

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NIKITA PETTIES, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 95-0148 (PLF)
)	
THE DISTRICT OF COLUMBIA, <u>et al.</u> ,)	
)	
Defendants.)	Dispute proceeding on behalf of individual students

REPORT AND RECOMMENDATIONS OF THE SPECIAL MASTER

Background

On April 28, 2003, counsel for thirty-one individual parents and guardians filed a request with the Special Master for an invoice dispute proceeding under procedures established by the October 11, 2002 Payment Order (“Payment Order”). Because a majority of claims involved services provided prior to October 2002, the parties were asked to consent in writing to resolution of the disputes pursuant to the terms of the Payment Order. By June 2003, all parents had provided consent, agreeing to be bound by the decision of the Court and to forego any other remedies. Accordingly, on July 7, 2003, the Special Master scheduled a proceeding for July 29, 2003.

On July 29 and July 30, 2003, a proceeding was held at the office of the Special Master. The parents were represented by private counsel and class counsel. Defendants were represented

by the Office of Corporation Counsel, counsel from the District of Columbia Public Schools (“DCPS”) Office of General Counsel and the Executive Director of the DCPS Office of Mediation and Compliance. At this meeting, the defendants provided written consent to the resolution of each claim in this forum.

Following the proceeding, DCPS submitted information on or about August 1, 2003, regarding payments made, or to be made, on behalf of eleven students.¹ Counsel for the parents provided information regarding thirteen students on August 8, 2003²; four students on August 13, 2003³; and two students on August 20, 2003.⁴ As of the date of this report, the claims involving six students have been resolved and are no longer in dispute.⁵

The first section of this report presents background information regarding the origin of the disputes presented to the Special Master in April 2003. The second section describes the nature of the claims in general terms. The third section sets out the attempts made by the Special Master to develop a full record regarding the claims. The fourth section details the need for further arguments from the parties with respect to approximately twenty-four claims. Appendix A to this report provides findings of fact and recommendations with respect to thirty claims.

¹ Matthew Bodnar, John Haslach, Rachel Herr, Jackson Sterling, Whitney Katz, John Kilmer, Caitlin Lowe, Kelly Minchik, Miles Tag, Colleen Walentynowicz, John Young.

² Matthew Bodnar, John Haslach, Andrea Hodges, Cameron Huble, Sterling Jackson, Whitney Katz, John Sergei Kilmer, Bryan Lambey, Rajeh Owens, Jasmine Payne, Robert Reusch, Colleen Walentynowicz.

³ Adam Scherr, Sterling Jackson, John Haslach, Caitlin Lowe.

⁴ Whitney Katz, Sterling Jackson.

⁵ Rachel Herr, Sterling Jackson, Caitlin Lowe, Kelly Minchik, Rajeh Oweis, Jasmine Payne.

I. Cloninger, et al. vs. District of Columbia

In April 2002, the parents of thirty-eight students filed a complaint in the U.S. District Court alleging that DCPS had failed to reimburse them for expenditures they made to procure special education and related services for their children (Cloninger, et al. vs. District of Columbia. (02-CV-00776 (ESH))). At a status hearing on October 10, 2003, Judge Huevelle inquired as to whether the claims were covered by orders in Petties v. D.C. and the parties agreed to consider this option. At a subsequent status hearing on December 2, 2002, both parties represented to the court that they would pursue the resolution of the disputes through Petties. Accordingly, the court entered an order dismissing the Cloninger complaint without prejudice.

During the course of Cloninger and in the four months following the dismissal of that lawsuit in December 2002, it appears that disputes regarding some of the students were resolved in their entirety. The request for a proceeding under the Payment Order, however, listed with twenty-eight former Cloninger claimants with all or some of their invoices unpaid or only partially paid. In addition to these outstanding Cloninger claims, the proceeding request also included claims for payment of more recent invoices submitted on behalf of some of these students. Finally, claims were submitted in April 2003 on behalf of three students who do not appear to have been included in the original Cloninger litigation.

II. Description of disputed invoices

The vast majority of claims presented here, as well as in Cloninger, concern requests by parents for reimbursement of monies paid to a special education or related service provider. In a few instances, the requests sought direct payment to the provider of the service (presumably because the parent had not been required to pay in advance). Moreover, in most instances, the

payments had been made by the parents after the child had received the service in question; although in a few instances the parents sought reimbursement for monies paid “up front”, such as a semester or year’s tuition that had been paid at the beginning of the term.

