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Testimony Before the District of Columbia Council
Committee of the Whole
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FY24 Performance Oversight
District of Columbia Public Schools

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Introduction

Good morning, Chairman Mendelson, members of the Committee, and staff. My name is Danielle Robinette, and I am a Senior Policy Attorney at Children's Law Center. Children's Law Center believes every child should grow up with a strong foundation of family, health and education and live in a world free from poverty, trauma, racism and other forms of oppression. Our more than 100 staff – together with DC children and families, community partners and pro bono attorneys – use the law to solve children's urgent problems today and improve the systems that will affect their lives tomorrow. Since our founding in 1996, we have reached more than 50,000 children and families directly and multiplied our impact by advocating for city-wide solutions that benefit hundreds of thousands more.

Thank you for the opportunity to testify regarding the FY24 performance of District of Columbia Public Schools (DCPS). Children's Law Center represents DC students who regularly face barriers in accessing their education. Through our medical-legal partnership, Healthy Together, we represent parents whose children are facing school attendance challenges related to chronic health conditions, lack of access to special education, housing conditions, among other concerns. We also represent children in foster care who face myriad challenges accessing and engaging with their education. My testimony and recommendations today arise from our experience representing students who are often furthest from opportunity.

At this Committee’s hearing on special education in November, we testified about concerning trends in special education dispute resolution in the District.¹ Our testimony today expands on our previous testimony with a focus on DCPS’s reliance on special education litigation and its adverse impacts on students with disabilities. In our experience, DCPS uses the dispute resolution tools outlined in the Individuals with Disabilities Education Act (IDEA) – specifically due process complaints – in a way that effectively prevents or significantly delays access to special education. This is affirmed by a recent report of the District of Columbia Advisory Committee to the U.S. Commission on Civil Rights (USCCR) analyzing DC’s provision of special education.²

DCPS’s litigation practices raise several concerns. First, the invocation of the legal system, or the implication that litigation is a necessary step, creates a chilling effect on DC families seeking special education supports for their children and likely has a disproportionate impact on low-income families. Second, the overuse of litigation drains significant resources that could be spent on the provision of special education from the outset. Said differently, DCPS’s significant litigation costs divert funds away from direct supports for students and classrooms. And third, drawn out litigation increases the risk of harm to students whose education is denied or delayed in the interim. DCPS’s use of litigation has the effect of disincentivizing or denying families seeking special education supports at every step in the process. Unfortunately, we note a similar trend in DCPS’s home and hospital instruction program (HHIP). DCPS’s overuse of procedural tools

results in the delay or denial of home and hospital instruction (HHI) to students with serious health conditions that prevent regular in-person attendance at school.

As the District prepares for another tough budget year, it is exceedingly important that the Council use its oversight power to ensure that education agencies are careful stewards of increasingly limited public funds. However, this must not result in the denial of education access to students who need accommodations due to health conditions or disabilities. In the context of special education, we urge the Committee to examine the costs of special education litigation and to determine what is needed to ensure that DCPS can fulfill its IDEA obligations in the first instance. For serious health conditions, DCPS must improve implementation of their home and hospital instruction program (HHIP) to ensure these vulnerable students receive appropriate instruction.

DCPS's Special Education Litigation Practices Prevent Access to Special Education

The purpose of the IDEA is “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living [and] to ensure that the rights of children with disabilities and parents of such children are protected.”³ Understandably, there will be times when mistakes are made, or disputes arise between the school and the student's parent(s). Over the years, however, Children's Law Center has observed an increasingly adversarial dynamic develop between DCPS and students' families.

