

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE INSPECTOR GENERAL**

**AUDIT OF
SPECIAL EDUCATION
ATTORNEY CERTIFICATIONS**



**CHARLES J. WILLOUGHBY
INSPECTOR GENERAL**

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General

Inspector General



October 11, 2013

Natwar M. Gandhi, Ph.D.
Chief Financial Officer
Office of the Chief Financial Officer
The John A. Wilson Building
1350 Pennsylvania Avenue, N.W., Suite 203
Washington, D.C. 20004

Kaya Henderson
Chancellor
District of Columbia Public Schools
1200 First Street, N.E.
Washington, D.C. 20002

Dear Dr. Gandhi and Chancellor Henderson:

Enclosed is the final report summarizing the results of the Office of the Inspector General's (OIG) Audit of Special Education Attorney Certifications (OIG No. 11-1-15AT). The audit was conducted pursuant to D.C. Code § 1-301.115a(3)(J) (2001), which requires the OIG to annually determine the accuracy of attorney certifications made to the Office of the Chief Financial Officer (OCFO) in special education cases. The audit was included in the OIG's Fiscal Year 2011 Audit and Inspection Plan.

As a result of our audit, we directed one recommendation to the OCFO and nine recommendations to the District of Columbia Public Schools (DCPS) (of which two were also directed to the OCFO) for action we consider necessary to correct identified deficiencies. The OCFO provided a written response to the draft of this report on June 7, 2013. The full text of the OCFO response is included in Exhibit B.

The OCFO agreed with Recommendation 1 and provided a plan of action without a target date. Thus, we request that the OCFO provide our Office with a target date and a response within 60 days of the date of this final report.

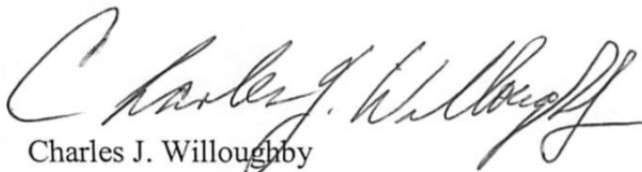
The OCFO's response to Recommendation 5 met the intent of the recommendation. However, the OCFO disagreed with Recommendation 6. Because the OCFO's response is unclear as to whether it meets the intent of the recommendation, we consider this recommendation to be unresolved. Thus, we request that the OCFO reconsider its position and provide a revised response within 60 days from the date of this final report. The full text of the OCFO response is included at Exhibit B.

We also received a response to the draft audit report from DCPS on July 25, 2013. DCPS disagreed with Recommendations 2, 3, 7, 8, and 10. However, we consider the actions taken and/or planned by DCPS to be responsive to Recommendations 2, 7, 8, and 10. DCPS's response to Recommendation 3 does not meet the intent of the recommendation; therefore, we consider it to be unresolved. We request that DCPS reconsider its position taken on Recommendation 3 and provide our Office with a revised response within 60 days from the date of this final report. DCPS did not provide a target date for completing planned actions for Recommendations 2 and 7. Thus, we request that DCPS provide target completion dates for Recommendations 2 and 7.

DCPS agreed with Recommendations 4, 5, 6, and 9, and their responses meet the intent of the recommendations. However, no target completion date for planned action was provided for Recommendation 5. Thus, we request that DCPS provide a target date for planned action for this recommendation within 60 days from the date of this final report. The full text of DCPS's response is included at Exhibit C.

We appreciate the cooperation and courtesies extended to our staff by the OCFO and DCPS personnel. If you have questions, contact me or Ronald King, Assistant Inspector General for Audits, at (202) 727-2540.

Sincerely,



Charles J. Willoughby
Inspector General

Enclosure

CJW/tda

cc: See Distribution List

DISTRIBUTION:

The Honorable Vincent C. Gray, Mayor, District of Columbia
Mr. Allen Y. Lew, City Administrator, District of Columbia (via email)
Mr. Victor L. Hoskins, Deputy Mayor for Planning and Economic Development, District of Columbia (via email)
The Honorable Phil Mendelson, Chairman, Council of the District of Columbia (via email)
The Honorable Kenyan McDuffie, Chairperson, Committee on Government Operations, Council of the District of Columbia (via email)
The Honorable David Catania, Chairperson, Committee on Education (via email)
Mr. Brian Flowers, General Counsel to the Mayor (via email)
Mr. Christopher Murphy, Chief of Staff, Office of the Mayor (via email)
Ms. Janene Jackson, Director, Office of Policy and Legislative Affairs (via email)
Mr. Pedro Ribeiro, Director, Office of Communications, (via email)
Mr. Eric Goulet, Budget Director, Mayor's Office of Budget and Finance
Ms. Nyasha Smith, Secretary to the Council (1 copy and via email)
Mr. Irvin B. Nathan, Attorney General for the District of Columbia (via email)
Dr. Natwar M. Gandhi, Chief Financial Officer (1 copy and via email)
Mr. Mohamad Yusuff, Interim Executive Director, Office of Integrity and Oversight, Office of the Chief Financial Officer (via email)
Ms. Yolanda Branche, D.C. Auditor
Mr. Phillip Lattimore, Director and Chief Risk Officer, Office of Risk Management (via email)
Mr. Steve Sebastian, Managing Director, FMA, GAO, (via email)
The Honorable Eleanor Holmes Norton, D.C. Delegate, House of Representatives, Attention: Bradley Truding (via email)
The Honorable Darrell Issa, Chairman, House Committee on Oversight and Government Reform, Attention: Howie Denis (via email)
The Honorable Elijah Cummings, Ranking Member, House Committee on Oversight and Government Reform, Attention: Yvette Cravins (via email)
The Honorable Thomas Carper, Chairman, Senate Committee on Homeland Security and Governmental Affairs, Attention: Holly Idelson (via email)
The Honorable Tom Coburn, Ranking Member, Senate Committee on Homeland Security and Governmental Affairs, Attention: Katie Bailey (via email)
The Honorable Mark Begich, Chairman, Senate Subcommittee on Emergency Management, Intergovernmental Relations and the District of Columbia, Attention: Cory Turner (via email)
The Honorable Rand Paul, Ranking Member, Senate Subcommittee on Emergency Management, Intergovernmental Relations and the District of Columbia
The Honorable Harold Rogers, Chairman, House Committee on Appropriations, Attention: Amy Cushing (via email)

DISTRIBUTION (CON'T):

- The Honorable Nita Lowey, Ranking Member, House Committee on Appropriations,
Attention: Laura Hogshead (via email)
- The Honorable Ander Crenshaw, Chairman, House Subcommittee on Financial Services
and General Government, Attention: Amy Cushing (via email)
- The Honorable José E. Serrano, Ranking Member, House Subcommittee on Financial
Services and General Government, Attention: Laura Hogshead (via email)
- The Honorable Barbara Mikulski, Chairwoman, Senate Committee on Appropriations,
Attention: Ericka Rojas (via email)
- The Honorable Richard Shelby, Ranking Member, Senate Committee on Appropriations,
Attention: Dana Wade (via email)
- Chairman, Senate Subcommittee on Financial Services and General Government,
Attention: Marianne Upton (via email)
- The Honorable Mike Johanns, Ranking Member, Senate Subcommittee on Financial
Services and General Government, Attention: Dale Cabaniss (via email)

ACRONYMS

DCPS	District of Columbia Public Schools
DCMR	District of Columbia Municipal Regulations
FCPS	Fairfax County Public Schools
FY	Fiscal Year
GAGAS	Generally Accepted Government Auditing Standards
GAO	Government Accountability Office
HOD	Hearing Officer's Decision
IDEA	Individuals with Disabilities Education Act
OCFO	Office of the Chief Financial Officer
OGC	Office of the General Counsel
OIG	Office of the Inspector General
OSSE	Office of the State Superintendent of Education
PASS	Procurement Automated Support System
SA	Settlement Agreement
SLPS	St. Louis Public Schools
SOAR	System of Accounting and Reporting

TABLE OF CONTENTS

EXECUTIVE DIGEST	i
INTRODUCTION.....	1
BACKGROUND	1
OBJECTIVES, SCOPE, AND METHODOLOGY	6
PRIOR REVIEWS	7
FINDINGS AND RECOMMENDATIONS.....	8
FINDING 1: ATTORNEY FEE LIMITATION	8
FINDING 2: ATTORNEY AFFILIATIONS AND REPORT SUBMISSION ...	12
FINDING 3: MAINTENANCE AND RETENTION OF CERTIFICATIONS. ...	17
FINDING 4: HOURLY RATE GUIDELINES	27
EXHIBIT.....	36
EXHIBIT A: SUMMARY OF POTENTIAL BENEFITS RESULTING FROM AUDIT.....	36
EXHIBIT B: OCFO RESPONSE TO DRAFT REPORT.....	39
EXHIBIT C: DCPS RESPONSE TO DRAFT REPORT.....	41

EXECUTIVE DIGEST

OVERVIEW

The Office of the Inspector General (OIG) has completed an Audit of Special Education Attorney Certifications (OIG No. 11-1-15AT). This audit was conducted pursuant to D.C. Code § 1-301.115(a)(3)(J), which requires the OIG to annually determine the accuracy of attorney certifications made to the Office of the Chief Financial Officer (OCFO) in special education cases brought under the Individuals with Disabilities Education Act (IDEA) in the District of Columbia. Our audit covers the period from fiscal year (FY) 2006 to FY 2010. In addition, this audit was included in our FY 2011 Audit and Inspection Plan.

Our overall objective was to determine the accuracy of certifications made to OCFO by attorneys in special education cases brought under the IDEA in the District. Based upon D.C. Code § 1-204.24d(28), our specific objectives were to determine whether: (1) attorneys certified in writing all rendered services for which the attorneys prevailed in a special education case; (2) attorneys receiving payment for rendered services maintained any financial, corporate, legal, board of directors, or other relationships with any special education diagnostic services, schools, or other special education service providers to which the attorney had referred any client; and (3) quarterly reports were prepared and submitted to the Committees on Appropriations of the House of Representatives and Senate on the certifications.

CONCLUSIONS

The report contains four findings that detail the conditions identified during our audit. We found that: (1) the absence of a monetary award limitation and local hourly rate guidelines on attorneys' fees could result in loss of revenue for the District; (2) the OCFO is not adhering to laws set forth in the D.C. Code, which could result in penalties imposed by the Council of the District of Columbia (Council) and the United States Congress; (3) the OCFO has significant weaknesses with respect to record management and record retention processes; and (4) some attorneys' fee payments should not have been awarded due to the lack of appropriate documentation and signatures. These deficiencies occurred due to the OCFO's lack of management oversight, lack of awareness of duties and responsibilities mandated by law, and poor recordkeeping practices.

