

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General

Inspector General



May 27, 2022

Dr. Lewis D. Ferebee
Chancellor
District of Columbia Public Schools
1200 First Street, N.E., 12th Floor
Washington, D.C. 20002

Dear Chancellor Ferebee:

This letter informs you of the results of the Office of the Inspector General's (OIG) *Audit of Special Education Attorney Payments* (OIG Project No. 21-1-26AT). This engagement was initiated pursuant to D.C. Code § 1-301.115a(a)(3)(J), which requires the OIG to annually conduct an investigation into the accuracy of the attorney certifications. However, as previously reported,¹ due to restrictions on access to the attorneys' underlying case files, the OIG could not perform the audit in accordance with generally accepted government auditing standards (GAGAS). The objective of the audit was to determine the accuracy of payments made by the Office of the Chief Financial Officer (OCFO) for attorneys in special education cases brought under the Individuals with Disabilities Education Act (IDEA) in the District. This audit was included in the *Fiscal Year 2021 Audit and Inspection Plan*.

On November 15, 2019, the OIG issued a recommendation to District of Columbia Public Schools (DCPS) to address restrictions on the OIG's access to underlying case files maintained by the attorneys for special education cases brought under the IDEA in the District. DCPS was unable to address the restriction, stating that "the attorney-client privilege is held by the client, not the lawyer, and the lawyer may not waive the privilege without affirmative consent of the client." Without access to the underlying case files, the OIG could not obtain sufficient, appropriate evidence needed to satisfy the audit objective. Analysis of case files is necessary to obtain reasonable assurance of the accuracy of the certifications that attorneys made. Finally, auditors needed to review case files to follow GAGAS, which requires auditors to plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for their findings and conclusions based on audit objectives.

As a result, the OIG will not issue a formal audit report and additional recommendations to address the repeated findings discussed in its prior report. The OIG will continue to report Recommendations 1, 3, 4, and 5, as previously reported, as open and unresolved. Accordingly, the OIG will not need to solicit management comments on this letter.

¹ D.C. OFFICE OF THE INSPECTOR GEN., OIG Project No. 19-1-26AT, [Access to Attorney Records is Needed to Determine the Accuracy of Attorney Certifications](#) (Nov. 2019).

The status of the OIG’s prior year's findings and recommendations is included in Attachment A to this letter. The OIG noted that DCPS did not implement corrective actions for four of five recommendations included in its prior year audit report dated November 15, 2019.² Specifically, DCPS indicated that Recommendations 1 and 3 had not been implemented. Also, DCPS indicated that Recommendations 4 and 5 were implemented and explained that since 2010, hearing officer determinations (HODs) had been tracked in an electronic database, and the assigned attorney analyzes each HOD. However, DCPS did not provide evidence that the assigned attorney analyzed each HOD because, according to DCPS-OGC, “documentation reflecting DCPS-OGC’s analysis of the fee petition or its internal consultation with DCPS staff on the reasonableness of the fee petition is privileged.”

Although the OIG will not issue an audit report for this engagement, this letter summarizes the operational and financial activities of special education cases during fiscal years (FYs) 2019 and 2020, for which the OIG could not obtain sufficient, appropriate evidence needed to satisfy the audit objective.

SUMMARY OF OPERATIONAL AND FINANCIAL ACTIVITIES OF SPECIAL EDUCATION CASES BROUGHT UNDER THE IDEA DURING FISCAL YEARS 2019 AND 2020

OCFO received 318 special education certifications valued at \$15.3 million in attorney fee payments in FYs 2019 and 2020. In resolving the 318 cases, the District of Columbia Superior Court, Office of the Attorney General for the District of Columbia (OAG), and DCPS Office of the General Counsel (DCPS-OGC) reduced the certified amounts by \$5.0 million (33 percent) to \$10.3 million. The reduction occurred during legal proceedings and settlement negotiations. After winning an award at an administrative hearing, attorneys either seek payment through the District of Columbia Superior Court or through DCPS. When the District of Columbia Superior Court is involved, the OAG represents DCPS during legal proceedings. Attorneys also negotiate payments directly with DCPS. Table 1 on the following page indicates that FY 2019 and 2020 payments were far less than what attorneys certified.

² *Id.*


Table 1: Amount Attorneys Certified vs. Amount Paid During FYs 2019 and 2020

FY	Resolution Type	Number of Cases Resolved	Certified Amount	Reduced Amount	Final Amount Paid
2019	Court Settlements	23	\$2,233,661.14	(\$467,678.54)	\$1,765,982.60
	OAG Settlements	16	\$1,318,442.49	(\$365,022.95)	\$953,419.54
	DCPS-OGC Settlements	155	\$5,531,088.26	(\$2,139,623.58)	\$3,391,464.68
2020	Court Settlements	2	\$181,622.97	(\$22,921.50)	\$158,701.47
	OAG Settlements	27	\$2,789,498.42	(\$577,919.17)	\$2,211,579.25
	DCPS-OGC Settlements	95	\$3,283,026.41	(\$1,474,056.41)	\$1,808,970.00
	Total	318	\$15,337,339.69	(\$5,047,222.15)	\$10,290,117.54

Source: OIG analysis of DCPS and OCFO data.

We appreciate the cooperation and courtesies extended to our staff during this audit. If you have any questions concerning this letter, please contact me or Mr. Fekede Gindaba, Assistant Inspector General for Audits, at (202) 727-2540.

Sincerely,


 Daniel W. Lucas
 Inspector General

DWL/sas

Attachment

cc: See Distribution List

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Mr. Jed Ross, Director and Chief Risk Officer, Office of Risk Management

Attachment A. Status of Prior Year Findings and Recommendations

Finding	Recommendations	Agency Response	Recommendation Status
Accuracy of Attorney Certifications cannot be verified due to Attorney-Client privilege.	1. Address the attorney-client privilege issue discussed above so OIG can determine the accuracy of certifications made to the Chief Financial Officer as required by D.C. Code § 1-301.115a(a)(3)(J).	Disagree	Open
DCPS-OGC omitted disclosure language from Attorney Certification Form.	2. Cite D.C. Code § 1-204.24d(28)(B) in the certification section of the packet.	Agree	Closed
DCPS did not establish Policies and Procedures over IDEA complaint settlement process.	3. Establish standard operating procedures to provide guidance on how DCPS-OGC staff attorneys determine fees in negotiated settlements.	Disagree	Open
	4. Maintain documentation or evidence of the basis on which negotiated settlements were determined.	Agree	Open
DCPS does not track and analyze the outcome of IDEA complaints.	5. Track and analyze the outcome of IDEA complaints on a monthly basis.	Agree	Open