

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
ADMINISTRATIVE ORDER 23-21

Special Education Panel Attorneys For Emerging Adult Defendants

WHEREAS, D.C. Law 24-344, enacted as D.C. Code § 16-714, provides that the Superior Court shall designate and appoint a panel of special education attorneys to represent indigent emerging adult defendants with educational and disability rights and needs in criminal proceedings by October 1, 2023; and

WHEREAS, the law provides that the term “emerging adult defendant with a disability” means a criminal defendant under 23 years of age, or the parent, as that term is defined in 20 U.S.C. § 1401(23)¹ of a criminal defendant under 18 years of age who is: (1) charged as an adult; and (2) qualifies as a child with a disability as that term is defined in 20 U.S.C. § 1401(3);² and

WHEREAS, Administrative Order 02-15 (April 26, 2002) required the Family Court Panels Committee to establish panels of qualified attorneys to represent indigent children and parents in Family Court proceedings and included the creation of a panel of special education advocates, Special Education Panel Attorneys; and

WHEREAS, Special Education Panel Attorneys in Family Court represent the parents or their surrogates in abuse and neglect, delinquency, or persons in need of supervision (PINS) cases and can be appointed in criminal cases and other cases outside the jurisdiction of the

¹ 20 USCS § 1401(23) provides:

Parent. The term “parent” means—

- (A) a natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent);
- (B) a guardian (but not the State if the child is a ward of the State);
- (C) 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
- (D) except as used in sections 615(b)(2) and 639(a)(5) [20 USCS §§ 1415(b)(2) and 1439(a)(5)], an individual assigned under either of those sections to be a surrogate parent.

² 20 USCS § 1401(3) provides:

Child with a disability.

(A) In general. The term “child with a disability” means a child—

- (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this title [20 USCS §§ 1400 et seq.] as “emotional disturbance”), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
- (ii) who, by reason thereof, needs special education and related services.

(B) Child aged 3 through 9. The term “child with a disability” for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the local educational agency, include a child—

- (i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in 1 or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and
- (ii) who, by reason thereof, needs special education and related services.

Family Court since the right of access to free and fair education extends to young people up to and in some cases beyond the 22nd birthday;³ and

WHEREAS, the Superior Court has established Attorney Practice Standards for Special Education Panel Attorneys;⁴ and

WHEREAS, the School Justice Project, a legal services and advocacy organization serving older students with special education needs involved in the District of Columbia's juvenile and criminal legal systems, received a grant from the Office of Victim Services and Justice Grants (OVSJG) to provide special education legal representation to emerging adult defendants with disabilities;

WHEREAS, attorneys handling special education matters in all Superior Court cases must adhere to the Attorney Practice Standards for Special Education Panel Attorneys pursuant to Administrative Order 09-03;⁵ and

WHEREAS, the Superior Court of the District of Columbia Administrative Order 09-03, the Family Court Attorney Practice Standards for Special Education Panel Attorneys, and the Family Court have a structure for the application, selection, and training of Special Education Panel Attorneys performing the same type of representation for clients in all divisions of the Court; and

WHEREAS, pursuant to D.C. Code § 11-2601, the Joint Committee on Judicial Administration has the authority to place in operation in the District of Columbia a plan for furnishing representation to any person in the District of Columbia who is financially unable to obtain adequate representation and is either a person charged with a crime, or a juvenile alleged to be delinquent or in need of supervision;⁶ and

WHEREAS, pursuant to D.C. Code § 11-2602, counsel furnishing representation under the plan shall in every case be selected from panels of attorneys designated and approved by the courts;

NOW, THEREFORE, it is by this court,

ORDERED that the members of the existing Family Court Special Education Panel Attorneys shall be available for appointment as Special Education Panel Attorneys in criminal proceedings; and, it is further

³ See Superior Court of the District of Columbia Administrative Order 09-03; Superior Court of the District of Columbia, Family Court Attorney Practice Standards for Special Education Attorneys, at 5 and fn. 2.

⁴ Id.

⁵ Id.

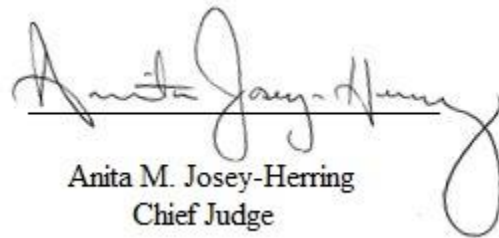
⁶ D.C. Law 24-344, enacted as D.C. Code 16-714, creates a different authorization of funds, separate from the court's authority, in which the Office of Victim Services and Justice Grants shall issue an annual grant of \$300,000 to a legal services and advocacy organization serving older students with special education needs who are involved in the District's juvenile and criminal legal systems to provide special education legal representation to emerging adult defendants. As this funding is separate from the Court's funding, the Court has no authority in administering those funds.

ORDERED that eligible attorneys from the School Justice Project shall be available for appointment as Special Education Panel Attorneys in criminal proceedings beginning October 1, 2023, and adhere to the Attorney Practice Standards for Special Education Panel Attorneys beginning October 1, 2024, unless this Administrative Order is modified; and, it is further

ORDERED that eligible attorneys from future organizations receiving OVSJG grant funds to provide special education legal representation to emerging adult defendants with disabilities shall be available for appointment as Special Education Panel Attorneys in criminal proceedings and adhere to the Attorney Practice Standards for Special Education Panel Attorneys; and, it is further

ORDERED that Special Education Panel Attorneys appointed pursuant to this Administrative Order shall represent the educational and disability rights and needs of indigent emerging adult defendants with a disability.

SO ORDERED.



Anita M. Josey-Herring
Chief Judge

Date: September 29, 2023

Copies to:

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