EXECUTIVE DIGEST

SUMMARY OF RECOMMENDATIONS

We directed one recommendation to the Director of the OCFO and nine recommendations to DCPS, two of which were also directed to the OCFO that we believe are necessary to correct the deficiencies noted in this report. The recommendations center, in part, on:

- Reinstating legislation previously written in federal law to prevent loss of revenue for the District;
- Establishing protocols and additional steps to verify attorney affiliations and to prepare and submit reports to Congress, as mandated by the D.C. Code;
- Implementing inter-agency agreements for the execution of duties and responsibilities;
- Developing formal policies and procedures regarding record maintenance to ensure proper management of legal documentation;
- Improving and strengthening internal controls for the approval and payment of attorneys' fees;
- Verifying the accuracy of the numbers of years in which attorneys have been licensed to practice law in the District; and
- Reevaluating protocols and procedures regarding the payment of attorneys' fees.

MANAGEMENT RESPONSES AND OIG COMMENTS

On June 7, 2013, the OCFO provided a written response to the draft audit report. The OCFO agreed with Recommendation 1 and provided a plan of action without a target date. Thus, we request that the OCFO provide our Office with a target date and a response within 60 days of the date of this final report.

The OCFO's response to Recommendation 5 met the intent of the recommendation. However, the OCFO disagreed with Recommendation 6. Because the OCFO's response is unclear as to whether it meets the intent of the recommendation, we consider this recommendation to be unresolved. Thus, we request that the OCFO reconsider its position and provide a revised response within 60 days from the date of this final report. The full text of the OCFO response is included at Exhibit B.

EXECUTIVE DIGEST

We also received a response to the draft audit report from DCPS on July 25, 2013. DCPS disagreed with Recommendations 2, 3, 7, 8, and 10. However, we consider the actions taken and/or planned by DCPS to be responsive to Recommendations 2, 7, 8, and 10. DCPS's response to Recommendation 3 does not meet the intent of the recommendation; therefore, we consider it to be unresolved. We request that DCPS reconsider its position taken on Recommendation 3 and provide our Office with a revised response within 60 days from the date of this final report. DCPS did not provide a target date for completing planned actions for Recommendations 2 and 7. Thus, we request that DCPS provide target completion dates for Recommendations 2 and 7.

DCPS agreed with Recommendations 4, 5, 6, and 9, and their responses meet the intent of the recommendations. However, no target completion date for planned action was provided for Recommendation 5. Thus, we request that DCPS provide a target date for planned actions for this recommendation within 60 days from the date of this final report. The full text of DCPS's response is included at Exhibit C.

INTRODUCTION

BACKGROUND

The Office of the Inspector General (OIG) has completed an Audit of Special Education Attorney Certifications. Our overall objective was to determine the accuracy of certifications made to the OCFO by attorneys in special education cases brought under the Individuals with Disabilities Education Act (IDEA) in the District. According to the D.C. Code, OCFO is responsible for confirming attorney certifications. The Office of the General Counsel (OGC) of the D.C. Public Schools (DCPS) is responsible for approving payment of attorneys' fees, and the Office of the Chief Financial Officer (OCFO) is responsible for processing attorneys' fee payments.

Individuals with Disabilities Education Act (IDEA). IDEA is a federal law established to ensure that children with disabilities receive free appropriate public education. Special education cases are generally filed under IDEA. If a parent or guardian is not satisfied with the type of educational service their disabled child is receiving, they have the opportunity to address their concerns and have the child transferred to a more responsive educational institution to meet the needs of their child. If this does not occur, the parent or guardian can request an administrative hearing with DCPS.

Requests for administrative hearings are submitted to the Student Hearing Office, which is independent of any other government agency, but funded and administered through the Office of the State Superintendent of Education (OSSE). Independent Hearing Officers are hired by the OSSE through the Student Hearing Office to hear and decide cases alleging any violation under IDEA. If either party is not satisfied with the final Hearing Officer's Decision (HOD), they have the opportunity to appeal the decision in court. However, if the parent or guardian prevails in the court case, they are entitled to seek the reimbursement of reasonable attorneys' fees under IDEA from DCPS. As a result, the attorney representing the student will receive payment from DCPS.

DCPS's Office of the General Counsel. DCPS's OGC is responsible for providing legal advice and counsel to DCPS.¹ The OGC represents DCPS in administrative proceedings, to include special education due process hearings. According to OGC officials, the District structure requires the OGC to represent DCPS in administrative hearings when complaints are filed under IDEA. With regard to the attorney certification process, the OGC's function is to process certifications daily and ensure that the attorneys prevailing against DCPS in IDEA matters are awarded attorney fees based on the reasonableness of services.

¹ See DCPS's website at <http://dc.gov/DCPS/About+DCPS/Office+Directory/Office+of+the+General+Counsel> (last visited Nov. 14, 2012)

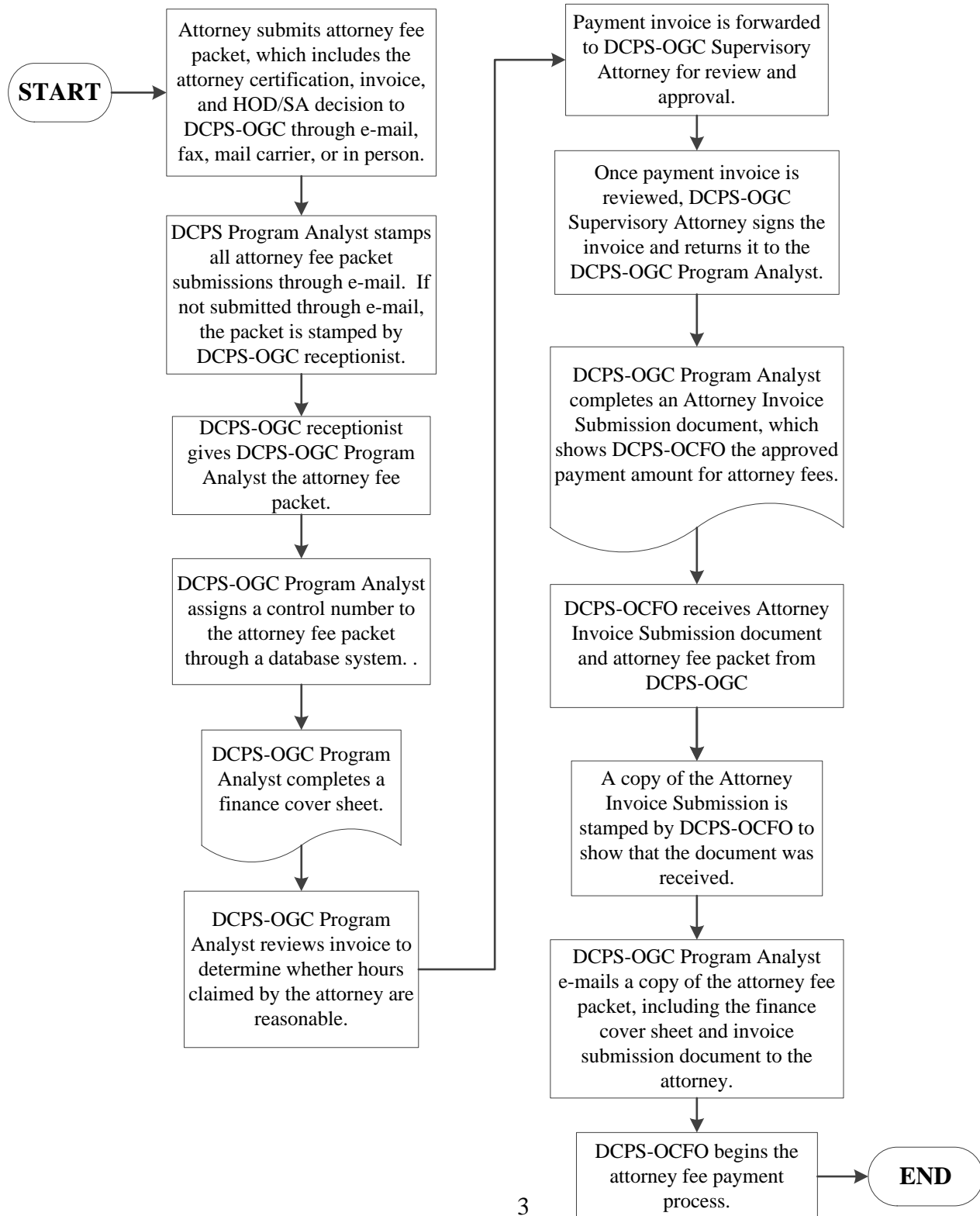
INTRODUCTION

OGC's Approval Process. The approval process involves attorneys representing students to submit to the OGC an attorney fee packet, which includes the attorney certification, invoice, and HOD or Settlement Agreement (SA). An attorney certification is prepared by the OGC, and signed by the attorney. The invoice documents the attorney's hourly rate and hours spent on the case with a total for expected compensation. The HOD provides documentation of the final decision by the Independent Hearing Officer based on the evidence presented during the administrative hearing. The SA reflects the agreement between the parent and DCPS. The OGC uses these documents to evaluate the reasonableness of services and administrative adjudication to determine the total amount that the attorney should be awarded. This process takes approximately 60 days from the date in which the attorney fee packet was received.² Based on our review, we prepared a flowchart (see next page), which depicts how attorney certifications are processed by OGC:

² Per DCPS Guidelines for Attorney Fees in IDEA Matters.

INTRODUCTION

Flowchart of OGC's Attorney Certification Process



INTRODUCTION

DCPS’s Office of Chief Financial Officer. The OCFO provides fiscal information and financial management planning that is necessary for the Board of Education and other District officials to make program decisions that effectuate a strong educational system in the District.³ The OCFO’s mission is to protect DCPS’ assets and resources and to oversee DCPS budget and accounting operations.⁴ The OCFO ensures that payments approved by OGC officials are proper in terms of rendered services and are processed timely.

