

# The Washington Post

D.C. SPECIAL EDUCATION

## Slower Payment Hinders Advocacy, Lawyers Say

By [Michael Birnbaum](#)  
Washington Post Staff Writer  
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The District has slowed payments to lawyers who help families obtain special education services, which lawyers say is limiting the number of students they can assist and city officials say is necessary to rein in costs.

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The lawyers, whose fees are paid by the city when parents they represent prevail against the school system, say the delays have forced many of them to curtail their services. The District counters that a new law that removed a cap on the fees the lawyers can be awarded has forced it to review invoices far more closely than in the past.

There are nearly 11,000 special education students in the District's regular and charter public schools. About 20 percent of those students are sent to private schools, at a cost to taxpayers of about \$200 million, because the city cannot meet their needs.

For the past decade, the [District has faced criticism](#) and legal action over delays in providing special education services. About a dozen law firms and organizations handle the bulk of special education cases in the city.

Last week, lawyer Douglas Tyrka sued the city, contending that he is owed more than \$570,000 in fees for special education cases, most of which date to last year. Several other lawyers have filed similar suits this year.

"At a certain point, if the District makes it exceptionally difficult for parent attorneys, we'll go out of business," Tyrka said. Until mid-March, he had five full-time employees to help him on special education cases. Now he's down to a part-time paralegal, restricting his ability to file complaints, he said.

At the Children's Law Center, a nonprofit agency that provides legal representation in special education cases, "there has been a slowdown" in payments, said Executive Director Judith Sandalow, although services have not been affected.

District officials said they are reviewing bills more carefully after the elimination of a cap that limited lawyers to \$4,000 per case. The cap, which had been in place intermittently since 1999 as a way to reduce the city's legal costs, was removed by Congress this spring with the support of Mayor Adrian M. Fenty (D). When a similar cap was removed at the end of 2001, legal fees paid by the city increased from about \$4 million to \$11.3 million a year.

"There is no intentional delay," D.C. Attorney General Peter Nickles said. "We now have to look at these invoices much more carefully to see if the costs are commensurate with the case." He said that fees paid in the last year were in the "low millions."

Since December, Nickles has engaged in an [aggressive campaign](#) against the lawyers, contending in a series of [lawsuits](#) that many of the special education complaints are frivolous. The city won one such lawsuit last week, but a judge who ruled against the city in April [criticized Nickles](#) for fighting the lawyers. The District is appealing that ruling.

One special education advocate said that although there might be some frivolous complaints filed by high-volume law firms, smaller practices could be hurt by the payment delays -- and, by extension, so could children.

"When somebody is a solo practitioner," said D.C. schools watchdog Mary Levy, "that is fairly hard, and it is important that you get your money." Litigation "is the reason that a lot of children get services at all," she said.

Complaints filed by parents, which averaged 250 a month from July to October 2008, dropped to an average of 167 a month from November 2008 to May 2009, according to a court filing. At a hearing last month, Richard Nyankori, the city's deputy chancellor for special education, pointed to the drop as a sign that the city was being more responsive to requests for services.

But some lawyers who represent parents said cases are down because of the payment problems.

"There are fewer hearing requests because of the financial squeeze that they're putting on people. They're starving them," said Donna Wulkan, a lawyer who was paid only after she filed a lawsuit in March.