

**Superior Court of the District of Columbia  
Family Court**

**Attorney Practice Standards  
For Special Education Panel Attorneys**

**Submitted to Lee F. Satterfield, Chief Judge  
Superior Court of the District of Columbia**

**By**

**The Family Court Implementation Committee  
Anita Josey-Herring, Presiding Judge, Family Court**

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## ACKNOWLEDGEMENTS

The Family Court Implementation Committee (hereafter “Implementation Committee”), chaired by Judge Anita Josey-Herring, Presiding Judge of the Family Court, was established to oversee the organization and management of the Family Court of the District of Columbia (hereafter “Family Court”). Consistent with the goals of the Family Court, the Court adopted practice standards for the CCAN panel attorneys in February 2003 (Administrative Order 03-07) and the following year for juvenile panel attorneys (Administrative Order 04-13).

This document, *Superior Court of the District of Columbia, Attorney Practice Standards for Special Education Panel Attorneys*, continues the goal of setting standards for all Family Court practitioners and sets the standards for the Special Education Attorney Panel. As such, this document draws on the language of the previously adopted standards.

A special debt of gratitude is owed to Judge Anita Josey-Herring, whose leadership on the Implementation Committee was instrumental in ensuring that Family Court standards and training were developed and implemented to maintain the highest level of representation in all Family Court matters. To this end, Judge Josey-Herring designated a Special Education Committee to draft proposed standards and develop a training program for Special Education Panel Attorneys. Following the review and approval of the draft proposed standards by the Implementation Committee, which includes stakeholders from the bench, bar, and community, the standards were referred to the Chief Judge for review.

The Court gratefully acknowledges all the individuals whose expertise and knowledge were invaluable to the completion of this document, particularly the following individuals and organizations<sup>1</sup>:

Anita Josey-Herring  
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<sup>1</sup> Judge Josey-Herring and Judge William Jackson were Presiding Judge and Deputy Presiding Judge, respectively, of the Family Court at the time the Attorney Practice Standards for Special Education were drafted.

***Superior Court of the District of Columbia,  
Family Court  
Attorney Practice Standards  
for Special Education Attorneys***

**Executive Summary**

The quality of legal representation is critical to the Court’s effective administration of justice. To render high quality representation, attorneys handling special education matters in the Family Court of the Superior Court of the District of Columbia must be well-trained and informed regarding procedural and substantive law and cognizant of psycho-social issues affecting their clients. These practice standards are intended to define the role court-appointed Special Education Attorneys and may be used for evaluating the performance of counsel assigned.<sup>2</sup> These standards are not intended to supersede any obligations under the code of professional conduct.

***Basic Functions of the Special Education Attorney***

The practice standards address the general authority and duties of Special Education Attorneys appointed to represent parents or surrogates in neglect, delinquency, or persons in need of supervision (PINS) cases, and to define the overall objectives that counsel should seek to achieve. The paramount obligation of Special Education Attorneys in the administration of justice, and as officers of the Court, is to serve as their client’s counselor and zealous advocate and to render effective, quality representation. Pursuant to federal law,<sup>3</sup> the right to make educational decisions on behalf of a child are rights of the parent,<sup>4</sup> and thus the parent is the client of the Special Education Attorney.<sup>5</sup> Additionally, barring a conflict of interest, the Special Education Attorney must make every effort to diligently work with the parties in the neglect or delinquency matter in which he or she is appointed to the extent practicable. Under these standards, attorneys shall only accept an appointment or otherwise appear on special education matters in Family Court proceedings if they are knowledgeable of substantive and procedural

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<sup>2</sup> The Court recognizes that the right to special education extends to young people up to and in some cases beyond the 22nd birthday, and thus Special Education Attorneys may be appointed in criminal cases or other cases outside the jurisdiction of the Family Court. The Court encourages attorneys handling special education matters in all Superior Court cases to adhere to these standards.

<sup>3</sup> 20 U.S.C. § 1400 et seq.

<sup>4</sup> Under the Individuals with Disabilities Education Act (IDEA), the term "parent" means "a natural, adoptive, or foster parent of the child (unless a foster parent is prohibited by State law from serving as a parent)"; "a guardian (but not the State if the child is a ward of the State)"; "an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare"; or "an individual assigned...to be a surrogate parent." 20 U.S.C. § 1401(23); see also 34 CFR § 300.30, *Comments*, p. 46566 (sets forth a more detailed discussion).