The IDEA anticipates disputes between parents and schools and outlines procedural safeguards for parents and children to ensure that their rights under the law are protected.⁴ These safeguards comprise various tools by which disputes between parents and LEAs can be resolved, including mediation, due process complaints, and state complaints.⁵ In the District, due process complaints are the most commonly sought form of dispute resolution.⁶ A parent or the school may file a due process complaint to allege a violation of the IDEA related to identification, evaluation, placement, or the provision of a free, appropriate public education (FAPE).⁷ In our experience representing the parents of students with disabilities, too often DCPS families must fight tooth and nail to get their child the services and supports to which they are entitled under the IDEA. Others have observed this trend as well. The USCCR report found, among other things, that “DC’s dispute resolution system places the burden of accessing special education services on students and their families”⁸ and, more specifically, that “[DCPS’s] reliance on due process complaints to determine and provide required services under IDEA has a disparate impact on protected classes.”⁹

At this Committee’s hearing on special education in November, we noted concerning trends in dispute resolution practices in DC.¹⁰ At that time, OSSE’s FY23 oversight responses showed that Local Education Agencies (LEAs) were overwhelmingly found to be in the wrong in Hearing Officer Decisions (HODs) in special education due process complaints (DPCs) (see chart below).¹¹

Due Process Hearings That Resulted in Final Order Issued

	Total Number of Hearing Officer Decisions Issued Against LEAs or SEAs	Total Number of Hearing Officer Decisions Against Parents	Total Number of Hearing Officer Decisions Issued
FY22	52	5	57
FY23	64	3	67
FY24 to-date (Jan 31, 2023)	34	2	36

In response to questions from the Chairman regarding these data, DCPS expressed some disagreement with the data as presented.¹²

Since the November hearing, Children’s Law Center has reviewed HODs issued in fiscal years 2023 and 2024.¹³ Specifically, we sought to identify any trends or nuance that may not be observable in the OSSE data.¹⁴ Our review found that DCPS is a party in the vast majority of DPCs that are fully litigated (60 of the 66 HODs issued in FY23).¹⁵

FY23 HODs to Which DCPS is a Party¹⁶		
DCPS Prevails on All Issues	20	33%
At Least One Substantive Violation by DCPS	25	42%
Parent/Student Prevails on All Issues	15	25%
Total	60	100%

Moreover, of the 60 HODs to which DCPS was a party, DCPS prevailed on all issues in only 20 cases, approximately 33% of the time. Therefore, of the HODs issued in FY23, at least one substantive FAPE violation was found 67% of the time. This loss rate reflects only those cases that DCPS chose to fully litigate (i.e. where they did not reach a settlement agreement or otherwise address the concerns in the complaint).

DCPS's decision to fight cases that they lose more often than not is concerning. Not only does this increase litigation costs but also creates a barrier to special education access. Too often DCPS denies special education services and chooses to litigate the dispute only to ultimately be ordered to provide the denied services and pay for the student's attorneys' fees that were increased by the decision to litigate rather than settle.

Further, this practice has a disproportionate impact on low-income students and families. Research on the IDEA's dispute resolution process has found that the law's private enforcement mechanism often prevents low-income students from accessing their rights.¹⁷ Specifically, the IDEA's reliance on parents' ability to navigate the legal system, or pay an attorney to represent them, has led to wealth-based disparities in enforcement.¹⁸ In DC, where 51.5% of students are economically disadvantaged,¹⁹ it is particularly concerning that DCPS's litigious practices are likely to result in wealth-based disparities.

DCPS's Litigation Decisions Directly Impact the District's Liability for Special Education Attorneys' Fees

The decision to fully litigate a due process complaint results in a variety of costs to the District. When a case goes all the way through a hearing – rather than being settled through mediation or a resolution meeting – litigation costs increase. With hundreds of DPCs filed each year, DCPS's Office of General Counsel (DCPS-OGC) decisions regarding litigation and settlement can result in expensive consequences for the District.

When the parent prevails in their due process complaint, DCPS is then liable for several additional costs. First, the IDEA's fee-shifting provision allows prevailing parents

to seek attorney's fees from LEA.²⁰ Additionally, DCPS is responsible for the costs of whatever relief is ordered by the hearing officer which could include tuition at a nonpublic school, evaluations, and compensatory education.

