



OFFICE OF THE STATE AUDITOR



June 18, 2019

DIANNE E. RAY, CPA

STATE AUDITOR

JUDICIAL BRANCH, OFFICE OF THE CHILD'S REPRESENTATIVE (SEPTEMBER 2018) - STATUS REPORT

Members of the Legislative Audit Committee:

Attached is the status report from the Office of the Child's Representative (OCR) on the implementation of recommendations from our *Office of the Child's Representative* performance audit.

We reviewed supporting documentation for each recommendation that OCR reported as implemented, including:

- Updated policies, procedures, forms, and reports related to OCR's processes for selecting, monitoring, and paying contract attorneys, and related to staff use of procurement cards.
- The revised attorney contract template.
- OCR's correspondence with the Chief Justice of the Colorado Supreme Court on caseload limits and the revised Chief Justice Directive 04-06.
- House Bill 19-1282 and OCR's contract with Colorado CASA, related to Court-Appointed Special Advocates programs.
- Screenshots from OCR's Colorado Attorney Reimbursement Electronic System (CARES).

Based on our review, the supporting documentation substantiates OCR's reported implementation statuses.

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Chris Henderson
Executive Director

May 13, 2019

Dianne E. Ray, CPA
State Auditor
Colorado Office of the State Auditor
1525 Sherman Street, 7th Floor
Denver, CO 80203

Dear Auditor Ray:

In response to your request, we have prepared the attached status report on the implementation status of audit recommendations contained in the *Office of the Child's Representative Performance Audit* (September 2018). The status report provides a brief explanation of the actions taken by the Office of the Child's Representative to implement each recommendation.

The OCR remains committed to continually assessing and refining our new procedures and policies to make sure they effectively address the concerns identified in the audit and optimize our agency's efficacy. We appreciate the General Assembly approving two new positions that will assist with our implementation and ongoing oversight. Furthermore, the passage of House Bill 19-1282 has clarified OCR's role regarding Colorado Court Appointed Special Advocates (CASA).

If you have any questions about this status report and our efforts to implement the audit recommendations, please contact Chris Henderson at 303-860-1517 or Chrishenderson@coloradochildrep.org.

Sincerely,

Chris Henderson
Executive Director

AUDIT RECOMMENDATION STATUS REPORT

AUDIT NAME	The Office of the Child's Representative, Performance Audit September 2018
AUDIT NUMBER	1776P
AGENCY	Judicial Branch, Office of the Child's Representative (OCR)
DATE OF STATUS REPORT	May 2019

SECTION I: SUMMARY

REC. NUMBER	AGENCY'S RESPONSE	ORIGINAL IMPLEMENTATION DATE	CURRENT IMPLEMENTATION STATUS	CURRENT IMPLEMENTATION DATE
1A	Agree	February 2019	Implemented	
1B	Agree	March 2019	Implemented	
1C	Agree	February 2019	Implemented and Ongoing	
2A	Agree	February 2019	Implemented	
2B	Agree	February 2019	Implemented	
2C	Agree	February 2019	Implemented and Ongoing	
2D	Agree	February 2019	Implemented and Ongoing	
2E	Agree	February 2019	Implemented and Ongoing	
2F	Agree	February 2019	Implemented and Ongoing	
3A	Agree	January 2019	Partially Implemented	June 2019
3B	Agree	June 2019	Partially Implemented	July 2019
3C	Agree	January 2019	No Longer Applicable	
3D	Agree	November 2018	Implemented	
4A	Agree	February 2019	Implemented and Ongoing	
4B	Agree	February 2019	Partially Implemented	September 2019
4C	Agree	February 2019	Implemented	
4D	Agree	February 2019	Implemented	
4E	Agree	April 2019	Implemented	
4F	Agree	July 2018	Partially Implemented	September 2019
5A	Agree	February 2019	Implemented and Ongoing	
5B	Agree	February 2019	Implemented	
5C	Agree	February 2019	Implemented	
5D	Agree	February 2019	Implemented	
5E	Agree	February 2019	Implemented	

SECTION II: NARRATIVE DETAIL

RECOMMENDATION 1A

The Office of the Child's Representative (OCR) should improve its attorney selection processes by: Working with the Chief Justice to determine the intent of the requirement in the Directive for proof of continuing education, and aligning the application instructions and webinar with the intent of the Directive.