OCFO’s Payment Process. Once the OGC reviews and approves the reasonableness of the attorney’s services, the OCFO is responsible for payment processing. After the attorney packets are received, OCFO officials review the accuracy of the information and ensure that there is an approval signature by OGC officials. The OCFO has 30 days from receipt of OGC’s approval to process payment.⁵ Per DCPS-OCFO officials, if a case is settled out of court, payments are mandated before the 30 days. Paid attorneys’ fees are documented through the System of Accounting and Reporting (SOAR) and Procurement Automated Support System (PASS) databases. Based on our review, we prepared a flowchart (see next page), which illustrates how payments are processed by the OCFO:

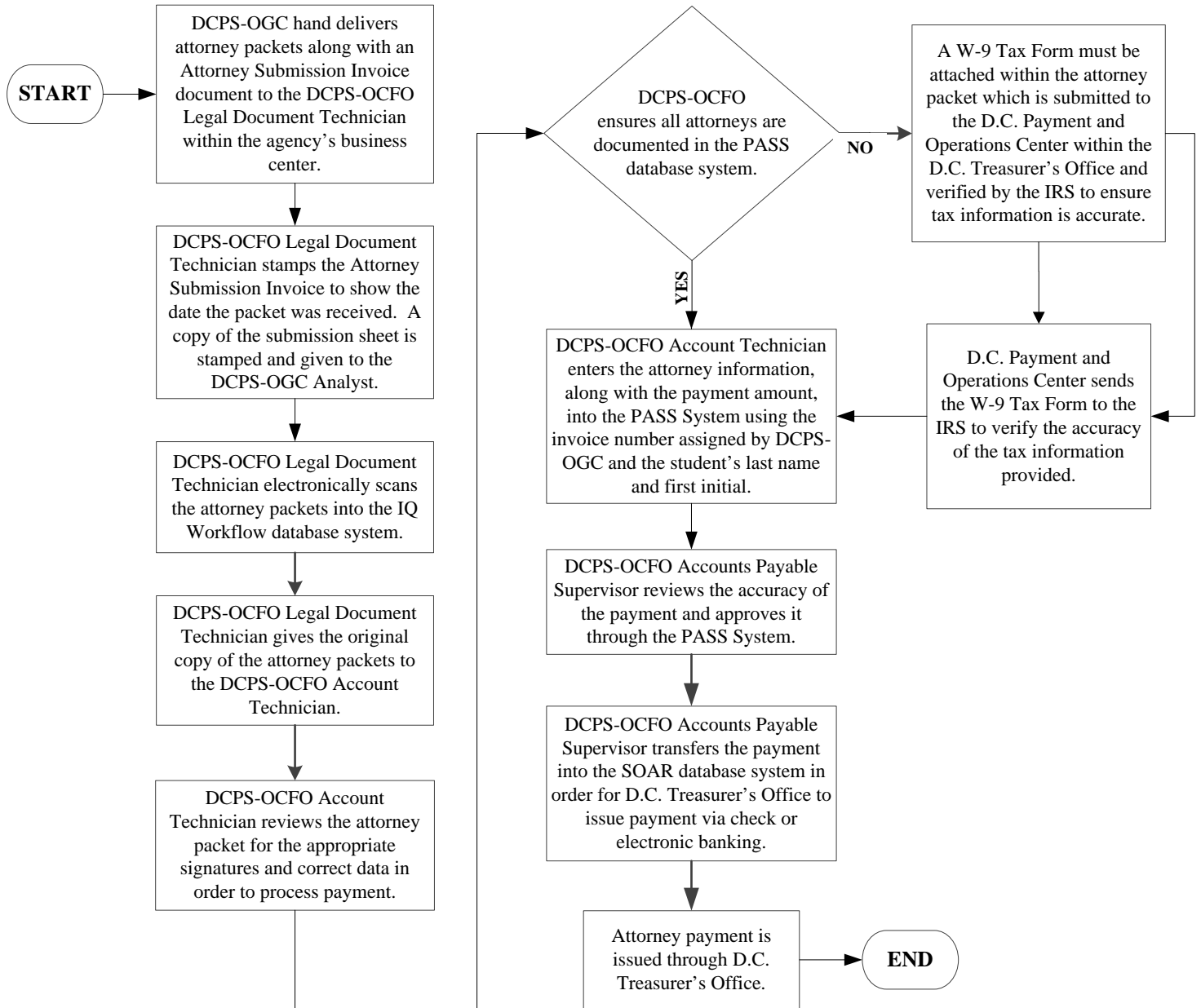
³ See DCPS’s website at http://dcps.cfo.dc.gov/dcps/cwp/view.a,3,q,491011,dcpsNav_GID,1461,dcpsNav,%7C31072%7C,..asp (last visited Nov. 14, 2012).

⁴ See *id.*

⁵ According to the District’s Quick Payment Act, D.C. Code § 2-221.02(a)(2)(A) (ii), to avoid paying interest penalties, District agencies are required to make payment within “30 calendar days, excluding legal holidays, after receipt of a proper invoice for the amount of the payment due, if a specific date on which payment is due is not established by contract. . . .”

INTRODUCTION

Flowchart of OCFO's Attorney Payment Process



INTRODUCTION

OBJECTIVES, SCOPE, AND METHODOLOGY

Our overall objective of the audit was to determine the accuracy of certifications made to the OCFO by attorneys in special education cases brought under IDEA in the District. Pursuant to the D.C. Code, we developed specific objectives to determine whether: (1) attorneys certified in writing any and all rendered services for which the attorneys received an award for prevailing in a special education case; (2) attorneys receiving payment for any or all rendered services maintained any financial, corporate, legal, board of directors, or other relationships with any special education diagnostic services, schools, or other special education service providers to which the attorneys have referred any clients; and (3) quarterly reports were prepared and submitted to the Committees on Appropriations of both the House of Representatives and Senate on the certification of and the amount paid for attorney certifications by the District of Columbia government.

The scope of the audit included a review of attorney certifications during FYs 2006 through 2010. To accomplish our objectives, we: (1) conducted interviews with staff members and appropriate officials from the OGC and the OCFO; (2) reviewed applicable laws and internal policies and assessed compliance with these laws and policies; (3) reviewed the accuracy of attorney certifications for the fiscal years under review; (4) analyzed attorney certifications and supporting documentation for program results; and (5) assessed the effectiveness of internal/management controls. Our review focused on the duties and responsibilities of the OCFO as found in D.C. Code §1-204.24d (28).

We accompanied OGC and OCFO officials on a walk-through of the attorney certification process. We reviewed manual records of attorney certifications for FYs 2006 through 2008. We conducted a site visit of the storage facility where OCFO official documents are archived. We also relied on the OCFO's database to review electronic records processed during FYs 2009 and 2010.

We relied on computer-processed data from SOAR to obtain summary information on the total amount paid for attorney fees during the fiscal years under review. We conducted the audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives.

INTRODUCTION

PRIOR REVIEWS

Our research revealed no reviews conducted in the last 5 years regarding District special education attorney certifications. However, the Government Accountability Office (GAO) issued a report on DCPS attorneys' fees entitled, "DCPS: Attorneys' Fees for Access to Special Education Opportunities," on May 22, 2002. This report evaluated attorneys' fees awarded by the courts to prevailing plaintiffs that were in excess of the appropriations act's limitation.

GAO determined that the attorney fee limitations in the appropriations acts had little to no impact on the total amount awarded by the courts for attorneys who prevailed against DCPS under IDEA. The limitations only applied to the amount the District could pay and not the amount that the court could award. Where there is an independent legal basis to award attorney fees, the court could do so without regard to the appropriations acts' limitations. GAO provided a comparison of District schools to five United States school districts with similar demographics and population. The five school districts were Oakland, California; St. Louis City, Missouri; San Antonio, Texas; Montgomery County, Maryland; and Fairfax County, Virginia. GAO found that the "history and scope of special education programs, as well as the likelihood of a district's success in prevailing in IDEA complaints, . . . can significantly affect the number and types of . . . cases [that are brought against school districts]. . . . Therefore, [they] believe [that] these factors [should] be considered when comparing data for attorneys' fees awarded under IDEA across school districts."⁶

⁶ Letter from Jeanette M. Franzel, Acting Director, Financial Management and Assurance, Government Accountability Office to Congressional Committees (May 22, 2002) (on file with author) *available at* <http://www.gao.gov/assets/100/91293.pdf>.

FINDINGS AND RECOMMENDATIONS

FINDING 1. ATTORNEY FEE LIMITATION

SYNOPSIS

DCPS does not have limitations on the monetary award an attorney can obtain for prevailing in a case under IDEA. The attorney fee limitation previously written in the Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, 118 Stat. 3, was removed by Congress in March 2009. The limitation allotted prevailing attorneys a maximum amount of \$4,000 in attorneys' fees. We found that DCPS spent less on attorneys' fees when the limitation was in place. Consequently, removal of the attorneys' fee limitation results in a loss of revenue that could have been put to better use for the District's special education students.

DISCUSSION

The attorneys' fee limitation in the 2004 Consolidated Appropriations Act limited the amount DCPS could award an attorney who prevailed in a special education case under IDEA.⁷ According to OGC officials, the attorneys' fee limitation was created by Congress for two reasons: (1) too much revenue was being spent on attorneys' fees rather than on care for students; and (2) a situation occurred between a local law firm and a disabled student, which required the OCFO to ensure attorneys were not affiliated with any special education services. Prior to the removal of the fee limitation, an attorney could receive from DCPS no more than \$4,000 for prevailing in a case.

If a parent or guardian is not satisfied with the type of educational service their disabled child is receiving, they have the opportunity to address their concerns and have the child transferred to a more suitable educational institution or have an administrative hearing. If the parent or guardian chooses to have an administrative hearing and prevails, their attorney may submit a payment request for rendered services to either the U.S. District Court for the District of Columbia or DCPS. According to OGC officials, most attorneys choose to submit payment requests to DCPS because it is a quicker process than the federal court process. DCPS's payment process takes 60 to 90 days to review, approve, and authorize the transaction. According to DCPS, the U.S. District Court takes about 6 months to process payment.

⁷ Pursuant to Sec. 432(1) of the Consolidated Appropriations Act, 2004, "None of the funds contained in this Act may be made available to pay . . . the fees of an attorney who represents a party in an action or an attorney who defends an action, including an administrative proceeding, brought against [DCPS] under the [IDEA] . . . in excess of \$4,000 for that action. . . ."

FINDINGS AND RECOMMENDATIONS

In March 2009, Congress removed the limitation for attorneys' fees for cases filed after the legislation's enactment. *See* Omnibus Appropriations Act, 2009, Pub. L. No. 111-8, 123 Stat. 697. Consequently, if the prevailing attorney is paid attorneys' fees from DCPS, the attorney can possibly receive more than the \$4,000 previously allotted in the act for rendered services.⁸ The OGC is unsure of why this decision was made, but believes that there should be a limitation on attorneys' fees because too much is being spent.

Attorneys' Fee Payments. We performed tests to determine whether the OGC followed the statutory limitation of awarding no more than \$4,000 in attorneys' fees during FYs 2006 through 2008. The statutory limitation was effective during FYs 2006 through 2008, and was removed from the appropriations act in FY 2009. We found that the OGC did not adhere to District guidelines in awarding no more than \$4,000 in attorneys' fees. Additionally, we identified that the removal of the statutory limitation adversely affected the District resources. Our review discovered that attorneys' fee payments have gradually increased since the removal of the limitations. Maintaining the statutory limitation could have saved the District revenue in awarding attorneys' fees.

According to the DCPS Guidelines for the Payment of Attorney Fees in IDEA Matters, the OGC will pay prevailing attorney reasonable attorneys' fees in addition to advocate fees and out-of-pocket expenses. Further, the guidelines states that "if the attorney has been paid up to the statutory cap, no addition[al] fee will be approved."⁹ We found that DCPS approved reimbursement for advocate and out-of-pocket expenses, in addition to attorney fees.¹⁰

As part of the OGC's review process, they prepare an invoice allocation document with the attorney's individual attorney certification packet. The invoice allocation document details the amount awarded to the attorney by the OGC for statutory fees, advocate fees, and out-of-pocket expenses. The invoice allocation document was included in FYs 2006,

⁸ Pursuant to Sec. 814(a)(1) of the Omnibus Appropriations Act, 2009, "[N]one of the funds contained in this Act or in any other Act making appropriations for the government of the District of Columbia for fiscal year 2009 or any succeeding fiscal year may be made available . . . to pay the fees of any attorney who represents a party in or defends an IDEA proceeding which was initiated prior to the date of the enactment of this Act in an amount in excess of \$4,000 for that proceeding"

⁹ This statement is pursuant to 5 DCMR § 3024.1.