Even when DCPS prevails in the resulting HOD, the decision to litigate comes with financial costs. At a minimum, the time of the attorney from DCPS-OGC and any other central office and school-based staff that may be needed to support the District's legal position. A recent survey of experienced special education teachers found that due process hearing preparation increased the workload, resulted in missed instruction time with students, and increased stress levels.²¹

Currently, HODs are the only publicly available record of DCPS's special education litigation; however, they represent only a small fraction of the students and families impacted by DCPS's litigious posture. DCPS's reliance on litigation tools impacts the rate at which DPCs are filed, increasing the cost to the District. In our cases, we have found that filing a DPC is sometimes the only way to get a response from DCPS regarding special education requests. Time and again parents' concerns are brushed aside or their requests denied. However, after a DPC is filed, the Agency responds with an offer of the service or support that had previously been denied – effectively making the filing of a DPC a necessary step in accessing special education. This leads to an increase in the filing of complaints against DCPS and, in turn, increases litigation costs. Special education litigation costs can quickly become very expensive for the District.

An FY23 audit of special education attorneys' fees conducted by the Office of the Inspector General (OIG) found that attorneys' fees resulting from DPCs involving DCPS totaled \$2,965,375 (see chart below).²²

Table 1: Amount Attorneys Certified vs. Amount Paid During FY 2023.

Resolution Type	Cases Resolved	Amounts Certified	Final Amounts Paid	Reductions ("Amounts Certified" Minus "Final Amounts Paid")
Court Ordered	0	\$ -	\$ -	\$ -
OSSE Settlements	13	\$ 166,477.47	\$ 148,422.66	\$ 18,054.81
OAG Settlements	7	\$ 943,312.26	\$ 590,000.00	\$ 353,312.26
DCPS-OGC Settlements	110	\$ 4,286,215.68	\$ 2,375,375.00	\$ 1,910,840.68
Total	130	\$ 5,396,005.41	\$ 3,113,797.66	\$ 2,282,207.75

SOURCE: OIG ANALYSIS OF DCPS AND OCFO RECORDS

In their oversight responses, DCPS reports that the city's potential financial liability due to pending IDEA lawsuits totals \$4,468,507.86²³ and that their costs from settled special education lawsuits totals \$2,243,850.00.²⁴ While the anticipated costs of pending suits may not ultimately come due, the totals reported by DCPS put them on track to outpace the FY23 amounts certified by OIG.

We urge the Committee to use tomorrow's hearing with the government witnesses to understand how DCPS analyzes the costs and benefits of pursuing litigation in special education cases. Additionally, the Committee should ensure that DCPS prioritizes OIG's 2019 recommendation that DCPS implement a system to track IDEA complaints and

outcomes despite OIG's 2019 recommendation to do so.²⁵ In their FY23 audit report, OIG noted that "[t]racking the progress of complaints is crucial because the attorneys' fees and costs incurred by DCPS may escalate based on the time it takes to resolve cases [and] data on outcomes can inform and enhance the District negotiation strategies."²⁶ We agree. Additionally, regular data regarding IDEA due process complaints would allow this Committee to better oversee DCPS's provision of special education.

DCPS's Failure to Provide Adequate Special Education Services Increases District Spending on Nonpublic Tuition, Evaluations, and Compensatory Education

Nonpublic Tuition

The IDEA and resulting case law have been clear that an LEA must provide "an appropriate educational placement that comports with the [student's] IEP."²⁷ However, when "no suitable public school is available, the school system must pay the costs of sending the child to an appropriate private school."²⁸ Many times the decision to place a student in a nonpublic school setting is made by the student's IEP team and does not require any sort of dispute resolution. However, when the IEP has not agreed to a nonpublic placement, but the parent feels that the school is not able to meet their student's needs, the parent may choose to unilaterally enroll their student in a nonpublic school. They may then file a DPC seeking reimbursement for the costs of tuition. To qualify for tuition reimbursement, the parent must show that the LEA failed to provide FAPE, that the nonpublic placement was suitable to meet the student's needs, and that the parent did not act unreasonably in moving their student to a nonpublic school.²⁹

Per our review of HODs, in FY23 DCPS was cumulatively ordered to reimburse parents for more than 10 years' worth of nonpublic tuition. OSSE has set the maximum annual per student tuition rate at \$68,353.³⁰ As such, DCPS's failure to meet the needs of students with disabilities cost the District more than \$700,000 in FY23 alone. This total includes only the amount of nonpublic tuition ordered by HODs issued in FY23. As noted above, DCPS is also responsible for the nonpublic tuition of students who are placed in nonpublic schools by agreement of the IEP team.