CURRENT IMPLEMENTATION STATUS Implemented

AGENCY UPDATE

As part of its annual verifications process, OCR now requires each attorney to submit a form identifying which continuing legal education credits or courses (CLEs) the attorney has attended to comply with Chief Justice Directive (CJD) 04-06. OCR follows up with attorneys who have not yet certified completion of the 10 OCR-approved CLEs to ensure each attorney has completed the required training prior to end of the fiscal year. OCR has instituted this practice for FY 2019 (applicable to FY 2020 contracts/pickup lists) and notified the Chief Justice of this procedure. OCR's application instructions, materials, and processes have been revised to comply with this requirement.

RECOMMENDATION 1B

The OCR should improve its attorney selection processes by: Revising contracts to reflect OCR's practices regarding requiring attorneys to provide proof of professional liability insurance and establishing a process for ensuring that contract attorneys have current insurance.

CURRENT IMPLEMENTATION STATUS Implemented

AGENCY UPDATE

The OCR revised its policies and contract provision regarding malpractice insurance. During the contract renewal/verifications process, all attorneys now must submit documentation (e.g., declarations page, certificate of insurance) of current malpractice insurance coverage annually and must verify in writing they have maintained and will maintain insurance throughout their contract period. If an attorney cannot provide proof of insurance and certify that s/he will maintain insurance throughout the term of the contract, OCR will remove the attorney's name from the pickup list and reassign the attorney's open appointments unless extraordinary circumstances require ongoing representation; OCR will amend its contract for such attorneys to eliminate the requirement and document the reasons for the exception. The OCR FY 2019-20 contracts require attorneys to maintain insurance and notify the OCR of any lapse in coverage.

RECOMMENDATION 1C

The OCR should improve its attorney selection processes by: Improving written policies and procedures that outline the evaluation process and related documentation that should be generated and maintained related to all applications, including the evaluation of each applicant and the reasons why each applicant was denied or approved for a contract. This should also include working with the Attorney General to develop a process to provide denied applicants with feedback that OCR can legally provide them about the denial, if they request it.

CURRENT IMPLEMENTATION STATUS Implemented and Ongoing

AGENCY UPDATE

For FY 2019, the OCR has improved its *Applications, Evaluation, & Verifications Policies and Procedures* manual (“*Applications manual*”) by clearly outlining the evaluation processes and required documentation for each applicant, including the reasons why each applicant was denied or awarded a contract. The *Applications manual* specifies procedures for both awarding and not awarding a contract. The OCR worked with the Attorney General to refine its process and letter for denied applicants. The letter states that the applicant may contact the OCR to learn how to become a successful applicant in the future.

RECOMMENDATION 2A

The OCR should improve its policies and processes for evaluating, overseeing, and managing contract attorney performance by implementing written policies and procedures that: Improve consistency of attorney evaluations by using similar information, including conducting at least the minimum number of observations per contract attorney.

CURRENT IMPLEMENTATION STATUS | Implemented

AGENCY UPDATE

The OCR has amended its *Applications manual* to increase consistency in all aspects of attorney evaluations, verifications and applications processes. The *Applications manual* requires more consistent review and rigorous documentation for any exceptions to any information source, policy, or procedure. The OCR remains committed to the three-observation minimum for renewing attorneys whenever possible and has further clarified procedures and documentation for exceptions to the minimum. An example of an exception would be an attorney on extended medical leave during the observation time period.