As indicated above, the April 2003 submission was made on behalf of thirty-one students. Although in some instances there was only one claim for a particular student, many students had multiple claims and more than sixty claims were presented in total. Each claim was based on an invoice that had been submitted to DCPS and was, according to the parents, overdue and owing. The invoices were generally numbered with the student’s initials and date of submission (e.g., MAS030402 would represent an invoice submitted on behalf of Mary Ann Smith on March 4, 2002). Invoices submitted prior to the new procedure adopted in October 2002, were addressed to the Executive Director of the Office of Mediation and Compliance. An invoice could reflect a single charge (such a single meeting with a therapist), a series of charges from a single provider (such as occupational therapy sessions between September and December) or charges for different types of services. For example, one invoice included charges for tutoring services between January and June 2001 delivered by one provider, psychotherapy from February 2001 to March 2002 delivered by another provider and other related services delivered between August 2001 and September 2002 by a third provider.

The invoice submitted by parents’ counsel to the Office of Mediation and Compliance generally consisted of cover letter setting forth a total amount owed, accompanied by copies of bills from the services providers and copies of checks indicating payment by the parent. Even if the claim was being made for the reimbursement of payments made to multiple providers, the

cover letter would rarely indicate how much each provider had billed or been paid, but would merely list the total amount sought as reimbursement.⁶

In the hearings before the court in Cloninger, the defendants stated that most if not all of the invoices were disputed because: 1) the supporting documentation did not show that the parents had, in fact, made such a payment; or 2) the supporting documentation did not demonstrate that the parent was entitled to reimbursement. With respect to this latter category -- entitlement to reimbursement -- DCPS primary contention was that invoice in dispute concerned an amount expended where: 1) the services were delivered outside the specific time frame covered by an IEP or HOD; or 2) the services were not expressly identified as necessary by the IEP or HOD; or 3) both of the above. Recommendations regarding the invoices that fall within this category will be discussed below in Section IV.

Findings of fact and recommendations regarding the remaining disputes -- involving thirty separate claims -- are addressed in the Appendix to this report. Despite DCPS' view that failure of the parent to provide proof of payment was a basis for disputing many of the claims, an analysis of these claims demonstrates that failures in communication, inaccurate computation, and general confusion gave rise to far more disputes than the failure to provide proof of payment.

III. The parties' positions and the production of evidence

At the status hearing held in October 2002 before Judge Huevelle, the court noted that DCPS had, as of that point, not only failed to pay the invoices but had failed to provide the parents, or their counsel, with any basis or reason for such nonpayment. The court requested that

⁶As indicated above, since October 2002, the invoicing procedure has been modified so that a single invoice reflects charges for only one service, even though that multiple months of the same service may be included on the invoice. Moreover, the invoices are now directed to the Office of the Chief Financial Officer as directed by the October 2002 Payment Order.

counsel for the parents prepare an exhaustive list of the invoices in dispute, including the purpose of the expense, the date of submission to DCPS and a cross reference to the basis for the expenditure (e.g., by order of an administrative due process hearing). DCPS was asked to provide a response to each claim submitted.

Pursuant to this request, counsel for the parents prepare such a list and submitted it to the defendants. On November 25, 2002, DCPS responded by furnishing a “status” list. This document listed 88 invoices that had been submitted on behalf of 38 students between November 2000 and July 2002. Next to each invoice, DCPS indicated whether the invoice had been paid, approved for payment, partially approved or denied. Approximately one-third of the invoices had been submitted to DCPS after the filing of the original complaint, and the court had, by October, already denied plaintiffs’ attempts to include these invoices in the lawsuit. Nevertheless, DCPS listed those invoices on the November 25, 2002 status report noting, where appropriate, “Dismissed (post complaint).” In some instances, substantive responses were also included, such as paid, or paid in part. In at least ten instances, DCPS indicated that further research was needed before processing. In addition to the November 25 status list, separate letters were sent to plaintiffs’ counsel with responses to many, if not all, of the invoices at issue.

With respect to the claims pending here that were not submitted originally as part of the Cloninger lawsuit, DCPS’ position was even less clear. In some instances DCPS had annotated the invoice describing the basis for its refusal to pay. In very few instances, however, was there any comprehensive communication between the parties regarding the invoice in dispute.

The need for a thorough disclosure of each parties’ case was made clear prior to the proceeding in late July. In the July 7, 2003, letter to the parties the Special Master stated:

As indicated in the procedures enclosed, the parties are required to file prehearing submissions five business days prior to the date of the proceeding. The

prehearing submissions may be delivered to my office, by hand, mail or fax, and copies must be provided to the other party and class counsel.

