



GAO

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United States General Accounting Office  
Washington, DC 20548

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November 6, 2002

The Honorable Kay Bailey Hutchison  
United States Senate

Subject: *DCPS: Limitation of Attorneys' Fees for Fiscal Years 1999 through 2001*

Dear Senator Hutchinson:

The District of Columbia appropriations acts for fiscal years 1999, 2000, and 2001 limited the amount of appropriated funds that could be paid to an attorney representing a prevailing party in an action brought against the District of Columbia Public Schools (DCPS) under the Individuals with Disabilities Education Act<sup>1</sup> (IDEA). The appropriations act for fiscal year 2002 lifted the caps on attorneys' fees and directed DCPS and GAO to report on judgments awarding attorneys' fees in excess of the limitations imposed in fiscal years 1999, 2000, and 2001. In May 2002, we reported<sup>2</sup> that, for fiscal years 1999, 2000, and 2001, the appropriations acts' limitations had little if any impact on the total amount of attorneys' fees awarded to prevailing parties in judgments entered by the courts in judicial proceedings brought against DCPS under IDEA. This is because court decisions made it clear that the appropriations acts' limitations applied only to the amount that the District could pay to a prevailing party under IDEA and not to the amount that the court could award. The decisions also made it clear that where there was an independent legal basis for awarding attorneys' fees, such as the Civil Rights Act,<sup>3</sup> the court could do so without regard to the appropriations acts' limitations.

Our May 22, 2002, report focused exclusively on the District's payments and court awards for attorneys' fee payments resulting from judicial proceedings as required by section 141 of the District of Columbia Appropriation Act for fiscal year 2002. However, attorneys' fees may also be awarded in administrative proceedings.<sup>4</sup> IDEA provides that in administrative proceedings<sup>5</sup> students and their parents have the right to be accompanied and advised by counsel. These proceedings occur when parents of students with disabilities file complaints against DCPS for any matters related to the identification, evaluation, or educational

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<sup>1</sup>20 U.S.C. § 1400 et seq.

<sup>2</sup>See U.S. General Accounting Office, *DCPS: Attorneys' Fees for Access to Special Education Opportunities*, GAO-02-559R (Washington, D.C.: May 22, 2002).

<sup>3</sup>In the District of Columbia, attorneys' fee awards and payments under the Civil Rights Act may cover not only attorneys' fees for the hours spent by attorneys in litigating matters, but also hourly compensation for paralegals and other attorney assistants as well as the standard expenses of litigation, such as copying, messenger, and filing costs. Fee requests also may include expert witness fees.

<sup>4</sup>A court decision makes it clear that attorneys' fees can be awarded to prevailing plaintiffs in administrative proceedings under IDEA.

<sup>5</sup>20 U.S.C. 1415 (h).

placement of the students or the provision of free, appropriate public education for the students.

In a March 29, 2002, report<sup>6</sup> to the Congress, the District stated that it had paid \$12.7 million<sup>7</sup> from its appropriations for fiscal years 1999 through 2001 for attorneys' fees and related litigation costs resulting from judicial and administrative proceedings brought against DCPS and the District under IDEA. Because the District incurs the majority of its IDEA legal expenses as a result of administrative proceedings, you requested that we (1) report on the amount of attorneys' fees paid to prevailing plaintiffs for fiscal years 1999 through 2001, including fees from administrative proceedings brought against DCPS under IDEA, and (2) review the District's estimate of total legal fees requested for administrative proceedings as an indication of the amount that might have been paid without the mandated caps on attorneys' fees.

### **Results in Brief**

The District's March 29, 2002, report showed that of the \$12.7 million paid for attorneys' fees from its appropriations for fiscal years 1999 through 2001, \$10 million was related to administrative proceedings and \$2.7 million was related to judicial proceedings. This report also contained DCPS's estimate of the fees that might have been paid to attorneys resulting from administrative proceedings using 1999, 2000, and 2001 appropriations had the limitation not been in place. DCPS reported that the estimated total amount of fees that might have been paid as a result of administrative proceedings was \$27.4 million over the 3-year period, as compared to \$10 million it actually paid. Because this estimate was not based on statistical methods, its precision was uncertain. After we brought this to the attention of DCPS officials, DCPS recalculated the estimate using an appropriate statistical methodology. The resulting revised estimate for the amount of attorneys' fees that might have been requested is \$27.7 million ( $\pm$  \$1.9 million at a 95 percent confidence level) over the 3-year period. We reviewed DCPS's statistical calculations and concluded that the methodology and results of DCPS's revised recalculation of the estimate and related confidence interval are reasonable. On September 13, 2002, DCPS reported to the chairmen of the Senate and House committees on appropriations the recalculated estimate and confidence interval by year and in total. In commenting on a draft of this report, the DCPS Superintendent stated that the statistical information in our report was consistent with the data that DCPS had provided in its September 2002 report to the Congress.