<sup>5</sup> Counsel may represent parents and youth together in special education matters pursuant to a retainer agreement with the parents and youth in cases where the parents’ interests do not conflict with those of the youth. Counsel should be aware that the special education rights transfer to the child at the age of majority if the child is competent. 20 U.S.C. § 1415(m)(1)(D).

special education law, and administrative due process hearings and procedures. Special Education Attorneys must also have a general knowledge of Family Court practice, and have participated in the required training programs. Counsel must also know and adhere to all applicable ethical opinions and standards and comply with all relevant court rules. If counsel is unclear about how to resolve an ethical issue, he or she should seek guidance from other experienced attorneys, Special Counsel at the Public Defender Service (PDS), or from the D.C. Office of Bar Counsel ([www.dcbbar.org](http://www.dcbbar.org)). The fundamental obligations of counsel as set forth below are based on the District of Columbia Rules of Professional Conduct and Superior Court Rules, including the Rules governing Neglect and Abuse Proceedings, the Rules Governing Juvenile Proceedings, and the General Rules of the Family Court (referred to collectively as the “Rules” unless otherwise specified).

Attorneys must be in full compliance with these practice standards to remain members of the Special Education Attorney Panel.

***Superior Court of the District of Columbia  
Attorney Practice Standards  
for Special Education Attorneys***

**Statement of Intent**

The District of Columbia Family Court Act of 2001, Pub. L. 107-114, provides that the Superior Court establish standards of practice for attorneys appointed as counsel in matters under the jurisdiction of the Family Court. Administrative Order No. 02-15 (April 26, 2002) requires the Family Court Panels Committee to establish panels of qualified attorneys to represent indigent children and parents in Family Court proceedings of the Superior Court and includes the creation of a panel of Special Education Attorneys.<sup>6</sup>

The Chief Judge established the initial panel of attorneys eligible to receive appointments as Special Education Attorneys in D.C. Superior Court. *See* Administrative Order 03-11 (March 26, 2003). The Chief Judge issued subsequent orders revising the panel consistent with established procedures. The most recent list of panel attorneys was issued as Administrative Order 08-04 (April 3, 2008) and includes forty-four attorneys. To accomplish the goals of the Family Court Act, and to promote high quality representation, Special Education Panel Attorneys must adhere to these practice standards. A panel attorney not in compliance with these standards may be subject to removal from the panel.

***A. Panels, Appointments, Certification, and Training***

**A-1 Application for Appointment to the Special Education Panel**

Individual attorneys wishing to receive appointments as Special Education Attorneys in Superior Court shall be selected from the Family Court Special Education Panel. An attorney seeking to become a member of the Special Education Panel must: complete a Family Court Panel Application that sets forth his or her qualifications to act as a Special Education Attorney; provide a Certificate Regarding Discipline from the Office of the District of Columbia Bar Counsel; a letter or receipt from the District of Columbia Bar indicating payment of dues is up to date; and certify, in writing, that he or she has read and understands these standards, the District of Columbia Rules of Professional Conduct, Superior Court Rules and District of Columbia statutes governing Family Court proceedings, the Individuals With Disabilities Education Act (IDEA), and related provisions of the Code of Federal Regulations (34 C.F.R. Part 300) and of the D.C. Municipal Regulations including Title 5 of the DCMR, primarily chapters 30 and 25.

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<sup>6</sup> The Court's Administrative Order refers to Special Education Panel appointees as "special education *advocates*." The Court appoints only attorneys to the panel and the standards will refer to the panel members as Special Education Attorneys.

Applications will be considered on a schedule set and published by the Family Court’s Panels Oversight Subcommittee (hereafter “Oversight Panels Committee”).

Prior to appointment to the Special Education Panel, counsel must complete the training requirements set forth in A-2 below. Fulfillment of training requirements does not guarantee appointment to the Special Education Panel. After appointment to the Panel, counsel must comply with all continuing legal education requirements as set forth in Section A-3 below.

## **A-2 New Panel Attorneys Training Requirements**

Any attorney admitted to the panel after adoption of these standards must receive initial training from the Public Defender Service for the District of Columbia (PDS). PDS shall, through its Special Counsel, certify in writing to the Oversight Panels Committee all new panel attorneys who have successfully completed training as set forth below.<sup>7</sup>

To attain training certification, lawyers will be required to complete a minimum of sixteen hours of training as provided by PDS.