Evaluations

Another common form of relief found in HODs is an order that the LEA conduct evaluations or pay for independent evaluations to be conducted by private providers in the community. Like with nonpublic tuition, OSSE prescribes maximum rates for the various types of evaluations that may be needed. In our review of FY23 HODs, DCPS was ordered to pay for more than \$20,000 in evaluations (see breakdown below).

FY23 Relief Ordered by HOD in DCPS Cases ³¹			
Evaluation Type	Quantity	Max. Rate ³²	Cost
Assistive Technology	1	\$1,550.00	\$1,550.00
Educational	2	\$1,000.00	\$2,000.00
Occupational Therapy	3	\$780.00	\$2,340.00
Psychiatric ³³	2 ³⁴	\$2,781.00	\$5,562.00
Psychoeducational	3	\$2,500.00	\$7,500.00
Speech-Language	1	\$1,003.20	\$1,003.20
Vocational	1	\$1,200.00	\$1,200.00
Total			\$21,155.20

Compensatory Education Awards

When an LEA denies a student FAPE, hearing officers have broad discretion to award appropriate relief including “educational services to be provided prospectively to compensate for a past deficient program.”³⁵ This type of relief is typically called a compensatory education award. The amount of a compensatory education award “must be reasonable calculated to provide the educational benefits that likely would have accrued from special education services the school should have supplied in the first place.”³⁶ In our review of HODs, we tracked how many hours of compensatory education were ordered against DCPS. Then, using the hourly rates prescribed by OSSE, we found that DCPS was ordered to pay \$432,568.69 in FY23 (see breakdown below).

FY23 Compensatory Education Awards (DCPS) ³⁷			
Type	Hours	Hourly Rate ³⁸	Cost
Behavioral Support ³⁹	100	\$179.19	\$17,919.00
Counseling ⁴⁰	162	\$179.19	\$29,028.78
Occupational Therapy	50	\$130.38	\$6,519.00
Parent Training ⁴¹	10	\$179.19	\$1,791.90
Speech Therapy	77	\$124.73	\$9,604.21
Tutoring	4719	\$78.30	\$369,497.70
Total			\$432,568.69

Cumulatively, special education attorneys’ fees, HOD-ordered nonpublic tuition, HOD-ordered evaluations, and compensatory education awards cost DCPS more than \$4.2 million in FY23. DCPS could invest these resources in improving the provision of

special education at the outset to prevent the need for litigation down the road. With \$4.2 million, DCPS could hire an additional 65 special education teachers⁴² or 103 dedicated aides⁴³ or 48 related service providers.⁴⁴ The Council must demand better implementation of special education to ensure that students have access to their education and reduce the litigation costs expended by DCPS-OCG.

Beyond the Financial Costs to the District, IDEA Litigation Delays Access and Risks Significant Harm to Students Waiting in Limbo

Even for those students and families who are able to navigate the legal system, DCPS's litigious practices delay special education access for those left waiting for their concerns to make their way through the IDEA's dispute resolution process. Even when these timelines fall within the statutory limits, students are often left without special education supports during this time. If the student prevails in HOD, they may be awarded compensatory education to make up for the time missed. However, that award is not a one-to-one measure of the time missed.⁴⁵ As a result, even when students receive compensatory education awards, they do not truly make up for all the time missed while DCPS insisted on litigating the due process complaint.