### **Background**

IDEA and its predecessor statutes since 1977 have included a requirement that states and local school systems receiving federal funds make available procedures for impartial due process hearings in which the parents of students with disabilities may challenge school district actions or inaction. By 1998, DCPS was experiencing serious problems in the timely conducting of hearings requested by parents under the act and in issuing final decisions within the required timelines. The delays resulted in an increasingly large number of parental complaints and legal suits filed against DCPS to obtain access to the educational opportunities called for under the act. As a result, paying attorneys' fees awarded to parties who prevailed in IDEA cases became costly to the District of Columbia.

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<sup>6</sup>Office of the Superintendent of the District of Columbia Public Schools, *Supplemental Report of the District of Columbia Public Schools Regarding Attorneys' Fee Payments in Fiscal Years 1999-2001 Related to Judicial and Administrative Proceedings Under the Individuals with Disabilities Education Act* (Washington, D.C.: Mar. 29, 2002).

<sup>7</sup>The amounts paid include payments awarded to a special master appointed by the court, totaling \$806,513 for fiscal years 1999, 2000, and 2001. However, we excluded amounts paid by the District for outside defense counsel representation.

Attorneys' fee provisions under IDEA provide the courts with the discretion to award reasonable attorneys' fees to prevailing parties in actions brought under IDEA. However, the District's appropriations acts for fiscal years 1999, 2000, and 2001 imposed limits on the amounts payable for attorneys' fees on a per hour and per case basis for cases in which the plaintiffs prevailed. (See table 1.) Accordingly, payments to prevailing parties in administrative proceedings using appropriations for fiscal years 1999 through 2001 were subject to the applicable attorneys' fee limitations for those years.

**Table 1: Limitations on Attorneys' Fees for Prevailing Parties for IDEA Cases**

Fiscal year	Hourly cap	Per case cap
1999	\$50	\$1,300
2000	60	1,560
2001	125	2,500

For clarity, DCPS's March 29, 2002, report noted that attorneys' fee payments awarded to a prevailing plaintiff resulting from administrative proceedings, which are subject to the limitations, often include not only compensation for the hours spent by an attorney in litigating a matter, but also hourly compensation for paralegal and other attorney assistants. Standard expenses of litigation—such as copying, messenger, and filing costs—are often requested along with the attorneys' fees, as are fees for expert witnesses. However, these expenses are not subject to the limitation and are therefore usually reimbursable (if reasonable) to the prevailing plaintiff. Section 140(b) of the District of Columbia Appropriations Act<sup>8</sup> for fiscal year 2002 directed the Superintendent of DCPS to report to the House and Senate appropriations committees an itemized list of judgments for attorneys' fees awarded to plaintiffs who had prevailed in proceedings against the District of Columbia or DCPS under section 615(i)(3) of IDEA.<sup>9</sup> DCPS provided its final report covering awards and payments for attorneys' fees for judicial proceedings to the House and Senate appropriations committees on February 28, 2002. Section 141 of the District of Columbia Appropriation Act for fiscal year 2002 directed that we also report on this matter. In May 2002, we issued our report.<sup>10</sup> The District issued a supplemental report, dated March 29, 2002, which identified all payments of attorneys' fees and costs, including those that did not result from court judgments. Its report included those payments resulting from administrative proceedings and settlement of suits.

**Legal Fees Paid for Administrative and Judicial Proceedings Using Appropriations from Fiscal Years 1999 through 2001**

In its March 29, 2002, supplemental report,<sup>11</sup> the District identified \$12.7 million in attorneys' fees and related litigation costs paid during fiscal years 1999 through 2001<sup>12</sup> to prevailing plaintiffs in judicial and administrative proceedings brought against DCPS and the District under IDEA. The District reported that the largest portion of the reported attorneys' fee payments, totaling approximately \$10 million for the 3-year period, resulted from

<sup>8</sup>Public Law No. 107-96, 115 Stat. 923, 958 (2001).

<sup>9</sup>20 U.S.C. § 1415(i)(3).

<sup>10</sup>See GAO-02-559R.

<sup>11</sup>See Office of the Superintendent of the District of Columbia Public Schools, *Supplemental Report on Attorneys' Fee Payments*. This report supplements DCPS's February 28, 2002, report issued in accordance with section 140 (b) of the District of Columbia Appropriations Act for fiscal year 2002.