The prehearing submissions of both the provider and DCPS must describe the arguments and claims that will be offered at the proceeding. In particular, the prehearing submissions must attach copies of all laws, regulations and policies upon which the party will rely. The submission should also attach any other documentation that would assist in the resolution of this dispute.

On the date the prehearing submissions were due, July 22, DCPS requested an extension until Friday, July 25, 2003 to submit its submission. The request stated, in part:

Until OSE (with the assistance of the special master's staff) has completed its review of the invoices, I am unable to submit a report of outstanding invoices/disputes. At this time, however, I can offer that the general bases for disputing invoices include no right to services contained in an IEP or an HOD, and a lack of sufficient documentation to support reimbursement to a parent/guardian for tuition/related services.

Judith Smith will be attending the proceeding on behalf of DCPS and there is the possibility that several Placement Specialists from the non-public division will also attend, but I will have a better idea of which Placement Specialist(s) will attend after tomorrow's review.

I appreciate your consideration of this request. Please let me know if there is anything that you would like for me to submit in the interim. Thanks.⁷

On July 25, DCPS counsel notified the Special Master as follows:

It does not appear as though any additional documents will be provided to the parties today, based on the review that took place yesterday.

OSE is still in the process of gathering IEPs and attempting to obtain some payment history on several children.

It is our hope that some documents will be available to distribute on Monday, July 28, 2003. I understand that this does not leave much time for review, but I think that the record is substantially complete based on the submission by Mr. Eig.

⁷ Based upon statements from DCPS counsel that the invoice review effort was extremely time-consuming, on July 23, 2003, Special Master Baach notified all parties that interns and law clerks would be made available at DCPS offices to review payment records the following day.

During the July 29, 2003 dispute proceedings held at Special Master Baach's office, DCPS produced letters regarding approximately 15 students of the thirty-one students.⁸

At various points in the proceeding, counsel for parents and class counsel argued: 1) that since DCPS did not comply with the request for a written preliminary statement, it had conceded that the amounts in dispute were owed, or alternatively; 2) that DCPS was prohibited from presenting evidence in the hearing before the Special Master unless good cause was shown. However, as indicated above, DCPS had provided responses to many of the invoices on or before November 25, 2002, in the context of the Cloninger litigation. Accordingly, to the extent that the claims had been addressed by DCPS, its position with respect to those claims must be considered. Moreover, in some instances, counsel for the parents was permitted to augment claims by submitting documents following the hearing even though the information had been requested by DCPS prior to the hearing.

In sum, despite the untimeliness of DCPS' documents, those documents that were submitted on the day of the hearing have been considered in the review of each invoice. However, where DCPS failed to provide information subsequent to the hearing, the Special Master is recommending that the Court order reimbursement to the parent or pay that amount to the Court Registry for the benefit of the class members.

V. Request for further briefing

⁸ By letter dated July 25, the Special Master set forth the order of claims to be heard, identifying the fifteen students with the simplest fact situations; the remaining sixteen students were to be examined after that. DCPS did not prepare responses for the second set of students.

During the course of the July 2003 hearing, both DCPS and the parents referred to litigation then pending in U.S. District Court (Spilsbury v. D.C., C.A. 02-0374 (EGS)). Although the parties did not agree on the central issue in that case, it appeared that the court had been asked to address some of the arguments raised in the invoice dispute proceedings pending before the Special Master. According to the parties, the Spilsbury case involved DCPS' assertion that tutoring services were not related services and hence not subject to reimbursement. In addition, Spilsbury presented the question as to whether related services could be required after the "expiration" of the IEP that required those services.

On March 10, 2004, a Memorandum Opinion and Order was issued in Spilsbury, granting plaintiffs' motion for summary judgment and denying the defendants' cross-motion for summary judgment. Although the Spilsbury decision has provided assistance in the resolution of some disputes, the court in Spilsbury was not asked to address one of the primary issues presented in approximately twenty-four of the claims at issue here. In Spilsbury, the court indicated, "Defendants have not challenged plaintiffs' assertions that the [earlier] IEPs provided for the services for which plaintiffs now seek reimbursement." Here, the defendants have expressly challenged the parents' assertion that earlier IEPs or HODs support the services billed. In particular, DCPS has challenged the assertion that an earlier IEP or HOD required tutoring, therapy, extended school year services, and evaluations.⁹

In reviewing claims for services that are an "expansion" of services described in an IEP or HOD, there are a variety of factors that one party or the other may consider persuasive --

