

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Office of the Inspector General**

Inspector General



September 25, 2023

Mr. Glen Lee  
Chief Financial Officer  
Office of the Chief Financial Officer  
1350 Pennsylvania Avenue NW, Suite 203  
Washington, DC 20004

Dr. Lewis Ferebee  
Chancellor  
District of Columbia Public Schools  
1200 First Street NE, Suite 1230  
Washington, DC 20002

Dear Chief Financial Officer Lee and Chancellor Ferebee:

The purpose of this letter is to inform you of the results of the Office of the Inspector General’s (OIG) audit of Special Education Attorney Certifications (OIG No. 23-1-04MA). This audit was conducted pursuant to D.C. Code § 1-301.115a(a)(3)(J), which requires the OIG to annually investigate the accuracy of the attorney certifications. The objective of this engagement was to determine the accuracy of certifications made to the Office of the Chief Financial Officer (OCFO) by private attorneys in special education cases brought under the Individuals with Disabilities Education Act (IDEA)<sup>1</sup> in the District. This audit was included in the *Fiscal Year 2023 Audit and Inspection Plan*. However, as previously reported,<sup>2</sup> due to restrictions on access to the underlying case files, we could not perform the audit in accordance with *Generally Accepted Government Auditing Standards* (GAGAS).

On November 15, 2019, the OIG issued a recommendation to the District of Columbia Public Schools (DCPS) to address the restriction preventing OIG from accessing underlying case files maintained by the attorneys for special education cases brought under the IDEA. However, 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.” Notwithstanding DCPS’s position, without direct access to the underlying case files, the OIG could not obtain the sufficient, appropriate evidence needed to satisfy the audit objectives for the 2019 audit, nor for the current audit for fiscal years (FY) 2021 and 2022.

The status of the OIG’s prior findings and recommendations is included in Attachment A of this letter. Although we will not issue an audit report for this engagement, this letter summarizes the operational and financial activities of the special education cases brought under IDEA in the

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<sup>1</sup> 20 U.S.C.S. §§ 1400 – 1482 (Lexis current through Pub. L. No. 118-13, Aug. 7, 2023).

<sup>2</sup> D.C. Office of the Inspector General, [Access to Attorney Records Is Needed to Determine the Accuracy of Attorney Certifications](#), OIG Project No. 19-1-26AT (Nov. 2019).

District during FYs 2021 and 2022. As this is not a formal audit report, neither OCFO nor DCPS are required to provide a formal response.

### **Operational and Financial Activities Summary of Special Education Cases Brought Under IDEA During Fiscal Years 2021 and 2022**

When a plaintiff prevails in a special education administrative hearing with a resulting award from the court, attorneys primarily seek payments through the District of Columbia Superior Court or DCPS-Office of General Counsel (OGC). Special education attorneys may also seek payment by directly negotiating payments with DCPS-OGC during legal proceedings or settlement negotiations.

The OCFO reviewed and processed 182 special education attorney certifications valued at over \$14.8 million in requests for fee payments during FY 2021 through FY 2022. To resolve the \$14.8 million in special education cases, the DCPS-OGC and Office of the Attorney General (OAG) agreed to a reduced certified request for payment amounts by \$5.4 million (36 percent). As a result of these reductions, final payments totaled \$9.4 million. See Table 1.

**Table 1. Amounts attorneys certified, as compared with the amounts paid during FYs 2021 and 2022**

<b>Resolution type</b>	<b>Cases resolved</b>	<b>Amounts certified</b>	<b>OGC reductions</b>	<b>Final amounts paid (amounts certified minus OGC reductions)</b>
<i>Fiscal Year 2021</i>				
Court order	2	\$471,557	\$7,515	\$464,042
OAG settlements	22	\$3,787,953	\$1,151,956	\$2,635,997
DCPS-OGC settlements	59	\$3,182,708	\$1,492,758	\$1,689,950
<i>Fiscal Year 2022</i>				
Court order	3	\$619,280	\$186,970	\$432,310
OAG settlements	17	\$2,627,704	\$834,778	\$1,792,926
DCPS-OGC settlements	79	\$4,113,964	\$1,693,164	\$2,420,800
<b>Total</b>	<b>182</b>	<b>\$14,803,166</b>	<b>\$5,367,141</b>	<b>\$9,436,025</b>

Source: OIG analysis of DCPS and OCFO records.

GAGAS requires auditors to plan and perform an audit to obtain sufficient, appropriate evidence to provide a reasonable basis for concluding audit objectives. The OIG could have obtained reasonable assurance on the accuracy of the certifications valued at \$14.8 million with an analysis of the case files, but DCPS was unable to furnish the evidence due to the protection of attorney-client privilege.

### **Prior Recommendations' Implementation Statuses**

The OIG noted that DCPS-OGC did not design and implement corrective actions for four of five recommendations included in the OIG audit report dated November 15, 2019.<sup>3</sup> In response to the OIG's inquiry, DCPS stated that Recommendations 1, 3, and 4 were not started, while Recommendation 5 was not applicable, as the database in which the outcomes of IDEA complaints would be housed is still in design mode, and the individual who had been responsible for it separated from DCPS in 2021. DCPS officials also indicated that DCPS attorneys are not in a position to implement Recommendation 1, as it violates attorney-client privilege; therefore, DCPS-OGC cannot resolve this issue.

Accordingly, additional recommendations will not be issued in this letter to address prior recommendations. We will continue to report Recommendations 1, 3, 4, and 5, which were included in the prior OIG report, as open and unresolved (see Attachment A for additional details regarding prior findings and their status). Since there has been no resolution to the prior findings, we will not solicit management comments on this letter or the unresolved comments from the November 2019 findings in Attachment A.

We appreciate the cooperation and courtesy extended to our staff during this audit. If you have any questions concerning this letter, please contact me or Mrs. Eileen Shanklin-Andrus, Deputy Inspector General for Audits, at [eileen.shanklin-andrus@dc.gov](mailto:eileen.shanklin-andrus@dc.gov).

Sincerely,



Daniel W. Lucas  
Inspector General  
DWL/cmw

cc: See distribution list

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<sup>3</sup> *Supra* note 1 at 1.

Distribution: (via email)

The Honorable Muriel Bowser, Mayor, District of Columbia, Attention: Betsy Cavendish  
(via email)

The Honorable Phil Mendelson, Chairman, Council of the District of Columbia (via email)  
Mr. Kevin Donahue, City Administrator for the District of Columbia, Office of the City  
Administrator (via email)

The Honorable Kenyan R. McDuffie, Chairperson, Committee on Business and Economic  
Development, Council of the District of Columbia

The Honorable Janeese Lewis George, Chairperson, Committee on Facilities and Family  
Services, Council of the District of Columbia

The Honorable Brian Schwalb, Attorney General for the District of Columbia

The Honorable Kathy Patterson, District of Columbia Auditor, Office of the DC Auditor

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

**Attachment A. Status of prior November 2019 findings and recommendations**

<b>Finding</b>	<b>Recommendations</b>	<b>Agency response</b>	<b>Recommendation status</b>
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 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