<sup>12</sup>The District does not maintain any single source that identifies all IDEA attorneys' fees awarded. Therefore, DCPS determined that the most accurate means of identifying IDEA attorneys' fees resulting from judicial and administrative proceedings was to rely on and compile information based on payment entries in the accounting systems maintained by the Office of the Chief Financial Officer (CFO), the CFO for DCPS, and the CFO for the Office of Corporation Counsel.

administrative proceedings. During the same period, the District reported payments for judicial proceedings totaling \$2.7 million. The \$12.7 million paid in attorneys' fees for both judicial and administrative proceedings represented 1.6 percent of the total special education expenses reported for fiscal year 2000 and 2.8 percent for fiscal year 2001 based on amounts shown in the Statement of Revenues and Expenses – Budget vs. Actual (General Fund) included in DCPS's Consolidated Annual Financial Reports. (See table 2.)

**Table 2: Reported Special Education Expenses for Fiscal Years 1999 through 2001**

Fiscal year	Legal fees paid for administrative proceedings	Legal fees paid for judicial proceedings	Subtotal of administrative and judicial proceedings	Total special education expenses	Percentage of total special education expenses
1999	\$3,513,824	\$518,759	\$4,032,583	-- <sup>a</sup>	-- <sup>a</sup>
2000	2,468,287	442,819	2,911,106	\$178,660,000	1.629
2001	3,972,045	1,824,122	5,796,167	\$210,215,000	2.757
<b>Total</b>	<b>\$9,954,156</b>	<b>\$2,785,700</b>	<b>\$12,739,856</b> <sup>b</sup>	-- <sup>a</sup>	-- <sup>a</sup>

<sup>a</sup>We did not calculate the percentage for fiscal year 1999 because total special education expense data consistent with fiscal years 2000 and 2001 were not reported in the fiscal year 1999 *DCPS Comprehensive Annual Financial Report*.

<sup>b</sup>The amounts paid include amounts awarded to a special master appointed by the court, totaling \$806,513 for fiscal years 1999, 2000, 2001.

Sources: DCPS September 13, 2002, report, figure A, page 3; DCPS September 13, 2002, report, figure A, page 3; *DCPS Comprehensive Annual Financial Report, Fiscal Year Ended September 30, 2000* (Washington, D.C.: Apr. 30, 2001); and *DCPS Comprehensive Annual Financial Report, Fiscal Year Ended September 30, 2001* (Washington, D.C.: Jan. 22, 2002). We did not independently verify this information.

DCPS's March 29, 2002, supplemental report identified 5,804 payments from fiscal years 1999 through 2001 to attorneys as a result of administrative and judicial proceedings. The average payment resulting from an administrative proceeding during the 3-year period in which the limitations were in effect was \$1,715. (See table 3.)

**Table 3: Reported Number of Administrative and Judicial Payments and the Average Attorneys' Fee Payments for Fiscal Years 1999 through 2001**

Fiscal year	Number of administrative payments	Average attorneys' fees paid—administrative	Number of judicial payments	Average attorney fees paid—judicial
1999	1,761	\$1,995	13	\$39,904
2000	1,925	1,282	32	13,838
2001	2,118	1,875	54	33,780
<b>1999 through 2001</b>	<b>5,804</b>	<b>\$1,715</b>	<b>99</b>	<b>\$28,138</b>

Source: Office of the Superintendent of the District of Columbia Public Schools, *Supplemental Report on Attorneys' Fee Payments*. We did not independently verify this information.

**DCPS's Estimated Difference between Requested and Actual Attorneys' Fees for Administrative Proceedings**

The DCPS March 29, 2002, supplemental report also contained DCPS's estimate of the fees that might have been paid had the statutory fee cap limitations not been in place for fiscal years 1999 through 2001. DCPS estimated that the total requested amount of legal fees for administrative proceedings was approximately \$27.4 million as compared to the \$10 million reported as actually paid over the 3-year period. However, we determined that DCPS used a

calculation to approximate an estimate but did not analyze its sample data using statistical methods to arrive at the estimate in its March 29, 2002, report, and therefore, the precision of the estimate was uncertain.

DCPS subsequently recalculated the estimates using an appropriate methodology and reported the results of the recalculated estimate and related confidence interval to the chairmen of the Senate and House committees on appropriations. The revised estimate for the amount of attorneys' fees that might have been requested is \$27.7 million ( $\pm$  \$1.9 million at a 95 percent confidence level). The District reported that this total indicates a potential savings of almost \$18 million over the 3-year period based on the difference between the estimated amounts requested (\$27.7 million) and the amount actually paid in attorneys' fees (\$10 million). The District's analysis also showed that the difference between the amount of legal fees requested and the amount paid increased from \$3.2 million in fiscal year 1999 to \$9.2 million in fiscal year 2001. (See table 4.) The amount that DCPS reported as potential savings assumes that the full amount requested would have been paid. However, DCPS noted that it would not necessarily have paid the full range of fees requested if adjustments were needed for unreasonably high hours or hourly fees. We reviewed DCPS's statistical calculations and concluded that the methodology and results of DCPS's statistical recalculation were statistically valid and reasonable.