Often, we find that filing a DPC is the only way to get a response from DCPS. For example, we had a case where a parent of a kindergarten student requested, through counsel, that DCPS conduct evaluations to determine the student's present levels and whether their Individualized Education Program (IEP) needed to be adjusted. After no response, the attorney sent a follow-up request two weeks later and again the week after

that. Finally, six weeks after the initial request, a meeting with the school team was held where we requested an Independent Educational Evaluation (IEE). The school team said they would decide by the end of the following week. That deadline came and went with no communication from or decision by DCPS. We filed a DPC and three days later a DCPS resolution specialist sent an IEE authorization. Here, the filing of a DPC seemed to be the only way to get a response from DCPS. Their current practices effectively make the filing of a DPC a necessary step in accessing special education services. Had this parent not been represented by counsel, delays likely would have continued, and the student may never have received the evaluations. At every turn, the Agency's practices prevent DC students from accessing special education.

DCPS's Use of Procedural Delays and Denials Also Impacts Students in Need of Home or Hospital Instruction

The sense that DCPS defaults to denying services can also be observed in their review of applications for Home and Hospital Instruction (HHI). In late 2023, we testified at this Committee's hearing on the Extended Students' Right to Home or Hospital Instruction Amendment Act of 2023. We noted then the persistent barriers to access faced by students seeking HHI.⁴⁶ Those barriers continue to delay and prevent access to education when a student's health impedes their ability to attend school in-person.

Specifically, DCPS continues to purport that they must talk to the student's healthcare provider before deciding on their application for HHI. When DCPS is not able to get ahold of the provider, they either delay making a decision – ignoring statutory

timelines – or deny the student’s application for HHI. As we argued in November 2023, the Students’ Right to Home and Hospital Instruction Act of 2020 creates a presumption in favor of the medical certification of need when an LEA is deciding on an application for Home and Hospital Instruction. DC Code § 38–251.03(a)(3) says:

“An LEA may deny an application for home or hospital instruction *only in the event that the application or a medical certification of need is missing or incomplete.* Nothing in this provision shall prohibit an LEA, as part of its review of the application and medical certification, from proposing accommodations to allow the student to remain in school; *provided, that the medical professional signing the medical certification of need shall agree in writing* that such accommodations meet the medical needs of the student and permit in-school instruction” (emphasis added).

This provision makes it clear that an application for HHI can only be denied when part of the application is missing (i.e., not in cases where the school disagrees with the medical certification of need). While this provision allows LEAs to offer accommodations that keep the student in school, it does not permit a school to deny an application for HHI on the grounds that they could not get ahold of the doctor before their decision deadline.

We encourage the Committee to use tomorrow’s hearing with DCPS leadership to examine the Agency’s continued resistance to District law regarding HHI. If there are logistical or financial barriers to implementing the law, we welcome conversations with DCPS to see how we can problem-solve to ensure the needs of DC students are met. Additionally, we renew the recommendations in our November 2023 testimony urging the Committee to close gaps in the Home and Hospital statute that leave students without

a remedy when procedural delays lead to missed education.⁴⁷ Our testimony from the November 2023 hearing provides greater detail but, in short, our asks were:

- 1) The law must empower the HHI appeals panel to grant compensatory remedies upon successful appeal of application denials; and
- 2) The law must allow families to appeal the substance of HHI implementation plans.

Without clear statutory directives and protections, we believe students will continue to face barriers to education access through HHI when health concerns impact their in-person attendance.

Conclusion

The Committee's performance oversight hearings are a crucial tool in identifying gaps in DC's special education system. However, more will be needed to ensure that meaningful change is made. As such, we urge the Committee and the education agencies to work together during and after oversight season to develop a comprehensive plan for the improvement of special education in the District. Importantly, DCPS will not be able to overhaul the system alone. The work of reforming special education will require action from the whole of DC's education sector. OSSE, the Deputy Mayor for Education, the Public Charter School Board (PCSB), DCPS, and the charter LEAs will all need to work together to ensure DC's students with disabilities are receiving an equitable education. To do so, they need a shared vision and comprehensive plan for how to move forward.