⁹ Andrea Hodges, AH062002 (tuition and transportation during summer), John S. Kilmer JK012402, JK062002, and JK020703 (summer camp and psychotherapy during summer months); Melissa Roark, MR081600 (summer program); Robert Reusch RR120701 (evaluation) RR082802 and RR12141 (services during summer); John Haslach, JH052402 (private psychological counseling); Tillman Ellis, TE082802 (evaluation); Michelle Lipow, ML101701 (tutoring); David Pearl, DP120701, DP062002, Invoices Dated 3/12/03 (tutoring); Colleen Walentynowicz, CW072601, CW012302, CW050902, CW052202, CW062002; and CW100902 (tutoring); Matthew Wood, MW062702 (tutoring).

including, among others, the opportunity to request the service prior to delivery, the participation of the nonpublic school in assessing the student's need, the existence and strength of the nexus between the IEP or HOD and the particular service delivered, or DCPS' previous payments for that service.

Under the IDEA, as well as rules of the D.C. Board of Education, DCPS has the burden of proof where parents have challenged the appropriateness of an IEP or placement. In my view, Congress cannot have intended for that burden to shift to the parents in those instances where DCPS has neglected to fulfill its responsibilities to develop annual IEPs. Nevertheless, the parents are the petitioners in these claims. How would the parties characterize their burden of going forward? To assist in the formulation of a decision on these matters, the Special Master requests further briefing from counsel for parents, class counsel and the defendants on the following issue: Where reimbursement is sought for services that were rendered during a period of time in which no IEP is in existence, and DCPS objects to such reimbursement, what must the parents show to establish that reimbursement is required, and conversely, what must DCPS show to establish that reimbursement is not required? The briefs must include either citations to legal precedent for the positions advocated or a certificate that the party has searched and found no precedent. The briefs should address educational and related services delivered during both the regular school year and the extended school year.¹⁰ The first briefs should be submitted no later than April 23, 2004, with reply briefs due April 30, 2004, unless extensions have been requested and granted by the Special Master.

¹⁰Additional claims were submitted in a request for an invoice dispute proceeding in December 2003 and January 2004. Accordingly, the briefs should address, if necessary, any additional types of services that are subject to dispute in the claims identified at the meeting with the parties on March 1, 2004 (that is, MB092203, MB123003, DP3/31/03, DP092203, DP0922032, DP092303 and CW3/15/03).

Recommendations regarding the resolution of the remaining invoices will be made after the parties have had an opportunity to provide comment.

Respectfully submitted,

Elise T. Baach

Date: March 23, 2004

APPENDIX A

Report and Recommendation of Special Master March 23, 2004

Matthew Bodnar (DOB: 12/28/88)

Invoice Number MB013003

Contention

The claim pertaining to Matthew Bodnar involves charges for transportation to Allredge Academy in May 2002 provided by Danielson Adolescent Transport Service.¹¹ On January 30, 2003, the claimant, through counsel, submitted an invoice to DCPS for 1,987.58, along with a copy of a check from the parents to Danielson Adolescent Transport Service. The first response from DCPS was provided three months later. In a letter dated May 24, 2003, the Executive Director of the Office of Mediation and Compliance, Judith Smith, replied, "I have requested that Danielson Adolescent Transport Service provide a detailed breakdown of the invoice. [U]pon receipt of that clarification from Danielson, I will reconsider the transportation reimbursement." According to the claimant, no further communication was received from DCPS.

At the invoice dispute hearing, Ms. Smith stated that she had written to Danielson, but that no response had been received. Ms. Smith did not dispute that DCPS should pay for transportation to Allredge Academy but expressed the view that the invoice was "excessive."

Following the invoice dispute hearing, on August 8, 2003, the claimants submitted a memorandum from Danielson Youth Transport Service. Although the memorandum was

¹¹ Two other claims relating to Matthew Bodnar were withdrawn at the hearing.

undated, it appears to have been faxed to claimants counsel on August 1, 2003. Of the 1,987.58 charge, 1,500.00 was for wages for two counselors who accompanied Matthew on the 355-mile trip to, and the return trip from, Allredge; the remaining amount was for mileage, meals, and administrative costs arranging the trip. This memorandum was furnished to counsel for defendants as well as Ms. Smith in early August 2003. No response has been received from the defendants in the intervening six months.

Finding

DCPS initially claimed that the invoice was not paid because the transportation company had failed to provide any supporting documentation to justify the charges. However, even after the claimant presented a breakdown of charges, the defendants made no attempt to support their initial position that the invoice for 1,987.58 was excessive. Accordingly, it is the recommendation of the Special Master that the Court order the payment of 1,987.58, plus interest from the date of August 1, 2003.