The sixteen hours of training shall be devoted to the following categories:

- (1) At least four hours of litigation and trial practice skills training;
- (2) At least six hours of special education law and procedure; and
- (3) At least six hours on special education practice in DC Public Schools and Family Court proceedings.

Training topics may include (1) administrative procedures, (2) use of educational experts, (3) disciplinary hearings, (4) opening statements, (5) closing arguments, (6) witness examinations, (7) investigation of a special education claim, (8) document review, (9) negotiating and assessing settlement agreements, (10) review of special education placements, (11) role of the Special Education Attorney, (12) assessing a claim under the IDEA, (13) interagency coordination, and (14) ethics and conflicts.<sup>8</sup> This list is illustrative, not exclusive.

As part of the training process, new attorneys are strongly encouraged to observe school administrative hearings and proceedings in the Family Court. Attorneys are also encouraged to seek the advice and input of more experienced lawyers who have represented parties on special education issues in Family Court proceedings.<sup>9</sup> Correspondingly, experienced attorneys are encouraged to

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<sup>7</sup> At the time of publication of these standards, Claire T. Roth, Esquire, is the Special Counsel overseeing the training programs and certification process.

<sup>8</sup> Law students practicing under the student practice rule must be enrolled in a clinical program as defined by D.C. Superior Court General Family Court Proceedings Rule M(b). Students in such a clinical program will be presumed to have satisfied the training requirements and will not be required to submit any certification to the Oversight Panels Committee. However, student practitioners must comply with District of Columbia Superior Court Rules, General Family Court Rule M, and District of Columbia Court of Appeals Rule 48.

<sup>9</sup> Counsel can contact the Counsel for Child Abuse and Neglect (CCAN) office for a list of experienced attorneys.

provide mentoring to new attorneys, assist new attorneys in preparing cases, and answer questions as they arise.

### **A-3 Continuing Legal Education (CLE) Requirements for All Attorneys**

All panel attorneys are required to complete a minimum of ten hours of CLE annually.<sup>10</sup> Attorneys admitted to the Special Education Panel who are practicing before the Family Court have a continuing obligation to stay abreast of changes and developments in the law. Where appropriate, counsel should be aware of any special requirements of the specific judge before whom a case is pending. Counsel should also be familiar with substantive special education law (federal and local), administrative procedure, the Rules Governing Proceedings of the Family Court, the Rules Governing Juvenile and Abuse/Neglect Proceedings, and the Rules of the District of Columbia Court of Appeals.

In order to continue receiving appointments in Special Education matters, Special Education Panel attorneys must complete ten hours of continuing legal education on special education and Family Court (juvenile/neglect) related topics every year. A minimum of five of those hours must be devoted to special education law. The remaining hours may be devoted to abuse/neglect or juvenile topic areas (including related litigation skills). At or near the end of the calendar year, counsel must submit a Certificate of Completion listing the trainings counsel has attended during the calendar year to the CCAN Director.

CLE training hours may be satisfied by course work and/or training seminars offered by PDS or through relevant programs sponsored by the following institutions: (1) Family Court Implementation Committee/Training Sub-Committee, (2) the Superior Court Trial Lawyers' Association (SCTLA); (3) Council of Parent Attorneys and Advocates (COPAA); (4) Wrightslaw; (5) the Counsel for Child Abuse and Neglect (CCAN); (6) The Children's Law Center (CLC); (7) the National Legal Aid and Defender Association (NLADA); (8) the Child Welfare League of America (CWLA); (9) the National Association of Counsel for Children (NACC); (10) Advocates for Justice in Education (AJE); (11) the District of Columbia Bar; (12) the Bar Association of the District of Columbia (BADC); (13) the Neglect and Delinquency Practice Institute; (14) the Office of the Attorney General; (15) the National Association of Criminal Defense Lawyers (NACDL); (16) The University of the District of Columbia David A. Clarke School of Law; and any other organization approved by the Implementation Committee. To assess compliance with certification requirements, the Public Defender Service or the Oversight Committee may request a copy of any training program or seminar outline.

