings or other documents on behalf of a party, present statements and arguments on behalf of a party, examine and cross-examine witnesses, offer and introduce evidence, object to the introduction of evidence and testimony, [and] engage in other activities in a representative capacity[.]" *Id.* at § 89.1175(j).

A nonlawyer representative who has been "qualified" by a due process hearing officer is therefore authorized by law to represent the parents in the due process hearing. In the Committee's opinion, in such a situation the school's lawyer may treat the qualified nonlawyer representative as the parents' lawyer for purposes of Rule 4.02(a), even if the parents are also represented by a licensed lawyer. If the qualified nonlawyer representative consents to the school's lawyer's communications with the parents regarding the subject of the due process hearing, the school's lawyer may rely on that consent for purposes of Rule 4.02(a).

CONCLUSION

If a school's lawyer attends an ARD meeting between a representative of the school and parents who are accompanied only by a nonlawyer advocate, and the school's lawyer knows the parents are represented by a lawyer regarding the subject of the meeting, the school's lawyer may not communicate or cause or encourage another to communicate with the parents about the subject of the meeting without the parents' lawyer's consent.

If a school's lawyer attends a due process hearing at which the parents are represented by a nonlawyer representative who has been qualified by the due process

hearing officer, and the qualified nonlawyer representative consents to the school lawyer's communications with the parents, the school lawyer may rely on that consent even though the parents are also represented by a licensed lawyer.