RECOMMENDATION 2B

The OCR should improve its policies and processes for evaluating, overseeing, and managing contract attorney performance by implementing written policies and procedures that: Ensure information that OCR considers important in evaluating and overseeing attorneys’ performance, such as data from reference interviews and activity reports, are obtained and reviewed periodically, rather than only once every 3 years. This includes using the activity reports to monitor caseloads and establish a caseload limit to recommend to the Chief Justice, as required by statute.

CURRENT IMPLEMENTATION STATUS | Implemented

AGENCY UPDATE

The *Applications manual* now formalizes OCR’s use of each data source it gathers on an annual basis for both renewing attorney contracts (every three years) and verifying attorney compliance (annually). The revisions formalize annual review of multiple information sources including the 30-day visit report, district visit analysis, activity report, child count report, stakeholder survey, and disciplinary history, while preserving the triannual in-depth review of qualitative information sources, such as reference interviews and court observations. Additionally, the OCR’s revised *Administrative and Oversight Policies* (“*Administrative Policies*”) implements quarterly use of the child count and 30-day visit reports and outlines other ongoing oversight activities, such as an age report (i.e., cases where the child has exceeded his/her statutory allowed age). The Chief Justice has promulgated a full-time case cap of 100 children, and the OCR is monitoring caseload through reports and taking actions to reduce attorneys’ caseloads when indicated.

RECOMMENDATION 2C	
<i>The OCR should improve its policies and processes for evaluating, overseeing, and managing contract attorney performance by implementing written policies and procedures that: Establish benchmarks to evaluate quantitative aspects of contract attorney performance, such as identifying noncompliance rates with specific requirements that will trigger corrective action by OCR.</i>	
CURRENT IMPLEMENTATION STATUS	Implemented and Ongoing
AGENCY UPDATE	
The OCR's <i>Applications manual</i> includes a description of the purposes and limitations of each source of quantitative information. Appendix A to the manual outlines benchmarks for follow-up for each quantitative source of information, factors for OCR's consideration in determining contract actions, and possible contract and oversight or corrective actions. The <i>Applications manual</i> institutes a formalized process to promote consistent decision-making, including a "Jurisdictional Needs Meeting 2" to discuss all attorneys flagged for potential action and requirements for Executive Director approval.	

RECOMMENDATION 2D	
<i>The OCR should improve its policies and processes for evaluating, overseeing, and managing contract attorney performance by implementing written policies and procedures that: Establish guidance to evaluate qualitative aspects of attorney performance. This could include guidelines for how staff should weigh feedback from families and court officials, the results of in-court observations, and complaint investigations in evaluating an attorney's overall performance.</i>	
CURRENT IMPLEMENTATION STATUS	Implemented and Ongoing
AGENCY UPDATE	
The benchmarks and processes explained in OCR's response to 2C also apply to qualitative information sources, including stakeholder feedback, court observations, and case reference interviews. Additionally, OCR's <i>Administrative Policies</i> institutes procedures for documenting information about issues identified through complaints and OCR's ongoing oversight activities in OCR's Attorneys Database to ensure consideration of those issues during OCR's annual verifications/triannual applications process. The <i>Applications manual</i> Appendix A establishes benchmarks to inform OCR's annual review of this information.	

RECOMMENDATION 2E	
<i>The OCR should improve its policies and processes for evaluating, overseeing, and managing contract attorney performance by implementing written policies and procedures that: Establish guidance for using the information it collects to address performance issues in a timely manner, such as guidelines for the types of remedial actions that are appropriate for different types and degrees of performance or compliance problems.</i>	
CURRENT IMPLEMENTATION STATUS	Implemented and Ongoing
AGENCY UPDATE	
The decision-making process outlined in the <i>Applications manual</i> Appendix A applies to both OCR's annual/triannual processes and to any issues identified throughout the year by OCR's ongoing oversight activities, including its complaint investigations. Additionally, OCR's <i>Administrative Policies</i> outlines a procedure for formal documentation of any action in the Attorneys Database to ensure ongoing review and assessment of actions taken.	