¹⁰ According to *DCPS Guidelines for the Payment of Attorney Fees in IDEA Matters*, advocates who are hired for the purposes of providing testimony are reimbursable as out-of-pocket expenses of the attorney, subject to the fee cap where the parent is determined to be a prevailing party. When billing for out-of-pocket expenses such as photocopies, attorneys must provide a statement of the basis for the rate billed (e.g. per-page cost for photocopies).

FINDINGS AND RECOMMENDATIONS

2007 and 2008 attorney certification packets. However, our review found that some of FYs 2009 and 2010 attorney certification packets did not contain the invoice allocation document. Therefore, we used the OGC's attorneys' fee worksheet which details each service provided by the attorney during the case and the amount requested for services rendered. Additionally, the OGC reviews and approves the worksheet, documenting their reason, if any, for denying the amount requested and the adjusted rate and total for services.

Payments Awarded over the Statutory Cap. Our tests consisted of determining whether DCPS awarded funds in excess of the statutory cap during FYs 2006 through 2008. Per agency guidelines, an attorney should not receive any additional funds, such as advocate and out-of-pocket expenses, if awarded the \$4,000 statutory cap. Our review of the attorney fees' worksheet found that the OGC awarded 205 payments in excess of the statutory cap, for a total of \$107,888.59. DCPS was noncompliant with agency policies in awarding funds exceeding the statutory cap. As a result, the District was at greater risk for overspending District funds.

We also reviewed the SOAR report to verify actual payment amounts listed on the worksheet, and found an additional 459 payments, totaling \$3,986,331.05, that exceeded the statutory cap. However, we were unable to conduct tests of the 459 payments due to the OCFO's inability to retrieve records, which were destroyed by inclement weather that affected the storage facility.

Attorneys' Fee Cost Savings. For FYs 2009 and 2010, we found that the OGC approved 290 payments over \$4,000 totaling \$612,511.99. Further, the attorneys' fee worksheets lacked necessary data to make an accurate assessment of the total amount approved for attorneys' fees, out-of-pocket expenses, and advocate expenses. Additionally, we found that the OGC did not properly document their approved adjusted rates and/or denials on the attorneys' fee worksheets, and thus, we were unable to determine the total amount approved for each fee and expense. After reviewing the SOAR reports for FYs 2009 and 2010, we identified 120 attorneys' fee payments totaling \$838,257.85 that lacked documentation.

Overall, we believe that the removal of the statutory limitation from the annual appropriations act has impacted the District's resources by increasing expended funds for attorneys' fees. Further, if the statutory cap existed during FYs 2009 and 2010, DCPS could have saved \$612,511.99. As a result, the District had a total cost savings of \$720,400.58 (\$612,511.99 + \$107,888.59) for the fiscal years under review.

FINDINGS AND RECOMMENDATIONS

RECOMMENDATIONS

We recommend that the OCFO:

1. Request that the Council implement an attorneys' fee limitation with the purpose of limiting the award amount a prevailing attorney receives for rendered services to permit additional revenue for the District in order to care for its disabled students.

OCFO Response

The OCFO states they will work with the Office of the Attorney General and DCPS's OGC to discuss the recommendation and take an appropriate course of action, once consensus is achieved.

OIG Comment

The action taken by the OCFO meets the intent of this recommendation. However, the OCFO did not provide a target date for completing the planned action for the recommendation. Thus, we request the OCFO provide our Office with a target date and a response within 60 days of the date of this final report.

FINDINGS AND RECOMMENDATIONS

FINDING 2. ATTORNEY AFFILIATIONS AND REPORT SUBMISSION

SYNOPSIS

The OCFO did not effectively manage the process of verifying attorney affiliations or submitting and preparing quarterly reports. Pursuant to D.C. Code § 1-204.24d (28)(B) and (C), the OCFO is required to ensure that attorneys disclose within the certification document any affiliations with institutions, businesses, organizations, schools, or other special education service providers where the attorney had referred clients. Also, the OCFO is required to prepare quarterly reports of financial activity of amounts paid to attorneys and submit the reports to the Committees on Appropriations of both the House of Representative and Senate.

We found that the OCFO was noncompliant with D.C. Code § 1-204.24d(28)(B) whereby the OGC is currently performing these duties. We determined that the OCFO never prepared any reports or submitted reports to the Committees on Appropriations of the House of Representatives and Senate pursuant to D.C. Code § 1-204.24d (28)(C). These conditions occurred because OCFO management did not comply with District laws and regulations in verifying and certifying attorney affiliations, and failed to report to Congress the financial activity of the money awarded to attorneys. In addition, OCFO management failed to ensure that proper controls were in place to monitor receipt, approval, and reporting of attorney certifications.

CRITERIA

D.C. Code § 1-204.24d (28)(B)(Supp. 2012) provides the governing criteria for attorneys to disclose within the certification document any “financial, corporate, legal, membership on boards of directors, or other relationships with any special education diagnostic services, schools, or other special education service providers to which the attorneys have referred any clients” in cases under IDEA.

D.C. Code § 1-204.24d (28)(C)(Supp. 2012) provides the governing criteria for the preparation and submission of quarterly reports to the Committees on Appropriations of the House of Representatives and Senate on the certification of and the amount paid by the DCPS to prevailing attorneys in cases under IDEA.

FINDINGS AND RECOMMENDATIONS

DISCUSSION

Attorney Affiliations. OCFO officials were unaware of their role and responsibility in the process for verifying attorney affiliations. Pursuant to D.C. Code § 1-204.24d (28)(B), the OCFO is required to ensure that attorneys disclose on the certification document any affiliations with institutions, businesses, organizations, schools, or other special education services providers to whom the attorneys have referred clients. However, this function is currently being performed by the DCPS OGC.

Currently, the OGC receives, reviews, and approves the attorney certifications along with determining the award amount based on the reasonableness of services. The OGC also verifies that the affiliation statement and the attorney's signature are documented on the certification. After all documents are approved, the OGC submits the documents for payment to the OCFO. During our review, we found several errors in the OGC's review and approval process of attorney certifications. However, pursuant to D.C. Code, the attorney certification process is the responsibility of the OCFO. In order to avoid errors in the certification process, we believe that the OCFO should begin performing these responsibilities as required under the D.C. Code.

We also found that the OCFO does not ensure the authenticity of affiliations for attorneys who have prevailed against DCPS in special education cases. The OCFO and the OGC ensure that the affiliation statement and the attorney's signature are documented on the certification; however, the OCFO does not conduct any further analysis to determine whether the lawyer's statement is valid. Although it is not a legal requirement to validate affiliations, we believe that the OCFO should ensure that attorneys are not involved in any entities within the case, which will prevent the likelihood of any potential conflict of interest between the attorneys and their clients.

We learned that the OCFO accepts an attorney's signature as validation and assurance of organization affiliations. The OCFO does not review the entities disclosed for potential conflicts of interest with the subject matter of each case. We believe that management should conduct some form of review for potential conflicts. This deficiency could result in the District being at risk of liability in the event of a lawsuit for misconduct or misrepresentation, as well as place District students at risk of being subjected to substandard legal representation.

Certifying Attorney Affiliations. The OCFO is responsible for verifying an attorney's affiliations. The certification document used by the OGC requires the signature of the attorney to certify the statement regarding any affiliations with any businesses,

FINDINGS AND RECOMMENDATIONS

companies, organizations, or other relationships with special education diagnostic services, schools, or special education diagnostic service providers where the attorney had referred clients. Also, the attorney's signature is required before payment approval. The following statement appears on the certification form:

I certify that all of the following statements are true and correct:

- All services listed in the enclosed invoices were actually performed;
- The entire amount requested on the enclosed invoice for payment of costs and expenses represents the actual amount of cost and expenses incurred;
- The District of Columbia Public Schools is the sole entity from which payment of the fees, costs, and expenses itemized on the enclosed invoices is requested;
- No attorney or law firm who either (1) provides services listed on the enclosed invoice; or (2) will benefit from any monies paid as a result of the submission of the enclosed invoice, has a pecuniary interest, either through an attorney, officer, or employee of the firm, in any special education diagnostic services, schools, or other special education service providers;
- I understand that the making of false a statement to an agency of the D.C. Government is punishable by criminal penalties pursuant to D.C. Code § 22-2405.

Our review also determined whether the OCFO provided effective controls over the review, verification, and approval of attorney affiliations. We reviewed 296 records for the fiscal years under review and determined that 96 were missing certification documents. Thirteen records contained the certification document but lacked the attorney's signature, which is required for payment approval. Overall, there were 205 certification documents that were either missing or did not contain the appropriate signature(s). As a result, the OCFO should not have issued payment without appropriate signatures and documentation. However, based on the SOAR reports, payment was made to the attorneys regardless of the supporting documentation.

Reporting Requirement. We found that the OCFO did not prepare quarterly reports for FYs 2007, 2008, 2009, or 2010. According to District law, the OCFO is required to prepare quarterly reports and submit the reports to the Committees on Appropriations of the House of Representatives and Senate.

FINDINGS AND RECOMMENDATIONS

OCFO officials were unaware of their responsibility to prepare and submit quarterly reports to the Committees on Appropriations of the House of Representatives and Senate and believed that they are not responsible for performing this function. As a result, the OCFO did not prepare or submit quarterly reports to Congress about the progress of the operations, as well as report funds awarded to attorneys involved in IDEA cases. Failure to adhere to District laws and regulations could potentially result in infractions and severe consequences imposed from the Council and the United States Congress.

RECOMMENDATIONS

We recommend that DCPS:

2. Develop processes to review attorney affiliations for potential conflicts of interest.

DCPS Response

DCPS disagreed with the recommendation and stated that a conflict would be created if the DCPS Office of the General Counsel (DCPS OGC) was charged with the responsibility. DCPS will seek guidance from the D.C. Attorney General to determine the office or independent agency most appropriate to conduct this type of review.

OIG Comment

Action taken by DCPS meets the intent of the recommendation. However, DCPS provided no target date for completing planned actions for the recommendation. Thus, we request that DCPS provide our Office with a target date for planned actions and a response within 60 days of the date of this final report.

FINDINGS AND RECOMMENDATIONS

3. Request the Council to amend D.C. Code § 1-204.24d (28) to include language for the OCFO to review the certifications to detect prohibited conflicts of interest.

DCPS Response

DCPS disagreed with the recommendation, stating the process currently being used by the DCPS OGC and the OCFO is sufficient to ensure that the agency has exercised due diligence in these matters. In addition, the agency believes the task is better completed by DCPS OGC personnel because these individuals have the requisite knowledge and expertise.