**Table 4: Estimate of the Difference between Attorneys' Fees Requested and the Amount Paid for Administrative IDEA Proceedings for Fiscal Years 1999 through 2001**

<b>Fiscal year</b>	<b>Point estimate and confidence interval at 95% confidence level of amount requested</b>	<b>Amount paid (actual)</b>	<b>Fee cap savings (difference between column 2 and column 3)</b>
1999	\$6,713,342 ( $\pm$ ) \$844,152	\$3,513,824	\$3,199,518
2000	7,463,922 ( $\pm$ ) \$948,731	2,468,287	4,995,635
2001	13,192,533 ( $\pm$ ) \$1,345,095	3,972,045	9,220,488
<b>Total</b>	<b>\$27,723,435 (<math>\pm</math>) \$1,921,095</b>	<b>\$9,954,156</b>	<b>\$17,769,279</b>

Source: Summary of results from the DCPS September 13, 2002, report, figure A, page 3.

**District of Columbia Comments**

In commenting on a draft of this report, the DCPS Superintendent stated that the statistical information in our report was consistent with the data that DCPS had provided in its September 2002 report to the Congress.

**Scope and Methodology**

To report on the amount of attorneys' fees paid as a result of both administrative and judicial proceedings filed against DCPS under IDEA for fiscal years 1999 through 2001, we reviewed DCPS's March 29, 2002, supplemental report and DCPS's methodology for compiling the underlying data. However, we did not independently verify or audit the completeness, accuracy, or validity of the compiled data. To review the District's estimate of total legal fees requested for administrative proceedings as an indication of the amount that might have been paid without the mandated limits on attorneys' fees, we reviewed the District's sampling methodology and its methodology for calculating its estimate of the amount that would have been paid without the mandated limitations. We also discussed the District's estimate with DCPS and District officials responsible for compiling the March report and developing and implementing the District's sampling methodology used in the report. We also reviewed and

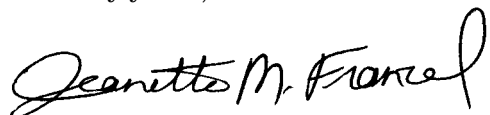
analyzed the District's revised recalculation of attorneys' fees requested and the underlying statistical projection that was intended to determine the difference between the amount requested and the amount paid. We also reviewed and analyzed the methodology used to select the sample cases included in the report. We conducted our work from July 2002 through September 2002 in accordance with U.S. generally accepted government auditing standards.

We provided our draft report to the DCPS Superintendent for review and comment. The Superintendent provided written comments, which we have reprinted in the enclosure. DCPS also provided suggested technical and clarifying comments on this report, which we incorporated as appropriate.

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If you have any questions, please contact me at (202) 512-9406 or by E-mail at [franzelj@gao.gov](mailto:franzelj@gao.gov). We are sending copies of this report to the Chief Financial Officer of the District of Columbia, the Superintendent of the District of Columbia Public Schools, and other interested parties. This report will be available at no charge on GAO's home page at <http://www.gao.gov>. Key contributors to this report were Keith A. Thompson, Deborah R. Peay, and Sharon O. Byrd.

Sincerely yours,



Jeanette M. Franzel  
Director  
Financial Management and Assurance

Enclosure

Enclosure

**Comments from the District of Columbia Public Schools**



**CHILDREN FIRST**  
DISTRICT OF COLUMBIA PUBLIC SCHOOLS

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VIA FACSIMILE

Attention: Keith Thompson  
Senior Project Manager

October 24, 2002

Ms. Jeanette M. Franzel  
Director  
Financial Management and Assurance  
United States General Accounting Office  
Washington, D.C. 20548

Dear Ms. Franzel:

Thank you for the opportunity to comment on the General Accounting Office (GAO) draft report, "Public Schools: Limitation of Attorneys' Fees for Fiscal Years 1999-2001."

Our review of the GAO draft shows the statistical information contained in this document to be consistent with the statistical content of the DC Public Schools' September 13, 2002 report on this subject, which we addressed to Senator Mary Landrieu and Congressman Knollenberg, the respective Chairman of the Senate and House Appropriations Subcommittees on the District of Columbia.

Should you have any questions or require additional information regarding this matter, please do not hesitate to contact me.

Respectfully,

  
Paul L. Vance  
Superintendent

PLV:jcs

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*Children First – The Transformation of the DC Public Schools*

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