RECOMMENDATION 2F	
<i>The OCR should improve its policies and processes for evaluating, overseeing, and managing contract attorney performance by implementing written policies and procedures that: Establish requirements for maintaining documentation of the performance evaluation process and how the evaluation supports OCR's decisions, such as contract renewals.</i>	
CURRENT IMPLEMENTATION STATUS	Implemented and Ongoing
AGENCY UPDATE	
OCR's <i>Applications manual</i> now contains a specific section outlining all documentation requirements, including its review of each information source and the reasons for its contracting decisions. The <i>manual</i> also establishes a process for ensuring completion of all documentation requirements. All staff attorneys and the Information Systems Manager (technical lead) have been trained on the <i>Applications manual</i> for successful implementation beginning in the FY 2019 applications cycle.	

RECOMMENDATION 3A			
<i>The OCR should fulfill its statutory role related to Court Appointed Special Advocate (CASA) programs in Colorado by: Executing a contract with a nonprofit entity to coordinate and support CASA activities and processes to oversee the contract. OCR should follow its procurement policies in selecting a contractor. The contract should reflect the amount of state funds provided to the contractor and the expected activities and deliverables.</i>			
CURRENT IMPLEMENTATION STATUS	Partially Implemented	CURRENT IMPLEMENTATION DATE	June 2019
AGENCY UPDATE			
The OCR selected Colorado CASA as the contract entity for FY 2019 in accordance with OCR's procurement policies. The OCR has drafted a retroactive contract for FY 2019. The OCR recently received Attorney General approval of this contract and has forwarded it to CASA for signature. In addition, the OCR pursued legislative change and the passage of House Bill 19-1282 has clarified the role and oversight responsibilities of the OCR with regard to CASA. The contract for FY 2020 has been submitted to Colorado CASA. That contract is being executed in June 2019 and reflects the amount of state funds provided as well as expected activities and deliverables in accordance with the new law. No funds will be distributed until the contract is fully executed.			

RECOMMENDATION 3B			
<i>The OCR should fulfill its statutory role related to CASA programs in Colorado by: Implementing a process to allocate state funds to local CASA programs, with the recommendation of the contractor.</i>			
CURRENT IMPLEMENTATION STATUS	Partially Implemented	CURRENT IMPLEMENTATION DATE	July 2019
AGENCY UPDATE			
With the passage of House Bill 19-1282, the OCR will not directly allocate funds to local CASA programs but will oversee the distribution of funds to local programs in accordance with the allocation formula established by CASA. The OCR is in the process of developing procedures to fully implement all requirements of the new legislation.			

RECOMMENDATION 3C	
<i>The OCR should fulfill its statutory role related to CASA programs in Colorado by: Implementing a means of enhancing non-public funding for CASA programs.</i>	
CURRENT IMPLEMENTATION STATUS	No Longer Applicable
AGENCY UPDATE	
With the passage of House Bill 19-1282, the OCR is no longer required to enhance non-public funding for CASA programs.	

RECOMMENDATION 3D	
<i>The OCR should fulfill its statutory role related to CASA programs in Colorado by: Implementing written conflict-of-interest policies that address potential employee conflicts other than those arising from court cases. This should include policies that prevent any OCR staff from participating in activities that create conflicts with their duties to the State, such as participating on the board of an entity that receives state funds through OCR.</i>	
CURRENT IMPLEMENTATION STATUS	Implemented
AGENCY UPDATE	
The Executive Director of OCR resigned from the CASA Board in 2018. The OCR updated its <i>Employee Handbook and Personnel Rules</i> (“ <i>Employee Handbook</i> ”) to enhance its conflict of interest policies and processes to address employees serving on boards.	