OIG Comment

DCPS's response is noted, but does not meet the intent of our recommendation. We understand that the OGC may be more proficient in determining conflicts of interest. However, pursuant to D.C. Code § 1-204.24d (28), the OCFO is the agency specified as the recipient for the attorney certifications. Further, the statute is silent as to DCPS's review of attorney certifications and affiliations. Therefore, we request that DCPS reconsider their response and provide us with a revised response within 60 days of this final report.

4. Establish protocols to prepare and submit the required quarterly reports to the Committee on Appropriations of the House of Representatives and Senate in accordance with D.C. Code § 1-204.24d (28)(C).

DCPS Response

DCPS agreed with the recommendation, and noted that the OCFO has submitted the required reports since receipt of the draft report. DCPS added that it will continue to work with the OCFO in the future to ensure that quarterly reports are submitted timely.

OIG Comment

Action taken by DCPS is responsive and meets the intent of the recommendation.

FINDINGS AND RECOMMENDATIONS

FINDING 3. MAINTENANCE AND RETENTION OF ATTORNEY CERTIFICATIONS
--

SYNOPSIS

The OCFO did not effectively maintain attorney certification records, and the OCFO lacked policies and procedures over the maintenance and retention of office records. We were unable to obtain records for FYs 2006 through 2007. For FY 2006 and FY 2007, the majority of the records were destroyed or damaged due to conditions at the storage facility. For FY 2008, the OCFO was unable to locate half of the records processed during the year. Our review of the storage boxes obtained from another storage facility found that records were missing, disorganized, and unrelated to attorney certifications.

We also found that payments for attorneys' fees were issued despite the lack of appropriate supporting documentation and signatures indicating approval. Further, the OCFO did not comply with 1 DCMR §§ 1502-1503. These poor recordkeeping practices resulted in a scope limitation for our audit; therefore, we were unable to review FY 2006 records and had limited records for FYs 2007 and 2008. These conditions exist due to inadequate management oversight of office operations and failure to enforce office policies and procedures for record maintenance and retention. We concluded that the OCFO lacked reasonable assurance that error or fraud would be prevented or detected timely.

DISCUSSION

Title 1 DCMR § 1502.1 states that District “[a]gency heads shall establish controls over the creation of records to ensure that adequate and proper records are made and preserved . . .,” and 1 DCMR Chapter 15 § 1502.4 states agency programs, policies, and procedures shall be documented in directives.

Additionally, 1 DCMR § 1503.1 requires District agencies to establish controls, facilitating proper and adequate record maintenance to ensure records of continuing historical or other significance can be located when needed and preserved in good condition for eventual transfer to archives.

FINDINGS AND RECOMMENDATIONS

We were presented with two options in reviewing attorney certification records, either manually or electronically. Prior to FY 2008, the OCFO did not electronically store attorney certifications. The manual records cover FYs 2006 and 2007. However, FY 2009 and FY 2010 records are electronically stored either in the KwikTag system or the IQ Workflow system, according to the OCFO.¹¹ FY 2008 records were both manually and electronically stored. To identify an accurate number of attorney certifications processed in the years under review, we obtained reports generated from the District's System of Accounting and Reporting (SOAR). We compared the SOAR report to the IQ Workflow and KwikTag systems to account for all the certifications processed for payment for FYs 2008 through 2010. After reviewing certifications from FYs 2006 through 2010, we derived a statistical sample of 597 records.

MISSING RECORDS

Our review of attorney certification records revealed that several records were missing for FYs 2006 through 2008. In the process of obtaining records for our review, there were many obstacles because the OCFO did not maintain these records on-site. According to the OCFO, the manual records from FYs 2006, 2007 and 2008 were stored at Iron Mountain, a privately owned storage facility. We made an official request for the OCFO to retrieve the requested documents for our review. The OCFO retrieved 225 boxes from Iron Mountain, in which, most of the FY 2006 records were destroyed due to conditions at the storage facility; resulting in a limited review of records. However, the OCFO was able to retrieve some records from FYs 2007 and 2008.

Fiscal Years 2006 and 2007 Records. Based on the SOAR report, we identified 926 and 674 processed attorney certifications for FYs 2006 and 2007, respectively. However, we were only able to retrieve 60 records from FY 2006 and 394 records from FY 2007. Ninety-four percent of records listed on the FY 2006 SOAR report were missing and about 42% of records listed on the FY 2007 SOAR report were missing.

Using the SOAR report, we generated our audit statistical sample of 119 records for each fiscal year (2006 and 2007) for a combined total of 238 records. We did not review any records for FY 2006 because none of the 60 records retrieved were included in our sample for testing. For FY 2007, only 12 of the 394 records were included in our audit sample. These actions resulted in a scope limitation because we did not review or validate the completeness of most transactions that occurred in FYs 2006 and 2007.

¹¹ KwikTag and IQ Workflow are database systems used by the OCFO to store legal documents electronically. Attorney certification records for FYs 2008 are electronically stored in KwikTag, and records for FY 2009 to present are stored in IQ Workflow.

FINDINGS AND RECOMMENDATIONS

Fiscal Year 2008 Records. Based on the SOAR report, 337 attorney certifications were processed in FY 2008 and electronically stored in the KwikTag system. We selected 119 of the 337 records to include in our audit sample. When we searched KwikTag for records related to those in our sample, we were able to identify only 50 of 337 records. The OCFO was able to provide 257 manual records processed in FY 2008 (see image 2 on page 18). Therefore, we reviewed both the electronic and manual records, with some duplication, but found only 61 of the 119 records included in our audit sample. Table 2 summarizes the results of missing records for FYs 2006, 2007, and 2008.

Table 2. Missing Records for Fiscal Years 2006, 2007, and 2008

Fiscal Year	Auditor's Sample	Records Reviewed	Missing Records	Percentage of Missing Records
2006	119	0	119	100%
2007	119	12	107	90%
2008	119	61	58	49%
Total	357	73	284	80%

Site Visit to Storage Facility. We identified 284 missing records for FYs 2006, 2007, and 2008. Based on our original data request, OCFO staff visited the Iron Mountain facility to retrieve the requested records and found that records for FYs 2006, 2007, and 2008 were damaged due to inclement weather.

The OCFO was able to retrieve 225 boxes from Iron Mountain, and our review of the boxes' contents indicated that they failed to contain the records needed for our review. We informed the OCFO of our findings regarding the missing records and they responded that the missing records could possibly be stored at another off-site storage facility, the Adams Place Warehouse, which is owned and operated by the District of Columbia government.

Therefore, the audit team along with an OCFO official visited the Adams Place Warehouse to identify and retrieved the missing records, but discovered that the records in question were not stored at this location. However, there were some boxes that were identified by the warehouse management as being received from the OCFO, but were not properly labeled to identify the contents of the boxes (see image 4 on page 19).

Overall, these conditions reveal inadequate management oversight of record retention. As a result, the OIG was unable to fully comply with the D.C. Code § 1-301.115a(a) (3)(J), which requires the OIG to perform audits during fiscal years 2006 and each succeeding fiscal year, determining the accuracy over attorney certifications made to the OCFO. Due to the lack of supporting documentation, we were unable to make a valid and accurate assessment of certifications for FYs 2006, 2007, and 2008.

FINDINGS AND RECOMMENDATIONS

REVIEW OF OFF-SITE RECORDS

Our examination of the contents of the 225 boxes identified 656 records processed in FYs 2006 through 2008. We found that boxes: (1) were incorrectly labeled and unidentifiable by agency or office name; and (2) contained documents from prior fiscal years and records unrelated to attorney certifications. Also, boxes containing attorney certifications were ragged and disorganized. For example, attorney certification records should be stored in boxes labeled “legal,” but several attorney certification records were found in boxes labeled “DCPS,” “Accounts Payable,” “Special Ed,” etc. As a result of OCFO’s poor recordkeeping practices, the review process was time consuming and tedious. This is a clear indication of inadequate management of record retention and maintenance of supporting documentation.

The following photographs depict the volume of boxes and labeling deficiencies we found during our review. The photographs also illustrate the poor conditions under which the OCFO records were prepared, packaged, and forwarded to an off-site storage facility. As a result, we needed additional time to perform and complete a detailed review of the contents of the boxes.

Image 1 shows the volume of boxes the audit team had to search in order to retrieve records for our FY 2007 sample. Each box averaged over 100 records.



FINDINGS AND RECOMMENDATIONS

Image 2 shows the volume of boxes the audit team had to search in order to retrieve records for our sample for FY 2008. Each box averaged over 100 records.



Image 3 shows attorney certifications that were stored in boxes with an incorrect label. All attorney certifications should be filed in boxes labeled “legal.”

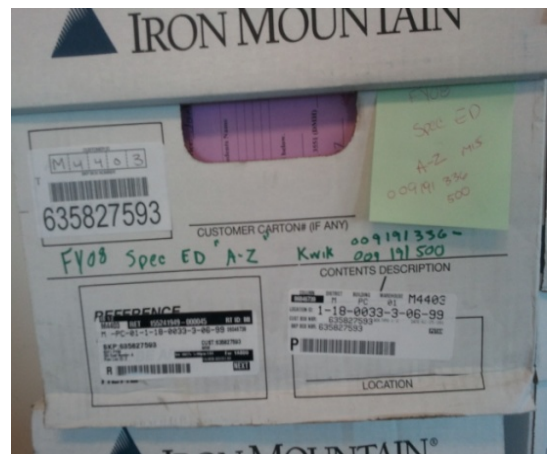


Image 4 shows boxes in the Adams Place facility that contained OCFO documentation, but lacked identifiable information on the boxes.



FINDINGS AND RECOMMENDATIONS

Overall, inadequate maintenance and retention of attorney certification records impede the OCFO's ability to effectively track and monitor certifications for compliance with District laws and regulations. OCFO's poor recordkeeping practices resulted in a scope limitation of our audit. We were unable to adequately and effectively perform tests and analysis to make a valid assertion of the completeness of the transactions.

The implementation of formal recordkeeping policies and procedures will facilitate the storage of attorney certifications and address the record maintenance and retention deficiencies noted in this report.

REVIEW OF ATTORNEY CERTIFICATIONS

Receipt, Review, and Approval of Attorney Certifications. We found that the OCFO did not properly obtain or maintain supporting documentation for approval of attorney certifications. An attorney certification packet should include the following documents:

- An attorney certification form stating that the attorney rendered services for the particular case in which they are seeking payment (attorney certification);
- An invoice showing the number of hours spent on the case and the attorney's suggested hourly rate; and
- Hearing Officer Determination (HOD) or Settlement Agreement (SA), which summarizes the case and documents the final court decision.

The prevailing attorney must submit an attorney certification packet to OGC for payment approval. According to the OGC's *DCPS Guidelines for the Payment of Attorney Fees in IDEA Matters*, it takes 60 days for the OGC to approve payment. The attorney certification document requires the attorney's signature to validate the services rendered, and OGC will deny payment if the form is unsigned. The OGC evaluates the contents of the attorney certification packet for reasonableness, ensuring the validity of the attorney's services and hours claimed. Upon approval, the OGC submits the entire packet to the OCFO for payment.