## ***B. General Duties***

### **B-1 Reasonable Diligence and Promptness**

The Special Education Attorney appointed in a Family Court matter has a duty to advance zealously the interests of the client. An attorney practicing before the Family Court

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<sup>10</sup> New panel attorneys shall have satisfied this requirement for the first year of admission to the panel. See Section A-2.

shall act diligently and promptly in the representation of clients. Counsel's obligations include the following:

- Counsel must understand the timelines for administrative due process hearings and be familiar with the school year calendar;
- Counsel should avoid unnecessary delay in the resolution of the educational portion of the case, being mindful of the impact of the education matter upon the Family Court matter;
- Counsel must take steps to inform all parties when delay is unavoidable;
- Counsel should be punctual in attendance in court, if court attendance is required; and
- Counsel must timely submit all motions, reports to the Court, and other papers.

## **B-2 Rules of Ethics**

Counsel must be knowledgeable of the District of Columbia Rules of Professional Conduct. The Special Education Attorney must be aware of potential conflicts of interest and has a duty to ensure that conflicts are resolved promptly. If during the course of representing a parent, counsel becomes aware of a conflict of interest between the youth and the parent or two parents, and represents both parties, counsel must resolve the conflict in accordance with the guidance provided by D.C. ethics rules and opinions before taking any further action in the matter. An attorney who is unclear about how to resolve an ethical issue should seek guidance from other experienced attorneys, Special Counsel at the Public Defender Service (PDS), or the D.C. Office of Bar Counsel ([www.dcbbar.org](http://www.dcbbar.org)). Should it be determined that a conflict exists requiring withdrawal, such withdrawal should be requested expeditiously.

## **B-3 Case Management**

Counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality legal service, endangers the client's interest in the prompt resolution of educational matters, or may lead to the breach of professional obligations. An attorney who is considering whether to act as counsel or to accept appointment by a Court must have sufficient time, resources, knowledge, and experience to offer quality legal services in the particular matter. If, after accepting an appointment, it later appears that counsel is unable to offer effective representation, counsel should consider appropriate case law and ethical standards in deciding whether to move to withdraw or take other appropriate action.

Counsel's obligations include the following:

1. Maintaining a working knowledge and familiarity with relevant federal and local education laws and regulations, including, but not limited to the Individuals with Disabilities Education Act (IDEA), and Title 5 of the D.C. Municipal Regulations, as well as relevant local class action lawsuits which may bear on the client's rights;
2. Maintaining a case file on each active case;
3. Counseling clients in matters relating to their case;
4. Conducting a thorough investigation of all necessary and relevant information pertaining to the education matter via records requests, school visits, and interviews with school

personnel, service providers, and other persons with knowledge of the child's educational needs, as well as through other means;

5. Requesting evaluations as appropriate to identify the child's educational needs;
6. Attending and participating in school-related meetings and conferences as appropriate (e.g., Individualized Educational Program (hereafter "IEP") meetings, disciplinary conferences or hearings);
7. Acquiring a working knowledge of potential placements and service locations for District of Columbia students (e.g., public schools, public charter schools, special education private schools, residential and secure facilities);
8. Developing a timeline for each case that identifies the actions to be taken and their deadlines;
9. Advising the client of his or her legal options if special education service delivery is not timely or appropriate;
10. Pursuing appropriate legal remedies, including due process hearings, requests for mediation, and federal court proceedings, as requested by the client and permissible by law;
11. Keeping the client informed about the status of the special education matter; complying with all reasonable requests for information; explaining the proceedings sufficiently so that the client may make informed decisions in the special education matter; having the client authorize any requests for due process hearings; informing the client promptly of the substance of all offers of settlement; and having the client approve any settlement;<sup>11</sup>
12. Developing legal strategies for administrative proceedings and related court matters, including dispositions, court review hearings, and permanency hearings;
13. Reviewing and adhering to the protocols established in the Student Hearing Office Standard Operating Procedures;
14. Preparing and filing all pleadings and motions in a timely fashion;
15. Securing appropriate support services, such as educational consultants and experts, sign language interpreters, and language translators in a timely fashion, as needed;
16. Participating in all administrative proceedings (resolution sessions, pre-hearing conferences, mediation sessions at the client's request, and/or due process hearings) to ensure that the client is zealously and effectively represented at all stages of the special education case;
17. Preparing and submitting copies of status reports and/or memoranda of law to the Court or Student Hearing Office if appropriate;
18. Promptly discussing with and advising the client about his or her right to appeal an unfavorable Hearing Officer Determination;
19. Promptly providing the case file to successor attorneys as authorized by the client; and
20. Following rules of decorum and civility when communicating with other professionals and parties in the case.