RECOMMENDATION 4A	
<i>The OCR should improve its controls over contract attorney billings and payments by: Implementing written policies that identify which OCR staff positions are responsible for review and approval of bills, specify that reviewers should verify compliance with all applicable policies and directives, and require staff to document their reviews and that amounts approved comply with OCR’s requirements.</i>	
CURRENT IMPLEMENTATION STATUS	Implemented and Ongoing
AGENCY UPDATE	
The OCR has revised its <i>Administrative Policies</i> to require multiple levels of review and approval of attorney bills. These policies establish protocols to verify compliance with OCR’s <i>Billing Policies and Procedures</i> , such as reviewing flagged days with 12 or more hours of billing, and they also specify requirements for documentation of review and approval.	

RECOMMENDATION 4B			
<i>The OCR should improve its controls over contract attorney billings and payments by: Expanding monitoring by implementing policies to conduct periodic, risk-based reviews of documentation substantiating attorney bills, including verifying case numbers, and recover payments made in error.</i>			
CURRENT IMPLEMENTATION STATUS	Partially Implemented	CURRENT IMPLEMENTATION DATE	September 2019
AGENCY UPDATE			
The OCR’s revised <i>Administrative Policies</i> outlines enhanced procedures and timeframes for expanding monitoring of attorney billing, including periodic risk-based reviews to substantiate attorney bills. The OCR			

continues to develop and finalize reports targeting high-risk activities. The OCR will begin risk-based reviews with the FY 2019 fourth quarter data. The OCR enhanced its Case Management and Billing System (“CARES”) to allow collection of credits for payments made in error. The OCR has recovered erroneous payments identified in the audit process and has recovered overpayments in FY 2019 and continues to do so. The two positions approved in the OCR’s FY 2020 budget will support implementation by running and analyzing reports, engaging in follow up with attorneys, and reviewing underlying documentation.

RECOMMENDATION 4C

The OCR should improve its controls over contract attorney billings and payments by: Updating policies to reflect the Chief Justice Directive and practices that OCR intends staff to follow, including those related to parking expenses, billing deadlines, excess fee requests for approval, paying expert witnesses, and requiring that approvals and exceptions to the policy to be documented.

CURRENT IMPLEMENTATION STATUS | Implemented

AGENCY UPDATE

The OCR has updated its *Billing Policies and Procedures* to clarify items including, but not limited to, travel expenses (including eliminating the prohibition of parking expenses), billing deadlines, requests of additional funds and payment of expert witnesses. These revisions eliminate the prior inconsistency regarding parking expenses. The OCR hosted a webinar to highlight the updated procedures in December 2018. The OCR has revised its *Administrative Policies* to outline improved controls over attorney billing as well as a process for approving and documenting exceptions in CARES. Additionally, the *Administrative Policies* define staff responsibilities for consistent documentation.

RECOMMENDATION 4D

The OCR should improve its controls over contract attorney billings and payments by: Implementing written policies that establish separation of duties between the approval and payment of bills, which ensure timely payment of bills, and establish a process for a documented approval if OCR continues to allow the payment of bills submitted late.

CURRENT IMPLEMENTATION STATUS | Implemented

AGENCY UPDATE

The OCR’s revised attorney billing and payment process, implemented in FY 2019, improves OCR’s controls and establishes the separation between approval and payment of bills. All attorney invoices require two levels of approval prior to payment – OCR Billing Manager and OCR Finance/Accounting. The same OCR employee may not apply both levels of approval. This separation of duties is further enforced by controls programmed in CARES. The new process requires contract attorneys to submit monthly invoices, and any exception to the billing invoice deadline now requires approval by the Executive Director. The approval and documentation process is now incorporated into CARES.

RECOMMENDATION 4E

The OCR should improve its controls over contract attorney billings and payments by: Centralizing attorney billing policies and guidance in a single document.

CURRENT IMPLEMENTATION STATUS | Implemented

AGENCY UPDATE

The OCR updated its *Billing Policies and Procedures* in December 2018. These policies were distributed to all contract attorneys and are also available on the OCR website. A webinar was also conducted in December 2018 to train OCR contract attorneys.