Our review consisted of determining whether our selected sample of attorney certification packets were accurately prepared, reviewed, and approved for payment. To conduct our review, we obtained a listing of 4,255 certification payments for FYs 2006 through 2010. Using the Automated Command Language (ACL) system as a stratified statistical

FINDINGS AND RECOMMENDATIONS

sampling method, we selected 597 records as our audit sample.¹² We were only able to review 296 of the 597 records selected because, according to the OCFO, the remaining records were damaged while at the storage facility. Our inability to review the supporting documentation for 300 records resulted in a scope limitation for our audit.

Our review of the 296 records revealed 96 certifications, 122 HOD/SAs, and 17 invoices missing for FYs 2007, 2008, 2009, and 2010. In addition, there was no supporting documentation for FY 2006 to review. Table 3, below, summarizes our results.

TABLE 3: MISSING CERTIFICATION DOCUMENTATION

FY	Packets Reviewed	Missing Certifications	Missing HODs or SAs	Missing Invoices
2006	N/A	N/A	N/A	N/A
2007	12	1	0	1
2008	61	14	16	4
2009	107	23	34	9
2010	116	58	72	3
TOTAL	296	96	122	17

Payment of Attorney Certification Fees. The OCFO processes payment of attorneys’ fees once approved by the OGC. The payment process takes up to 30 days upon the OGC’s approval, as mandated in the Quick Payment Act.¹³ The OCFO ensures that the finance cover sheet, invoice, attorney certification form (including the attorney’s signature), and HOD or SA is submitted with each attorney packet received. Further, the OCFO ensures that there is a signature from the supervisory attorney of the OGC on the finance cover sheet for payment approval. Our analysis determined that the OGC made certification payments in a timely manner. However, we noted that the OCFO processed 109 payments without an attorney’s signature on the certification. Additionally, the OGC failed to ensure that the proper signatures were in place prior to submitting the paperwork to the OCFO for payment. We determined that there were 19 supervisory attorney signatures missing for FYs 2008, 2009, and 2010. In addition, we were unable to locate 105 approval dates from the OGC for the fiscal years under review in order to determine

¹² ACL is a database system that is used for data analysis, sampling, audit support, and comparing data from different sources.

¹³ According to the District’s Quick Payment Act, D.C. Code § 2-221.02(a)(2)(A) (ii), to avoid paying interest penalties, District agencies are required to make payment within “30 calendar days, excluding legal holidays, after receipt of a proper invoice for the amount of the payment due, if a specific date on which payment is due is not established by contract. . . .”

FINDINGS AND RECOMMENDATIONS

the actual payment processing period. Table 4, below, summarizes our results.

TABLE 4: FINANCE FORMS APPROVED WITHOUT REQUIRED SIGNATURES

FY	Missing Attorney Signatures	Missing Supervisory Attorney Signatures	Missing Approval Dates From OGC
2006	N/A	N/A	N/A
2007	1	0	0
2008	14	9	60
2009	25	8	44
2010	69	2	1
TOTAL	109	19	105

Overall, the OGC is responsible for approving payment of attorneys’ fees, and the OCFO is responsible for processing payment of attorneys’ fees once approval has been issued. However, we noted that both agencies failed to ensure proper evaluation of documentation. In cases that lacked supporting documentation and/or authorizing signatures, payments should not have been awarded to attorneys. These deficiencies constitute a significant internal control weakness in the payment process for attorneys’ fees. We believe that proper evaluation of records would strengthen controls over the payment process of attorneys’ fees.

RECOMMENDATION

We recommend that DCPS and OCFO:

5. Develop formal record maintenance and retention policies and procedures to ensure efficient and effective management of records related to attorney certification documentation.

DCPS Response

DCPS agreed with the recommendation and will work to develop written guidelines for maintaining documentation in compliance with District-wide document retention policy guidelines. DCPS added in its response that documents maintained since 2005 are housed within the agency’s attorney fee database and electronic share drive.

FINDINGS AND RECOMMENDATIONS

OIG Comment

Action taken by DCPS is responsive and meets the intent of the recommendation. However, DCPS did not provide a target date for completing planned actions for the recommendation. Thus, we request DCPS provide a target date for planned actions for this recommendation, and provide our Office with the response within 60 days of the date of this final report.

OCFO Response

The OCFO noted in its response that as of 2008, the document receiving and filing policy was revised to an electronic format whereby documents are scanned and logged in an electronic document management system when received to allow for these to be, amongst other things, readily accessible for audits and inquiries. The implementation of the electronic system has resulted in significantly greater access to documentation. The OCFO added that policies and procedures for the electronic system exist and have been revised as necessary since 2008, and OCFO has ensured that the system complies with all District retention policy requirements.

OIG Comment

The OCFO's response meets the intent of our recommendation. We are fully aware of the electronic system that was implemented in 2008 for filing documentation. However, as noted in the report, we were unable to determine the accuracy of attorney certifications, because there were missing records in the electronic system for FYs 2006, 2007, and 2008. We did not receive any formal policies and procedures for the electronic system. Therefore, we request that the OCFO provide us with their policies and procedures within 60 days of this final report.

6. Accurately evaluate the attorney certification packages submitted in order to strengthen controls over the process of attorney fee payments and prevent unauthorized payment.

DCPS Response

DCPS indicated in its response that the agency reviews all certification packages submitted for payment for accuracy prior to its submission to the OCFO for payment processing. DCPS believes this process secures against unauthorized payment because the OCFO will not process attorney certification packets without the OGC's review and approval. DCPS will periodically evaluate its payment processing

FINDINGS AND RECOMMENDATIONS

procedures to ensure that internal controls are consistently sufficient to prevent unauthorized payments.

OIG Comment

DCPS's response meets the intent of our recommendation.

OCFO Response

The OCFO disagreed with the recommendation, but noted that it will ensure that the attestation statement is attached and signed.

OIG Comment

The OCFO's response partially meets the intent of the recommendation. During our review, we identified errors in attorney certification payments. Payment of attorney fees should not have been approved without proper evaluation of attorney certification packets. For example, we found several instances in which payments were processed by the OCFO without the signature of the Supervisory Assistant Attorney General, OGC. Accordingly, we request that the OCFO reconsider its response to the recommendation and provide the OIG with a revised response within 60 days from the date of this final report.

FINDINGS AND RECOMMENDATIONS

FINDING 4. HOURLY RATE GUIDELINES

SYNOPSIS

We found no evidence that the OGC verified the number of years in which a prevailing attorney has been licensed to practice law in order to award the appropriate hourly rate for rendered services. Further, the OGC does not have written guidelines regarding the methodology for determining attorneys' hourly rates based on experience and skill in special education cases.

These conditions exist because the U.S. District Court for the District of Columbia has not implemented local hourly rates for attorney services. Instead, the OGC currently uses guidelines established in Appendix B of the 2004 Local Rules of the U.S. District Court of Maryland. In addition, the OGC failed to ensure adequate control in verifying the attorney's state license and number of years practiced in the District. These conditions promote the possibility of excessive payment for attorney fees that could save revenue for the District government and result in a potential cost saving.

During our audit fieldwork, we conducted a benchmarking review with jurisdictions similar to the District. As part of our benchmarking review, we obtained and reviewed information from other public school districts that award attorneys' fees to attorneys who prevail in special education cases. Our results concluded that DCPS spends more money on attorneys' fees than other jurisdictions.

DISCUSSION

According to the OGC, the U.S. District Court of the District of Columbia has not established written guidelines on hourly rates for attorneys in the District of Columbia.¹⁴ Therefore, the OGC uses the hourly rate guidelines for attorney services established in the 2004 Local Rules of the U.S. District Court of Maryland. OGC awards hourly rates for attorneys that successfully represent District students in cases under IDEA based on: (1) the number of years an attorney has been licensed to practice law in the District of Columbia; and (2) the amount of hours spent rendering services.

¹⁴ We attempted on several occasions to contact the OGC regarding its position on whether the District should implement local hourly rates and to determine the agency or department that would be held responsible for this matter, but OGC failed to respond to our inquiries.

FINDINGS AND RECOMMENDATIONS

The total amount billed for each service rendered is determined by multiplying the hourly rate by the time increment per service.¹⁵ For example, if an attorney has been licensed to practice law in the District for 1 year and conducted 5 hours of work on a case, he or she is entitled to receive \$675¹⁶ for rendered services. Table 5, below, depicts the hourly rate guidelines for attorney fees.

TABLE 5: GUIDELINES REGARDING HOURLY RATES

No.	Number of Years Admitted to Bar	Hourly Rate
1	Less than 5 Years	\$135-170
2	5 to 8 Years	\$150-225
3	More than 8 Years	\$200-275
4	Paralegals and Law Clerks	\$90

DCPS will pay an attorney’s reasonable hourly rate, taking into account the attorney’s experience, skill and/or reputation, prevailing market rates in the community for similar services by lawyers, and the complexity of the issues raised in the case.¹⁷ According to OGC officials, the cost of an attorney’s hourly services are determined by the hourly rate based upon the number of years licensed to practice law (see Table 5). The OGC also takes the difference in the number of years licensed to practice law and divides that number by the difference of the hourly rate to determine the actual hourly rate for rendered services. For example, attorneys who are licensed for 1 to 5 years receive an \$8.75 increase each year ($\$170 - \$135 = \$35$; $\$35 \div 4$ years in rate range = \$8.75 yearly increase).

Discrepancy in Hourly Rates. In our review of the hourly rate guidelines, we noticed discrepancies in the hourly rate range. We believe that the attorney hourly rate schedule could be misinterpreted by attorneys submitting payment requests. In Table 5 above, row 1 indicates that an attorney who has practiced law for 5 years can receive \$170 hourly, whereas row 2 allows OGC to award an attorney with more experience a lesser hourly rate of \$150. Further, row 2 illustrates that an attorney who has practiced law for 8 years can receive \$225 hourly whereas an attorney with more experience could be awarded only \$200 per hour.

¹⁵ Section 2(f) and 2(h) of the *DCPS Guidelines for the Payment of Attorney Fees in IDEA Matters*.

¹⁶ An attorney licensed to practice law for 1 year receives \$135 per hour. Therefore, 5 hours of case work multiplied by an hourly rate of \$135 entitles the attorney to \$675 for services rendered.

¹⁷ Section 4 of the *DCPS Guidelines for the Payment of Attorney Fees in IDEA Matters*.

FINDINGS AND RECOMMENDATIONS

Table 6, below, depicts the difference in the 5-8 year hourly rates.

TABLE 6: DISCREPANCIES IN HOURLY RATES

Row # of Hourly Rate	Years Licensed to Practice Law	Year Difference	Starting Hourly Rate	Total Difference
1	Less than 5 Years (\$135-170)	5 Years	\$170	\$20
2	5 to 8 Years (\$150-225)		\$150	
2	5 to 8 Years (\$150-225)	8 Years	\$225	\$25
3	More than 8 Years (\$200-275)		\$200	

When we questioned OGC officials on how they determine the appropriate hourly rate, they explained that the difference is based on the experience the attorney has in special education cases. For example, if an attorney has been licensed to practice law for 5 years but has no experience in special education cases, they may receive \$150 per hour. However, an attorney that has been licensed the same amount of years but has experience in special education cases may receive \$170 per hour.