#### **B-4 Case Organization**

Counsel shall maintain a client case file on each active case and, when appropriate, provide the case file to successor attorneys. Counsel is expected to maintain all information about the case's history and future proceedings, deadlines, dates, etc., on or within the client case

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<sup>11</sup> See District of Columbia Rule of Professional Conduct 1.4.

file so that it is readily discernible. All client case files must reflect the procedural history of the case and all other information necessary to render effective legal service, including copies of documents, all discovery, pleadings, settlement offers, notes and other communications to and from the client and other relevant parties in the case, the names and telephone numbers of other parties and counsel, and information on how to locate the client.

#### **B-5 Continuity of Representation**

A Special Education Attorney who reasonably believes assistance is no longer necessary shall consult with the client and seek to withdraw from the court appointment.

Counsel has an obligation to continue to represent the client in the special education matter even when the underlying court matter is resolved, closed, or dismissed, unless counsel determines that assistance is no longer practical or necessary. Counsel must withdraw in a manner that seeks to avoid prejudice to the client and must provide to the client written notification of the withdrawal.

#### **B-6 Court Appearances**

At all hearings counsel has an obligation to be prepared and, consistent with client confidentiality and the ethical duty of zealousness, provide information to the Court on the status of the special education matter. In advance of the hearing, counsel may submit to the Court and all parties an Educational Status Report, if appropriate. Counsel must attend all court hearings unless excused by the Court. If there are no issues which require the Court's immediate attention, the Special Education Attorney may request to be excused from appearing at the court hearing either in advance of the hearing or at the hearing itself.

Additionally, counsel should make efforts to avoid schedule conflicts that prevent counsel from attending a court hearing. If counsel is unable to attend a court hearing, he or she shall notify the courtroom clerk and/or judge's chambers. Counsel is also obligated to notify all other parties. If necessary, the attorney should make efforts to secure stand-in counsel.

#### **B-7 Duty of Counsel or Stand-In Counsel**

In the event that counsel must rely on stand-in counsel to be present at a substantive proceeding, counsel, where practicable, must inform the client prior to the proceeding that their will be a stand-in counsel. Additionally, counsel must brief stand-in counsel of the status of the client's educational case, as well as follow-up with stand-in counsel as soon as possible after the proceeding. If counsel is acting in a stand-in capacity for another attorney, counsel has an obligation to prepare for the hearing and inform the attorney of record about all information regarding the proceeding and future court dates set in the matter.

## ***C. Attorney-Client Relationship***

### **C-1 Role of Counsel**

The appointment order will inform the Special Education Attorney and other parties who the client (educational decision maker) is for purposes of the special education case. The Special Education Attorney's principal duty is the representation of the client's legally viable interests.<sup>12</sup> Thus, counsel should seek the lawful objectives of the client and should not substitute counsel's judgment for that of the client. Additionally, the Special Education Attorney is encouraged to work collaboratively with the other attorneys in the neglect or delinquency matter in order to resolve the child's special education issues in the most efficient and ethical manner possible.

In a delinquency matter, counsel may represent both the parent and the child in the special education matter if there is no conflict between the parent and child. Regarding cases in which the interests of the child and the parent do not conflict, this arrangement (of counsel representing both the parent and the child with regard to the special education matter) can benefit all parties.

Counsel shall not serve as both the Special Education Attorney if also acting as the Guardian *ad Litem* (GAL) for the child. Counsel may not serve this dual role of a GAL and a Special Education Attorney because the educational decision maker's interests in the child's special education needs may conflict with the best interest of the child as determined by the GAL.

### **C-2 Protecting Confidentiality of Communication and Proceedings**

A lawyer shall not knowingly reveal a confidence or secret of the client. Accordingly, counsel should ensure that all confidential communications between counsel and the client are conducted in private. As Family Court proceedings are closed to the public, during the course of representation, counsel must not discuss the proceedings with persons not involved in the court hearing.<sup>13</sup> Moreover, before speaking with the attorneys of the other parties about confidential information that may be necessary to share in the course representation, counsel must have the client's permission. Counsel must be familiar with the appropriate procedures for obtaining educational records, and must be aware of and comply with the federal and local confidentiality statutes and rules of professional conduct relating to the dissemination of confidential information concerning educational and Family Court matters. Counsel must comply with all privacy statutes. *See* Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g (b); Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. § 1320d-6; and D.C. Mental Health Information Act of 1978, D.C. Code § 7-1201.04.