Given the Committee of the Whole's jurisdiction over agencies in the education cluster, you have both the opportunity and the responsibility to be a leader of this work.

As such, we urge the Committee to lead a cross-agency coalition of education stakeholders to develop a comprehensive plan to guide improvement of special education in the District. Rather than wait for the next court-ordered consent decree, the District must proactively examine where it is missing the mark and what is needed to course correct.

Thank you for this opportunity to provide testimony. I welcome any questions.

¹ See Danielle Robinette, Children’s Law Center, Testimony Before the District of Columbia Council Committee of the Whole, (November 20, 2024), pp. 15-19, available at: <https://childrenslawcenter.org/resources/testimony-advancing-equity-in-special-education-protocols-amendment-act-of-2024/>.

² See U.S. Commission on Civil Rights, District of Columbia Advisory Committee, “Accessing Services for Students with Disabilities in DC Public Schools” (Dec. 2024), available at: https://www.usccr.gov/files/2024-12/dc-report_special-education.pdf?utm_medium=email&utm_source=govdelivery.

³ 20 U.S.C. § 1400(d)(1).

⁴ See 34 CFR § 300.500 *et seq.*

⁵ See 34 CFR § 300.506-300.520.

⁶ See The Center for Appropriate Dispute Resolution in Special Education, “National & State DR Data Dashboard,” available at: <https://www.cadeworks.org/national-state-dr-data-dashboard> (filtering Total Events by State/Entity “District of Columbia” showing the number of Due Process Complaints filed by school year).

⁷ See 34 CFR § 300.507(a).

⁸ USCCR, “Accessing Services for Students with Disabilities in DC Public Schools,” *supra* note 2, at 21.

⁹ *Id.*, at 25.

¹⁰ See Danielle Robinette, Testimony Before the District of Columbia Council Committee of the Whole, (November 20, 2024), *supra* note 1.

¹¹ See Office of the State Superintendent of Education, FY23 Performance Oversight Responses, response to Q79, p 207, available at: <https://dccouncil.gov/wp-content/uploads/2024/08/FY23-OSSE-Performance-Oversight-Hearing-Council-Responses.pdf>

¹² See Councilmember Phil Mendelson, District of Columbia Council, Question to DC Public Schools, Committee of the Whole Hearing, (November 20, 2024), available at: <https://www.youtube.com/live/P6jcpfHYmSw?si=MssQ5X0GmnEluYUI>.

¹³ Redacted versions of HODs are published on OSSE’s website at <https://osse.dc.gov/service/hearing-officer-determinations>. Our HOD analysis assumes that this record online is complete and assigns HODs to the fiscal year in which the HOD was issued (acknowledging that the alleged violations, filing of the complaint, the due process hearing, and other litigation steps may have occurred in a different fiscal year).

¹⁴ HODs frequently have mixed decisions that cannot be cleanly categorized as “against LEAs” or “against parents” as represented in OSSE’s oversight response. A DPC may contain several alleged violations of the IDEA and the HOD may decide in favor of the LEA on some issues and in favor of the parent on others. As such, our analysis examined each issue decided in each HOD and categorized the results based on whether the hearing officer found a substantive denial of a free, appropriate public education (FAPE) as defined in the IDEA.

¹⁵ Of the remaining six HODs, three were filed against a charter, one was filed against OSSE, and two were filed against both a charter and OSSE.

HODs do not encompass the full scope of due process cases. HODs represent only those cases not resolved through mediation or settlement. Neither DCPS nor OSSE publicly reports data on the total number of DPCs filed, the number resolved through mediation, or the number for which settlement agreements were reached. The most recent data available from the Center for Appropriate Dispute Resolution in Special Education (CADRE) reports that 229 DPCs were filed in the District during the 2022-2023 School Year (SY). However, these data do not indicate how many of the DPCs involved DCPS or how they were resolved. See The Center for Appropriate Dispute Resolution in Special Education,

“National & State DR Data Dashboard,” available at: <https://www.cadreworks.org/national-state-dr-data-dashboard> (filtering Total Events by State/Entity “District of Columbia” showing the number of Due Process Complaints filed by school year. SY21-22 - 237; SY20-21 - 190; SY19-20 – 268; SY18-19 – 346; SY17-18 – 333; SY16-17 – 323).