According to Section 4 of the *DCPS Guidelines for the Payment of Attorney Fee in IDEA Matters*, the OGC considers an attorney’s skill, experience, market rate, and/or reputation when determining the appropriate hourly rate. However, the OGC does not have written guidelines regarding the methodology for determining hourly rates for attorneys. We believe that modifying the hourly rates will eliminate any confusion that attorneys may have when receiving payment for rendered service.

Years Licensed to Practice Law. The OGC ensures that an attorney states the number of years licensed to practice law in the District. However, we found that the OGC does not verify the number of years an attorney has been licensed to practice law. We asked OGC officials how they determine the number of years, and they responded that they rely on the figure reported by the attorney requesting payment. By not verifying these figures, the OGC risks overpaying attorneys who provide inaccurate information. OGC could request prevailing attorneys to submit documentation, such as a current certificate of good standing, depicting the date in which the attorney was licensed to practice law in the District. In addition, the OGC could use the D.C. Bar website (www.dcbbar.org), which allows the public to research the credentials of attorneys licensed to practice law in the District of Columbia, to determine the number of years an attorney has practiced in the District.¹⁸ Utilizing these measures will assist the OGC with ensuring the accuracy of attorney submissions.

¹⁸ [Http://www.dcbbar.org/find_a_member/index.cfm](http://www.dcbbar.org/find_a_member/index.cfm) (last visited Nov. 27, 2012).

FINDINGS AND RECOMMENDATIONS

Benchmarking Review of Hourly Rates for Attorney Fees

Benchmarking is a structured approach for identifying best practices from similar industries or jurisdictions aimed at achieving a more efficient and effective process for intended results. Our benchmarking efforts were to determine whether DCPS' special education attorney certification process could benefit from information gained about other state public school districts that have similar special education programs.

At the start of our research we contacted five school jurisdictions, and forwarded surveys to each in order to gather relevant data. However, only two jurisdictions responded to our requests: Fairfax County, Virginia, and St. Louis, Missouri. The results of our benchmarking follow.

Fairfax, VA

- The Fairfax County Public School (FCPS) system has approximately 24,655 students enrolled in its special education program.
- If a parent or guardian is not satisfied with the type of educational service their disabled child is receiving, the parent or guardian can utilize an internal administrative review process, the Virginia state complaint process, Office for Civil Rights process (OCR), or the due process hearing procedures in order to address their concerns. During FY 2009-2010, 20 due process hearings were held.
- In a due process hearing, Virginia special education regulations state that the parent of a student is responsible for their own attorneys' fees. If the parent or guardian prevails, the parent or guardian has the right to petition either the state circuit court or a federal district court for an award of reasonable attorneys' fees. The court may award reasonable attorneys' fees only if the award is consistent with the limitations, exclusions, exceptions, and reductions in accordance with the state regulations and its implementing regulations.
- In school year 2009-2010, FCPS did not reimburse attorneys' fees based on litigation. The school system does not have a rate schedule because attorneys' fees are awarded through the federal court system. If attorney fees are awarded, FCPS is responsible for payment through the school system's budget.

FINDINGS AND RECOMMENDATIONS

St Louis, MO

- The St. Louis Public Schools System's (SLPS) special education program has approximately 4,253 students enrolled from kindergarten through 12th grade.
- If a parent or guardian is dissatisfied with the type of educational service their child is receiving, the parent or guardian can make an official complaint against the school district.
- In FY 2009-2010, one due process complaint was filed against SLPS. The complaint was not resolved by a hearing; therefore, there were zero special education cases in which SLPS did not prevail.
- SLPS does not have a formal procedure for providing attorney fees to a prevailing parent or guardian. If a parent or guardian prevails, any claim for attorneys' fees would be resolved by a negotiated agreement or through a civil action. Similar to FCPS, attorney fees are awarded through the state and district courts and paid through SLPS's budget. SLPS did not award any attorneys' fees for school year 2009 through 2010.

Washington, D.C.

- DCPS has approximately 11,904 students enrolled in the special education program.
- If a parent or guardian is not satisfied with the type of educational service their disabled child is receiving, he or she has the right to file a complaint against the school system. If the parent or guardian litigating prevails, DCPS will pay the parent or guardian's attorneys' fees.
- In order to obtain payment, the attorney must submit a document that certifies that the attorney: (1) rendered any and all services for which the attorney received an award; and (2) discloses any financial, corporate, legal, membership on boards of directors, or other relationships with any special education diagnostic services, schools, or other special education service providers to which the attorneys have referred any clients in special education cases.

FINDINGS AND RECOMMENDATIONS

- In FY 2010, DCPS processed 1,079 attorney certifications payments that totaled \$5,945,617. DCPS has hourly rate guidelines that are used to provide payment to prevailing attorneys in special education cases. Hourly rates are based on the number of years the prevailing attorney has been licensed to practice law and the total hours of services rendered.
- Prior to FY 2009, federal law limited the amount of attorneys' fees a prevailing attorney could receive in a special education case to no more than \$4,000. To date, the attorneys' fee limitation has been lifted, which means that an attorney is able to receive any award amount based on the reasonableness of services.

Comparison of Jurisdictions Surveyed

Comparing the jurisdictions surveyed and the District, we found that:

- For FY 2009-2010, FCPS had more students enrolled in the special education program, had fewer complaints filed, and did not reimburse for attorneys' fees. However, DCPS had fewer students than FCPS, but more complaints and spent about \$5.9 million in attorneys' fees.
- SLPS had one complaint, which did not result in awarding monies for attorneys' fees.
- Unlike DCPS, FCPS and SLPS districts do not have a formal process for awarding attorneys' fees.
- Neither FCPS nor SLPS have legislation, such as the previous attorneys' fee limitation, as did DCPS, restricting funds for awarding attorneys' fees.
- DCPS is the only jurisdiction that has an hourly rate schedule to determine the amount of money awarded to an attorney for services rendered.

FINDINGS AND RECOMMENDATIONS

TABLE 7. COMPARISON OF ATTORNEY CERTIFICATION FEES

Category	DCPS	FLPS	SLPS
Students enrolled in the special education program	11,904	24,655	4,253
Number of complaints filed against the school district	1,079	127	1
Amount awarded to prevailing attorneys	\$5,945,617	0	0

Our benchmarking efforts revealed that DCPS spent the most revenue on attorneys' fees. In addition, we found that FCPS and SLPS have not lost any special education cases brought against them. These cases have been settled outside of court. We believe that DCPS should consider resolving cases before matters reach the court system in order to limit the amount of attorneys' fees paid through DCPS. Our benchmarking efforts provide the District with alternative methods that could help improve the effectiveness and efficiency of its program.

RECOMMENDATIONS:

We recommend that DCPS:

7. Establish verbiage within the *DCPS Guidelines for the Payment of Attorney Fee in IDEA Matters* stating the monetary breakdown of hourly rates for attorneys' fees based on the attorney's experience and skill in order to prevent any misinterpretations of the guidelines.

DCPS Response

DCPS disagreed with the recommendation. According to DCPS, the agency has utilized the recommended legal standard for payment of attorney fees since 2006, pursuant to 34 CFR § 300.517(c) of IDEA. DCPS also indicated that it will revise the verbiage in *DCPS Guidelines for the Payment of Attorney Fees in IDEA Matters* to include a breakdown of the hourly rates for attorney's fees.

FINDINGS AND RECOMMENDATIONS

OIG Comment

Actions taken by DCPS are responsive and meet the intent of the recommendation. However, DCPS did not provide a target date for completion of its planned action. Therefore, we request that DCPS provide our Office with a target date within 60 days of this final report.

8. Establish hourly rates that will ensure attorneys are paid at the same rates based on the number of years the attorney has been licensed to practice law.

DCPS Response

DCPS disagreed with the recommendation and indicated that attorney fee payments are based on the U.S. District Court for the District of Columbia's established hourly rates for attorneys who practice pursuant to the IDEA.

OIG Comment

DCPS's response meets the intent of the recommendation. During our review, the U.S. District Court did not have hourly rates implemented for the District and used guidelines established in Appendix B of the 2004 Local Rules of the U.S. District Court of Maryland to determine the hourly rate an attorney should receive for rendered services. Therefore, we request that DCPS provide us with a copy of the hourly rate guidelines implemented by the U.S. District Court of the District of Columbia within 60 days from the date of this final report.

9. Verify the number of years in which prevailing attorneys have been licensed to practice law in the District prior to award.

DCPS Response

DCPS indicated that it is their normal practice to utilize the D.C. Bar website as well as the legal websites of other states to verify licensure status and years of practice prior to making payment awards.

FINDINGS AND RECOMMENDATIONS

OIG Comment

DCPS's response meets the intent of the recommendation. During our review, when we questioned OGC staff on how they verify the number of years an attorney has been licensed to practice law, we were told that the attorney informs them. These officials did not state that they utilize the D.C. Bar website or that the attorney provides them any documentation to support the licensure status. OGC officials later reiterated to us that they rely on the figure reported by the attorney requesting payment. Accordingly, we request that DCPS provide us with evidence documenting their review of attorney's licensure verification within 60 days from the date of this final report.

10. Re-evaluate protocols and procedures for paying attorneys' fees to identify cost-savings measures for the District.

DCPS Response

DCPS disagreed with the recommendation, but indicated that it will routinely review agency practices and procedures to ensure compliance with new case law issued by the U.S. District Court for the District of Columbia. DCPS added that the attorney fee process was recently updated in March 2013. As a result of the update, partial payments of attorney fees are no longer processed, and the agency only negotiates full and final settlements. DCPS believes this change will facilitate increased cost savings for the District.

OIG Comment

DCPS's response meets the intent of the recommendation. We acknowledge the policy change and request that DCPS provide a copy of the supporting documentation to our Office within 60 days of the date of this final report.

**EXHIBIT A: SUMMARY OF POTENTIAL BENEFITS
RESULTING FROM AUDIT**

Recommendations	Description of Benefit	Amount and Type of Benefit	Status¹⁹
1	Compliance and Control. Requests that the Council of the District of Columbia implement an attorneys’ fee limitation with the purpose of limiting the award amount a prevailing attorney receives for rendered services to permit additional revenue for the District in order to care for its disabled students.	Monetary \$720,400.58	Open
2	Internal Control. Ensures that DCPS/OCFO develops processes to review attorney affiliations for potential conflicts of interest.	Non-Monetary	Open
3	Compliance and Internal Control. Requests the Council of the District of Columbia to amend D.C. Code § 1-204.24d (28) to include language for DCPS/OCFO to review the certifications to detect prohibited conflicts of interest.	Non-Monetary	Unresolved
4	Compliance and Internal Control. Establishes protocols to prepare and submit the required quarterly reports to the Committee on Appropriations of the House of Representatives and Senate in accordance with D.C. Code § 1-204.24d (28)(C).	Non-Monetary	Closed
5a	Compliance and Internal Control. Ensures DCPS/OCFO develops of formal maintenance and retention policies and procedures to ensure efficient and effective management of records related to attorney certification documentation.	Non-Monetary	Unresolved

¹⁹ This column provides the status of a recommendation as of the report date. For final reports, “**Open**” means management and the OIG are in agreement on the action to be taken, but action is not complete. “**Closed**” means management has advised that the action necessary to correct the condition is complete. If a completion date was not provided, the date of management’s response is used. “**Unresolved**” means that management has neither agreed to take the recommended action nor proposed satisfactory alternative actions to correct the condition.