RECOMMENDATION 4F

The OCR should improve its controls over contract attorney billings and payments by: Ensuring that edits are implemented in the new CARES system to flag or prohibit noncompliant bills.

CURRENT IMPLEMENTATION STATUS	Partially Implemented	CURRENT IMPLEMENTATION DATE	September 2019
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AGENCY UPDATE

The CARES system includes flags for users billing twelve or more hours per day. The OCR continues to develop reports to flag noncompliant activities, including paralegals and social workers billing for court, potential duplicate billing, statutory age limit, and time allowed to open and close cases in CARES. These reports have been created, raw data has been collected, and the OCR is in the process of testing and finalizing for successful review of FY 2019 fourth quarter data in September.

RECOMMENDATION 5A

The OCR should improve its controls over procurement card purchases by: Improving its policies and procedures to cover the use of procurement cards, including, but not limited to, describing the types of purchases that staff are authorized to make with the cards, identifying the staff positions that need cards, and outlining the documentation needed to support that purchases are reasonable and necessary.

CURRENT IMPLEMENTATION STATUS	Implemented and Ongoing
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AGENCY UPDATE

The OCR has updated its *Administrative Policies* and clarified the procedures covering the use of procurement cards and documentation required to support purchases. The OCR has reduced the number of staff authorized to have a credit card to seven employees and has lowered the monthly credit limits for existing cardholders. These limits will be reviewed annually and adjusted as necessary.

RECOMMENDATION 5B

The OCR should improve its controls over procurement card purchases by: Enforcing existing policy by ensuring that staff obtain supervisory approval for travel and do not exceed per diem rates.

CURRENT IMPLEMENTATION STATUS	Implemented
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AGENCY UPDATE

The OCR has revised its *Administrative Policies* to require supervisor review of purchases and approval of non-routine travel. The travel policies require compliance with rates established by the General Services Administration (GSA) or documented approval of exceptions. Credit card purchases must adhere to all other relevant provisions in these policies and procedures, including the requirement that purchases must be for reasonable and necessary expenditures of the OCR.

RECOMMENDATION 5C	
<i>The OCR should improve its controls over procurement card purchases by: Implementing a written policy for cardholders' supervisors to review their subordinates' procurement card statements to ensure reasonableness of purchases and compliance with policy, and for a Child's Representative Board member to review the Executive Director's card statements to approve payment.</i>	
CURRENT IMPLEMENTATION STATUS	Implemented
AGENCY UPDATE	
The OCR's revised <i>Administrative Policies</i> require supervisors to review each subordinate's monthly credit card charges for reasonableness and compliance with OCR's credit card policies. A member of OCR's Board of Directors reviews the Executive Director's monthly credit card statement for reasonableness and compliance with OCR's credit card policies. Such review shall be documented by signing or initialing the credit card statement, or providing other reasonable documentation indicating approval.	

RECOMMENDATION 5D	
<i>The OCR should improve its controls over procurement card purchases by: Establishing mechanisms to avoid paying state sales taxes on purchases.</i>	
CURRENT IMPLEMENTATION STATUS	Implemented
AGENCY UPDATE	
The OCR's revised <i>Administrative Policies</i> require staff to proactively seek removal of taxes at the time of purchase and to document any reasons why they were unable to do so. Additionally, the policies require OCR staff to attempt to remove taxes after the purchase if possible.	

RECOMMENDATION 5E	
<i>The OCR should improve its controls over procurement card purchases by: Establishing processes to ensure that staff are trained on and comply with the revised policy and procedures that are implemented in PARTS A through D.</i>	
CURRENT IMPLEMENTATION STATUS	Implemented
AGENCY UPDATE	
The OCR revised its credit card policies included in the <i>Administrative Policies</i> and conducted a training of all staff in April 2019, highlighting changes and requirements to ensure compliance. Ongoing training will be provided as necessary.	