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<sup>12</sup> In neglect cases, allegations and findings of neglect do not in and of themselves take away the parents' rights to make special education decisions for their children. Counsel must be familiar with the IDEA definition of "parent." See footnote 3, *supra*. Federal law does not allow an agency representative to be a "parent" for purposes of asserting the child's educational rights; therefore, the social worker cannot be the parent/client.

<sup>13</sup> Super. Ct. Juv. R. 53; Super. Ct. Neg. R. 45.

During the course of representation, counsel will be required to speak with numerous professionals and obtain many records relating to the child's educational, social, mental health, and medical histories. Counsel must obtain the client's written consent to obtain the child's records and must follow all requirements with respect to confidentiality and re-disclosure, as noted above. In the alternative, the Court may grant counsel access to the child's records by including the necessary language in the appointment order. (See Section D-1 regarding Contact with Other Parties.)

### **C-3 Meeting with the Client**

Upon initial appointment, counsel shall conduct an in-person client interview as soon as practicable and sufficiently before any proceedings. Counsel must maintain regular contact with the client in order to build trust and promote communication. Trust and open communication are essential to counsel's ability to advance effectively the client's interests and accomplish the client's objectives.

### **C-4 Barriers to Communication with Client**

At all interviews and proceedings, counsel should ensure that specific barriers to communication, such as differences in language or literacy, or in mental or physical disability, are addressed. An attorney encountering such barriers to communicating with a client shall take whatever steps are necessary to ensure effective communication with the client and to ensure that the client understands the proceedings. To this end, counsel must be mindful of any special needs of the client and should secure appropriate expert services, such as an interpreter or translator.

### **C-5 Preparing for and Conducting the Initial Client Interview**

Prior to conducting the initial interview, where possible, the attorney should be familiar with the neglect or delinquency case and its impact on the special education matter. At the initial interview, counsel should obtain a signed release from the client authorizing the attorney and/or the attorney's agent to obtain educational, medical, or other records relevant to the education matter. In addition, at the initial interview, counsel should endeavor to convey the following types of information to the client:

- 1) An explanation of the special education process, the role of education counsel, the attorney-client privilege, and the limits to privileges covering the client's communications with counsel, therapists, case workers, social workers, and other relevant individuals;
- 2) An explanation of how counsel can be reached and the preferred means for contacting the attorney;
- 3) An answer, to the extent possible, to the client's most urgent case-related questions; and
- 4) A discussion of the next steps counsel will take on the client's behalf.

## **C-6 Duty to Keep Client Informed**

Counsel shall maintain regular contact with the client during the course of the case, especially before school meetings, administrative hearings, and court hearings. Counsel shall respond promptly to telephone calls and other types of contact from clients, and whenever possible, within one business day. Counsel has a continuing duty to keep the client informed of developments in the case including any settlement offers and the progress of preparing the case. Counsel must promptly comply with all reasonable requests from the client for information. *See* D.C. Rule of Professional Conduct 1.4(a). When on vacation or otherwise unavailable for a considerable length of time, counsel shall make reasonable efforts to provide emergency contact information and/or arrange to have back-up counsel available to respond to client emergencies.

## **C-7 Advising the Client**

Counsel should advise the client about all aspects of the special education case, including candidly assessing the legal merits of the case and any probable outcomes, as well as the broader implications of different case outcomes in the educational matter on the neglect or delinquency matter. Counsel should not intentionally understate or overstate the risks, hazards, or prospects of the case to exert undue influence on the client's decision as to the effect of a settlement. Counsel should keep the client informed of all significant developments in the case and should explain legal rights and options to the client to the extent reasonably necessary to permit the client to make informed decisions regarding the course of the case and the representation.

## **C-8 Distinguishing Between Client and Attorney Decisions**

Certain decisions relating to the conduct of the case are ultimately the province of the client, whereas others are ethically the responsibility of counsel. Decisions that are to be made by the client after full consultation with counsel include, but are not limited to, those that are educational in nature (such as providing consent for evaluations, accepting or rejecting a recommendation for special education eligibility as well as for specific education services, the contents of the IEP, placement, the location where services are to be delivered, and compensatory education). Strategic and tactical legal decisions should be made by counsel after consultation with the client, to the extent that such consultation is feasible and appropriate. Such decisions include what evidence should be introduced at an administrative hearing.