¹⁶ Our review of HODs from FY24 is ongoing. We will share our results with the Committee when they are complete. Of note, there was a 53% increase in HODs issued in FY24 (101) as compared to FY23 (66).

¹⁷ See, e.g., Eloise Pasachoff, “Special Education, Poverty, and the Limits of Private Enforcement,” 86 Notre Dame L. Rev. 1413, p. 1422 (2011), available at:

<https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1690&context=facpub>

¹⁸ Id., at 1426.

¹⁹ See Office of the State Superintendent of Education (OSSE), Data and Reports, available at:

<https://osse.dc.gov/page/data-and-reports-0>.

²⁰ 20 U.S.C. § 1415(i)(3)(B).

²¹ See Elizabeth Zagata, et al., The Center for Appropriate Dispute Resolution in Special Education, “‘I Didn’t Sign Up For This!’: Considering The Impact of Due Process On Teachers,” p. 6 (April 2024),

available at: <https://www.cadreworks.org/resources/literature-article/i-didnt-sign-for-considering-impact-due-process-teachers>

²² The chart shows that the District paid \$3,113,797.66 in special education attorneys’ fees in FY23. This total includes fees resulting from settlements with OSSE, settlements with the Office of the Attorney General (OAG) when an HOD is appealed to DC Superior Court, and negotiated amounts agreed to by DCPS-OGC during legal proceedings or settlement negotiations. We subtracted the amount paid as a result of OSSE settlements (\$148,422.66) to conclude that the attorneys’ fees total resulting from DPCs against DCPS was \$2,965,375. See Office of the Inspector General (OIG), Special Education Attorney Certifications Audit, FY2023, p. 3, available at:

<https://oig.dc.gov/sites/default/files/Reports/Special%20Education%20Attorney%20Certifications%20Audit%20%28OIG%2024-1-01MA%29.pdf>.

²³ See District of Columbia Public Schools, Responses to Pre-Hearing Questions for FY24 Performance Oversight Hearing, at Q18, p. 8-9 (Feb. 21, 2025), available for download at:

<https://lims.dccouncil.gov/Hearings/hearings/661> (including only the totals for cases listing “IDEA” as the Description of Case”).

²⁴ See District of Columbia Public Schools, Responses to Pre-Hearing Questions for FY24 Performance Oversight Hearing, Attachment Q19 – Settled Lawsuits (Feb. 21, 2025), available for download at:

<https://lims.dccouncil.gov/Hearings/hearings/661>.

²⁵ Office of the Inspector General, Special Education Attorney Certifications Audit, FY2023, p. 4, available at:

<https://oig.dc.gov/sites/default/files/Reports/Special%20Education%20Attorney%20Certifications%20Audit%20%28OIG%2024-1-01MA%29.pdf>.

²⁶ Id.

²⁷ *Alston v. District of Columbia*, 439 F. Supp. 2d 86, 90 (D.D.C. 2006).

²⁸ *District of Columbia v. Vinyard*, 901 F. Supp. 2d 77, 80-81 (D.D.C. 2012) (Kollar-Kotelly, J.) (quoting *Reid v. District of Columbia*, 401 F.3d 516, 519 (D.C. Cir. 2005)).

²⁹ See *Leggett v. District of Columbia*, 793 F.3d 59, 66-67 (D.C. Cir. 2015).

³⁰ See DC Office of the State Superintendent of Education, “Maximum Evaluation Costs under 5 DCMR § A-2853” p. 4 (effective October 1, 2024), available at:

<https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/2024-25%20School%20Year%20OSSE%20Nonpublic%20COA%20Regs%20Rate%20Charts.pdf>

³¹ Our review of HODs from FY24 is ongoing. We will share our results with the Committee when they are complete. *See supra* note 16.