**EXHIBIT A: SUMMARY OF POTENTIAL BENEFITS
RESULTING FROM AUDIT**

Recommendations	Description of Benefit	Amount and Type of Benefit	Status ²⁰
5b	Compliance and Internal Control. Ensures DCPS/OGC develops of formal maintenance and retention policies and procedures to ensure efficient and effective management of records related to attorney certification documentation.	Non-Monetary	Open
6a	Internal Control. Ensures the attorney documentation submitted is accurately evaluated by DCPS/OCFO in order to strengthen controls over the process of attorney fee payments and prevent unauthorized payment.	Non-Monetary	Unresolved
6b	Internal Control. Ensures the attorney documentation submitted is accurately evaluated by DCPS/OGC in order to strengthen controls over the process of attorney fee payments and prevent unauthorized payment.	Non-Monetary	Closed
7	Internal Control. Establish verbiage within the <i>DCPS Guidelines for the Payment of Attorney Fee in IDEA Matters</i> stating the monetary breakdown of hourly rates for attorney fees based on the attorney’s experience and skill in order to prevent any misinterpretations of the guidelines.	Non-Monetary	Open
8	Internal Control. Establish hourly rates that will ensure attorneys are paid at the same rates based on the number of years the attorney has been licensed to practice law.	Non-Monetary	Open

²⁰ This column provides the status of a recommendation as of the report date. For final reports, “**Open**” means management and the OIG are in agreement on the action to be taken, but action is not complete. “**Closed**” means management has advised that the action necessary to correct the condition is complete. If a completion date was not provided, the date of management’s response is used. “**Unresolved**” means that management has neither agreed to take the recommended action nor proposed satisfactory alternative actions to correct the condition.

**EXHIBIT A: SUMMARY OF POTENTIAL BENEFITS
 RESULTING FROM AUDIT**

Recommendations	Description of Benefit	Amount and Type of Benefit	Status²¹
9	Internal Control. Ensures verification of the number of years in which prevailing attorneys have been licensed to practice law in the District prior to award.	Non-Monetary	Unresolved
10	Internal Control. Ensures protocols and procedures for paying attorney fees are reevaluated in order to identify cost-savings measures for the District.	Non-Monetary	Open

²¹This column provides the status of a recommendation as of the report date. For final reports, “Open” means management and the OIG are in agreement on the action to be taken, but action is not complete. “Closed” means management has advised that the action necessary to correct the condition is complete. If a completion date was not provided, the date of management’s response is used. “Unresolved” means that management has neither agreed to take the recommended action nor proposed satisfactory alternative actions to correct the condition.

EXHIBIT B: OCFO RESPONSE TO DRAFT REPORT

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER



2013 JUN 11 PM 3 05

Natwar M. Gandhi
Chief Financial Officer

June 7, 2013

Charles J. Willoughby
Inspector General
Office of the Inspector General
717 14th Street, N.W.
Washington, D.C. 20005

Dear Mr. Willoughby:

This is in response to the Office of the Inspector General's (OIG) draft report on the *Audit of Special Education Attorney Certifications* (OIG No. 11-1-15AT), dated April 24, 2013. My office has reviewed the finding and recommendations contained in the report and are providing the following responses:

FINDING #1: ATTORNEY FEE LIMITATION

Recommendation 1 for the OCFO

Request that the Council implement an attorneys' fee limitation with the purpose of limiting the award amount a prevailing attorney receives for rendered services to permit additional revenue for the District in order to care for its disabled students.

Response

The Office of the Chief Financial Officer's Office of the General Counsel will work with the Office of the Attorney General and DCPS Office of the General Counsel to discuss the recommendation and take appropriate course of action, once consensus is achieved.

FINDING #3: MAINTENANCE AND RETENTION OF ATTORNEY CERTIFICATIONS

Recommendation 5 for DCPS and OCFO

Develop formal record maintenance and retention policies and procedures to ensure efficient and effective management of records related to attorney certification documentation.

EXHIBIT B: OCFO RESPONSE TO DRAFT REPORT

Audit of Special Education Attorney Certifications
June 7, 2013
Page 2

Response

As of 2008, the document receiving and filing policy was revised to an electronic format whereby documents are scanned and logged in an electronic document management system when received to allow for these to be, amongst other things, readily accessible for audits and inquiries. Implementation of this electronic system, as noted in the report, has resulted in significantly greater access to documentation. Policies and procedures for the electronic document management system exist and have been revised as necessary since 2008 (copy attached). In developing these policies and procedures, OCFO employees at DCPS ensured that the electronic document management system complied with all of the District Wide document retention policy requirements.

Recommendation 6 for DCPS and OCFO

Accurately evaluate attorney certification packages submitted in order to strengthen controls over the process of attorney fee payments and prevent unauthorized payment.

Response

The OCFO does not agree with the recommendation of verification, however the OCFO will ensure that the attestation statement is attached and signed.

If you any additional information, please feel free to contact me at 727-2476.

Sincerely,

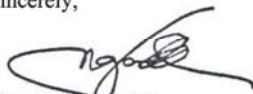

Natwar M. Gandhi

EXHIBIT C: DCPS RESPONSE TO DRAFT REPORT



DISTRICT OF COLUMBIA
PUBLIC SCHOOLS



2013 JUL 31 PM 3 43

July 25, 2013

Mr. Charles J. Willoughby
Inspector General
717 14th Street, N.W.
Washington, DC 20005

RE: OIG Number 11-1-15AT

Dear Mr. Willoughby:

Thank you for the opportunity to respond to the findings and recommendations in the Office of the Inspector General's (OIG) draft audit report of Special Education Attorney Certifications (OIG No. 11-1-15AT). Responses to the findings addressed to DCPS only¹ are being submitted via this letter. A signed original copy of DCPS' response will follow via USPS.

Finding #2 Attorney Affiliations and Reports Submission

Recommendation 2

Develop processes to review attorney affiliations for potential conflicts of interest.

Response:

We do not agree with the recommendation as stated. We believe that a conflict would be created if the DCPS Office of the General Counsel (DCPS OGC) was charged with the responsibility of reviewing attorney affiliations for conflicts of interest. As a remedy, we will seek guidance from the DC Attorney General to determine the office or independent agency most appropriate to conduct this type of review.

Recommendation 3

Request the Council to amend D.C. Code § 1-204.24d (28) (C) to include language for the OCFO to review the certifications to detect prohibited conflicts of interest.

Response:

We do not agree with the recommendation. We believe the process that is currently being used by the DCPS OGC and the OCFO is sufficient to ensure that the agency has exercised its due diligence in these matters. The DCPS OGC performs the required attorney certifications because we believe this task is better completed by individuals who have the requisite knowledge and expertise.

Recommendation 4

Establish protocols to prepare and submit the required quarterly reports to the Committee on Appropriations of the House of Representatives and Senate in accordance with D.C. Code § 1-204.24d (28) (C).

Response:

We concur that the quarterly reports were not being submitted as required. Since receipt of the draft version of this audit report, the OCFO has submitted the required reports. We will continue to work with the OCFO in the future to ensure that the required quarterly reports are submitted timely.

¹ It is our understanding that the OCFO has already provided responses directly to the OIG for recommendations that were made to the OCFO.

EXHIBIT C: DCPS RESPONSE TO DRAFT REPORT

Finding #3 Maintenance and Retention of Attorney Certifications

Recommendation 5

Develop formal record maintenance and retention policies and procedures to ensure efficient and effective management of records related to attorney certification documentation.

Response:

We concur with the recommendation. DCPS does not currently have a written maintenance and retention policy for attorney certification documentation. However, documents maintained since 2005, at a minimum, are housed within the DCPS attorney fees database and in DCPS' electronic share drive. We will work to develop a written guideline for maintaining this documentation in compliance with the District wide document retention policy guidelines.

Recommendation 6

Accurately evaluate the attorney certification packages submitted in order to strengthen controls over the process of attorney fee payments and prevent unauthorized payment.

Response:

DCPS OGC reviews all certification packages submitted for payment for accuracy prior to them being forwarded to the OCFO for payment processing. We believe that this process ensures security against unauthorized payments because the OCFO will not process attorney certification packages without OGC's review and signature of approval. We will, however, periodically evaluate our payment processing procedures to ensure that internal controls are consistently sufficient to prevent unauthorized payments.

Finding #4 Hourly Rate Guidelines

Recommendation 7

Establish verbiage within the DCPS Guidelines for the Payment of Attorney Fees in IDEA Matters stating the monetary breakdown of hourly rates for attorneys' fees based on the attorney's experience and skill in order to prevent any misinterpretation of the guidelines.

Response:

We do not concur with the recommendation. Since 2006, pursuant to 34 CFR §300.517(c) of IDEA, DCPS has utilized the recommended legal standard for payment of attorneys fees which includes considering the attorney's experience, skill and/or reputation, prevailing market rates in the community for similar services by lawyers and the complexity of the issues raised in each case. However, we will revise the verbiage in DCPS Guidelines for the Payment of Attorney Fees in IDEA Matters to include a breakdown of the hourly rates for attorney's fees.

Recommendation 8

Establish hourly rates that will ensure attorneys are paid at the same rate based on the number of years the attorney has been licensed to practice law.

Response:

We do not concur with the recommendation. The US District Court for the District of Columbia established hourly rates for attorneys who practice pursuant to the IDEA. DCPS makes payments based on this payment scale.

EXHIBIT C: DCPS RESPONSE TO DRAFT REPORT

Recommendation 9

Verify the number of years in which prevailing attorneys have been licensed to practice law in the District prior to award.

Response:

It is our normal practice to utilize the DC Bar website to verify DC licensure status and years of practice as well as legal websites of other states prior to making payment awards.

Recommendation 10

Re-evaluate protocols and procedures for paying attorneys' fees to identify cost-saving measures for the District.

Response:

DCPS does not concur with the recommendation; however, we commit to routinely reviewing our practices and procedures to ensure that we are compliant with new case law issued by the US District Court for the District of Columbia. We note that the most recent update to our attorney fee process occurred in March 2013. As a result of this change in procedures, we no longer make partial payments. Now, we only negotiate full and final settlements. We believe this procedural change will facilitate increased cost savings for the District.

Please feel free to contact us if you have any further questions, or if additional information is needed.

Sincerely,



Kaya Henderson
Chancellor
District of Columbia Public Schools