

# CPCS Performance Standards

## What do they say about education?

### ○ PERFORMANCE STANDARDS GOVERNING THE REPRESENTATION OF CHILDREN AND PARENTS IN CHILD WELFARE CASES

- 14.1 Counsel should make an independent **determination of what services are necessary to meet the client's needs and to advance the client's interests in the litigation**. Counsel should consider any barriers to the client's use of available services including disabilities or transportation, language or cultural barriers and seek to overcome such barriers. Services may include: family preservation-related prevention or reunification services; sibling and family visitation; domestic violence prevention, intervention and treatment; medical care; mental health services; substance abuse treatment; parent and home health aides; parenting education; respite services; independent living services; specialized or long-term foster care; adoption services; **education**; recreational or social services; housing; financial assistance; vocational or employment related services.
- 3.1(d) Counsel shall review relevant social service, medical, psychiatric, psychological, substance abuse, law enforcement, CORI and **school records**, as well as records of other court proceedings, as appropriate, and take the necessary steps to obtain such records.
- 3.1(h) Counsel should, if appropriate, necessary and practicable, attend all service planning, treatment and placement meetings, administrative reviews and hearings and other proceedings involving the client. In addition, if counsel represents a child, counsel should, if appropriate, necessary and practicable, **attend school conferences**.

### ○ PERFORMANCE STANDARDS GOVERNING REPRESENTATION OF INDIGENT JUVENILES INDELINQUENCY, YOUTHFUL OFFENDER, AND CRIMINAL CASES

- I(B): "Counsel should have a working knowledge of the law regarding: DYS classification procedures, Child Requiring Assistance (CRA), Care and Protection, **school suspension and expulsion, special education**, and DCF Fair Hearings. Counsel should be aware that each of these other areas of law and social service systems has a potential overlap with the delinquency/youthful offender proceedings."
- II(A)(C)(4): Bail or Detention Hearing - Counsel should consider and advocate for **reasonable conditions of release**...
- II(B)(3): If the client may be detained, the focus of the initial interview and investigation will be to obtain information relevant to the determination of bail and/or pretrial conditions of release. Such information should generally include: (i) **client's school placement, (G.L. c.71B); status, attendance, special ed. designation**;
- II(B)(6): Counsel should obtain signed releases by the client and parent for mental health records, **school records**, DCF records, DYS records, employment records, etc. Counsel should advise the client of the potential use of this information and the privileges that attach to this information.

- II(E)(5): Counsel should consider obtaining funds for an interpreter, investigator, social worker, expert (e.g., psychologist or educational specialist) at arraignment if the client does not speak English, immediate investigation of the allegations is necessary, or immediate psychological/psychiatric/biopsychosocial evaluation of the client is warranted. Otherwise, these motions may be filed at the pre-trial hearing date.
- III(C): Counsel should be aware of the statutory findings (protection and interests of the public) that G.L. c. 119, § 72A requires the judge to make. Counsel should be prepared to argue that the judge should consider, but is not limited to, the following factors: (i) the seriousness of the alleged offense; (ii) the child's family, **school and social history**, including his court and juvenile delinquency record, if any; (iii) adequate protection of the public; (iv) the nature of any past treatment efforts for the child; and (v) the likelihood of rehabilitation of the child. Commonwealth v. A Juvenile, 16 Mass. App. Ct. 251 (1983).
- V(L): Counsel should begin gathering information relative to possible sentencing as soon as possible. This should include, but not be limited to, obtaining any and all relevant school records, background information, psychological evaluations, and the like.
- VI(A): Where negotiations are begun, counsel should attempt to obtain the most **favorable disposition possible** for the client. The client shall be kept informed of the status of the plea negotiations.
- VI(D)(12): Counsel must also fully advise the client of the consequences of a conviction, including (13) potential school suspension or expulsion consequences (G.L. c. 71, §§ 37H and 37H1/2);
- VIII(A): Defense counsel should be familiar with and consider (10) **Available school placements and services** that could aid in disposition
- VIII(B): Counsel should advocate in advance of trial or sentencing for a **favorable recommendation** from both the prosecutor and the representative of the probation department.
- VIII(D)(1): Counsel should carefully consider and discuss with the client any sentencing recommendations to be made by the defense and the reasons for them. If appropriate, counsel should discuss any recommendations with other experienced defense counsel. Counsel should explore **all reasonable alternatives** to commitment to DYS or incarceration as an adult, e.g., community services, **educational services**, rehabilitative programs, DCF services, including shelter care, foster placement, or residential placement, DMH or DDS services, outpatient counseling, inpatient drug treatment, and restitution.