³² *See* District of Columbia Public Schools, “Guide to Independent Services,” p. 17 (December 2024), available at: <https://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/SY24-25%20Guide%20to%20Independent%20Services%20December%202024.pdf>

³³ DCPS’s “Guide to Independent Services,” *id.*, does not include a rate for behavioral health evaluations separate from comprehensive psychological and neuropsychological evaluations. The rate for this evaluation type was drawn from OSSE’s “Maximum Evaluation Costs under 5 DCMR § A-2853,” *supra* note 30, at 2.

³⁴ One HOD ordered a “mental health evaluation” and another ordered a “school refusal evaluation” – our analysis assumes that these would be conducted by a psychiatrist and uses the relevant rate.

³⁵ *Reid ex Rel. Reid v. District of Columbia*, 401 F.3d 516, 521- 23 (D.C. Cir. 2005).

³⁶ *B.D. v. District of Columbia*, 817 F.3d 792, 797-798 (D.C. Cir. 2016) (quoting *Reid*, 401 F.3d at 524).

³⁷ Our review of HODs from FY24 is ongoing. We will share our results with the Committee when they are complete. *See supra* note 16.

³⁸ *See* OSSE, “Maximum Evaluation Costs under 5 DCMR § A-2853,” *supra* note 30, at 2.

³⁹ The rate for Behavioral Support will be based on licensure of provider. Our analysis assumes this will be provided by a behavioral health professional and thus uses the Counseling rate, *see infra* note 36.

⁴⁰ The rate for Counseling is based on the professional certification of the provider (i.e., Mental Health Counselor (LPC), Licensed Social Worker, Psychologist, or Psychiatrist). Our analysis uses a maximum hourly rate of \$179.19 which is the median between the highest (Psychiatrist, \$278.10) and lowest (Mental Health Counselor, \$80.28) possible rates. *See* OSSE, “Maximum Evaluation Costs under 5 DCMR § A-2853,” *supra* note 30, at 2.

⁴¹ The rate for Parent Training will be based on the area in which the parent needs trained (e.g., the parent of a non-speaking student needs training on use of an augmentative and alternative communication device, they would likely be trained by a speech pathologist and, thus, the compensatory education voucher would use the Speech rate). The only parent training award in FY23 was connected to behavior support and so the Counseling rate was used here, *see id.*

⁴² *See* District of Columbia Public Schools (DCPS), ET-15 FY 2024-2028 Pay Schedule, available at: https://dcps.dc.gov/sites/default/files/dc/sites/dcps/page_content/attachments/ET%2015%20FY%202024-2028%20Pay%20Schedule.pdf.

Calculations: \$4,200,000 divided by \$64,640 equals 64.9

⁴³ *See* District of Columbia Public Schools (DCPS), Public Salary Information Tool, Paraprofessional Salary Range: \$32,487-\$48,526, Median Salary: \$40,506.50, available at: <https://dchr.dc.gov/publicbodyinfo>.

Calculation: \$4,200,000 ÷ \$40,506.50 = 103.7.

⁴⁴ *See* District of Columbia Public Schools (DCPS), FY24 CSO - ET Officer Related Service Providers Pay Scales, available at: <https://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/FY24-CSO%20-%20ET%20Officer%20Related%20Service%20Providers%20Pay%20Scales%20%281%29.pdf>.

Calculation: \$4,200,000 ÷ \$86,566 = 48.5.

⁴⁵ *See Reid v. District of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005); “Accordingly, just as IEPs focus on individual needs, so must awards compensating past violations rely on individualized assessments. Flexibility is indeed a virtue in fashioning equitable relief, but we cannot countenance compensatory awards that lack any grounding in the aims of the IDEA.”

⁴⁶ *See* Danielle Robinette, Children’s Law Center, Testimony Before the District of Columbia Council Committee of the Whole, (November 30, 2023), available at: <https://childrenslawcenter.org/resources/testimony-committee-of-the-whole-public-hearing/>.

⁴⁷ *See id.*, at 9-14.