Open, candid, and ongoing communication with the client is essential to effective representation. Counsel is not free to substitute or impose counsel's own judgment as to what is in the best interest of the child for that of the parent/client.<sup>14</sup> Counsel should inform the client of all administrative and court proceedings relating to the youth's education.

Counsel shall not make any representations in a court neglect or delinquency proceeding related to the special education representation without consulting with the client prior to the

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<sup>14</sup> The attorney's duty is to follow the informed express interest of the parent/client. Thus, the duty is not -- as for a GAL in a neglect matter -- determining and pursuing the best interest of the child.

hearing about the nature of the proceeding and the matters of interest to the Court relating to the special education case.

### **C-9 Negotiating a Resolution or Settlement Agreement of the School Matters**

Counsel should participate in settlement negotiations to seek the best result possible for the client consistent with the client's objectives and express interests. Prior to entering into any negotiations, counsel shall have sufficient knowledge of the strengths and weaknesses of the client's case, or of the issue under negotiation, to enable counsel to advise the client of the risks and benefits of settlement. Counsel should always promptly inform the client of the substance of any and all offers of settlement in a civil case. *See* D.C. Rule of Professional Conduct 1.4(c). Counsel shall explain all offers of settlement to the extent necessary for the client to make an informed decision. After such consultation, a lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. *See* D.C. Rule of Professional Conduct 1.2(a).

### **D. *Stages of the Special Education Case***

Counsel might be appointed at any stage in the neglect or delinquency matter (initial hearing, status, review, disposition, or post-disposition), and at different stages of the administrative proceedings with respect to the educational issues. As noted above, counsel must be knowledgeable regarding federal and local law and procedures, as well as all potential educational placements and services, so as to be able to ascertain quickly the most efficient and effective manner in which to proceed with the special education case. In addition to the pre-hearing and hearing standards listed below, counsel should assist the client with accessing services or navigating the educational system and attend and participate in school conferences and meetings, as needed and as appropriate.

#### **D-1 Contact with Other Parties**

As the lawyer for the special education decision maker, counsel must consult with all relevant parties, including the child and/or the child's representative(s). To the extent that the child is represented by counsel, such as a GAL or defense attorney, counsel must have prior consent of the lawyer representing the child. *See* D.C. Rule of Professional Conduct 4.2(a). In addition, counsel must not circumvent the Rules of Professional Conduct concerning communication with a represented party by asking a third party to ask the represented party for information. *See* D.C. Bar Legal Ethics Comm., Opinion 295 (2000).

#### **D-2 Information, Investigation, and Evaluation**

Counsel must assess the child's educational needs independently from educational issues that may have been raised by the Court or the parties. To this end, counsel has an absolute duty to conduct a prompt and diligent case investigation. Counsel shall interview relevant family members and school personnel to obtain a thorough understanding of the child's school history. Counsel shall also gather educational, medical, and court records, as well as other relevant documents. Counsel must also always consider the potential effects of a pending neglect or

delinquency case on the educational matter, and, conversely, counsel also must consider the potential effects of a pending special education matter on the pending neglect or delinquency case.

### **D-3 Pre-Administrative Hearing**

Counsel should engage actively, as appropriate for advancing the client's interests, in pre-hearing motions practice. Counsel must be prepared to participate competently in any resolution session that is scheduled or agreed to by the parties. Counsel should be informed of and follow the procedures outlined in the IDEA and Student Hearing Office (SHO) Standard Operating Procedures.

### **D-4 Satisfactory and Prompt Resolution of the Case and Client Settlement Discussion**

Counsel should explore with the client the possibility and desirability of a settlement agreement or mediation agreement if such an agreement can resolve issues to the client's satisfaction and benefit. Early and thorough investigation, as discussed above, will facilitate counsel's identifying major legal issues (such as early childhood transition, violations of FAPE or Child Find) that might be addressed quickly and reduce the potential harm to the youth caused by protracted litigation.

### **D-5 Due Process Hearing Preparation**

Early and thorough preparation is typically a critical component in successful resolution of a case. Counsel must be prepared to prove at the hearing all relevant violations of the IDEA; therefore, counsel must investigate and develop the case completely, and, in light of the investigation, counsel must continually reassess case strategy. Counsel must set aside adequate time to prepare witnesses and exhibits. Adequate preparation also requires communicating with the client in advance of the due process hearing, attempting to resolve issues prior to any contested proceeding, and conducting necessary legal research on relevant topics. As required by law, counsel should submit a witness list and all evidentiary disclosures five (5) business days prior to the due process hearing. *See* 20 U.S.C. § 1415(f)(2).

All requests for continuances should be made in accordance with the Standard Operating Procedures issued by the Student Hearing Office. Requests for a continuance should only be made with good cause and after having fully informed the client of the need for the continuance. Counsel should assess the impact of a delay on both the special education matter and the related court case.

### **D-6 Experts**

Counsel shall file all pleadings with the Court necessary to secure payment of any experts or other professionals needed to assist with the case. Such experts and professionals evaluate the child and/or educational programs, develop appropriate recommendations with respect to the

child's educational and programmatic needs, and provide other consultation and witness testimony regarding issues in the case.

#### **D-7 Client and Witness Testimony**

Counsel is obligated to prepare the client and all witnesses who may testify (either for direct or cross-examination) at the hearing. Counsel must explain to the client and the witnesses in clear, appropriate language what is likely to happen before, during, and after the due process hearing.

#### **D-8 Motions and Objections**

Counsel must be fully informed of the procedural rules for due process hearings and make appropriate motions and evidentiary objections during due process hearings to protect the client's rights and advance the client's objects, including steps to establish and preserve the record for appeal. Counsel must also file appropriate motions with memoranda of points and authorities and proposed orders in support of the client's objectives, if it is requested by the hearing officer or Court and/or as necessary to advance the client's objectives.

#### **D-9 Presentation of Evidence**

At the due process hearing, counsel must present witnesses and cross-examine the opponent's witnesses, and prepare and present exhibits in effort to present the strongest case possible. Counsel must understand the evidence and the legal standards in order to meet the applicable burden of proof and in order to prevail.<sup>15</sup>

### ***E. Post Due Process Hearing***

In every case, counsel must obtain copies of all hearing documents and inspect them to ensure that the documents reflect the oral representations made at the hearing. Such documents may include the Hearing Officer's Determination (HOD), Settlement Agreement (SA) or Mediation Agreement (MA). Counsel should file any motions necessary to remedy factual or legal inaccuracies to promote the client's interests.

#### **E-1 Reviewing Order with Client**

Counsel should review the HOD/SA/MA with the client promptly to consider any basis for reconsideration of the decision or rescission of the agreement. Otherwise, counsel should discuss any required client actions and advise the client to complete such actions in accordance with any timelines established in the HOD or other agreement.

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<sup>15</sup> The burden of proof is on the moving party, typically the parent. *See* Schaffer ex rel. Schaffer v. Weast, 546 U.S. 49, 2005 DCMR provision.

## **E-2 Implementation of the Order**

Counsel must monitor the HOD/SA/MA requirements to ensure timely and appropriate implementation by the other party (e.g., school personnel). If timely and appropriate implementation is not achieved, counsel should consider taking other legal enforcement actions, such as filing a new complaint or filing for a preliminary injunction in federal or local court.

### ***F. Appeals of the Hearing Officer's Determination***

Counsel should discuss with the client the scope of the representation and whether it will encompass an appeal of an unfavorable Hearing Officer Determination (HOD). Upon the informed consent of the client, and if legally appropriate, counsel shall file an appeal of the HOD in the form of a Complaint within 90 days of the final decision.

Counsel must be familiar with the law, procedures, and timelines for filing an appeal of an administrative decision, and possess an understanding of which forum, federal or local, is appropriate and most beneficial to the client. Counsel must also ensure that the client's appellate rights are preserved at all stages of the administrative process.

#### **F-1 Decision to Appeal the Hearing Officer's Determination**

Counsel shall consider and discuss with the client the client's right to appeal and whether the appeal has merit. When discussing the possibility of an appeal, counsel should explain both positive and negative potential effects or consequences.

### ***G. Disposition and Post-Disposition Advocacy***

Frequently, disposition and post-disposition advocacy are the most important aspects of the delinquency or neglect counsel's role in Family Court matters. Many changes in the youth's status can occur at these stages of the court case. Accordingly, the Special Education Attorney must determine whether such changes affect the special education matter and whether the special education matter can potentially aid in the disposition or make a positive impact on the disposition.

### ***H. Effective Date***

These practice standards will take effect by Administrative Order of the Court.