Theodore Czarniwy (DOB: 8/11/88)

Invoice Number TC062002 **Contention**

The claim pertaining to Theodore Czarniwy involves charges for services furnished by a variety of providers between October 2001 and June 2002. An invoice was submitted on June 20, 2002, for 9,430.27. On July 19, 2002, DCPS paid 7,092.19 but provided no explanation as to the remaining 2,338.08. In its November 25, 2002, status letter, DCPS claimed that the full amount had been paid. No further communication was received from DCPS until the date of the invoice dispute hearing when the Ms. Smith furnished a letter providing a rationale for the underpayment.

Finding

Having examined the underlying invoice, it appears that the amount of 2,338.08 is exactly the amount that appears on page two of the June 20 invoice. The most likely explanation for the underpayment is that the second page was simply neglected in the approval process. The rationale supplied by DCPS, while creative, is neither timely nor convincing. Accordingly, it is the recommendation of the Special Master that the Court order the payment of 2,338.08, plus interest from the date of July 19, 2002.

Cameron Hubley (DOB: 11/28/88)

Invoice Number CH091302

Contention

The claim pertaining to Cameron Hubley involves charges for transportation to McLean School in Potomac, Maryland during the 2002-03 school year. The transportation was provided by Coleman Taxi Service. On September 13, 2002, the claimants submitted an invoice to DCPS for 2,700.00. The submission also enclosed “a copy of the settlement letter to support [the] request.” That settlement letter was a letter dated September 30, 1996, and it confirmed the agreement between DCPS and Cameron’s parents to fund a placement at McLean school. The letter concluded with the statement the parents of Cameron “have decided to waive their right to transportation services to and from The McLean School.” DCPS did not respond to the request for payment until the date of the hearing. At the hearing, DCPS noted that: 1) the invoice had been submitted for future services, not reimbursement for services rendered; and 2) the supporting documentation did not support the claimant’s position but, instead, supported the position that the parents’ had waived the right to transportation.

Following the hearing, claimants provided proof that DCPS had paid for transportation in at least one intervening year (2001-02), that the latest IEP for Cameron (2001-02) listed transportation as a related service and that the parents ultimately paid for the 02-03 transportation. In this regard, the parents were only able to recover receipts for 2,650.00 although the estimate had been for 2,700 (1,350 for each semester).

Finding

The invoice submitted by the parents in September 2002 for future transportation services was premature and DCPS was under no obligation to pay in advance. Moreover, the supporting documents submitted by the parents contradicted, rather than supported, Cameron's right to receive transportation as a related service. At this point however, the transportation service has been provided and the parents have supplied evidence that transportation was a related service in the preceding school year. Accordingly, it is the recommendation of the Special Master that the Court order the payment of 2,650.00.

Whitney Katz (DOB: 12/18/84)

Invoice Number WK110100

Contention

The claims pertaining to Whitney Katz originally involved nine invoices. Since the hearing on July 29, 2003, DCPS has fully paid seven of the nine invoices. Of the remaining claims, the first concerns the allegation that DCPS failed to pay for an invoice dated November 1, 2000 for 69.16 for transportation services provided by Barwood Inc, for cab service and paid for by Whitney's parents. The total original invoice was for 409.61 and DCPS previously paid all but the 69.16

Finding

With respect to this claim, DCPS withheld this amount because receipts were not presented. As DCPS is not expected to reimburse claims without supporting documentation, the denial of reimbursement by DCPS is appropriate.

Invoice Number WK080702

Contention

In addition to the dispute above, the claim of Whitney Katz includes an allegation that DCPS failed to pay an invoice dated August 7, 2002, for 600.00 for book fees paid during the 2001-02 school year to the Nora School. DCPS indicated that they had no evidence that the parents had in fact paid the 600.00 fee. However, at the hearing on July 29, 2003, Ms. Smith testified, "If the parent actually paid the school fees and there is a cancelled check to support it, I will pay it". Subsequent to the July 28 hearing, claimant's counsel provided a copy of a cancelled check for 600.00 from Whitney's parents to the Nora School for 2001-02 book fees.

Finding

In that the claimants have produced the evidence requested, DCPS must reimburse the claimants. Accordingly, it is the recommendation of the Special Master that the Court order the payment of 600.00, plus interest from the date of August 8, 2003.

John S. Kilmer (DOB: 6/7/88)

Invoice Number JK1226012

Contention

Four claims were presented on behalf of John Kilmer, but only the first is considered in this report. A December 5, 2001 HOD ordered DCPS to "fund John Sergei Kilmer's enrollment at the Dominion School for the 2001-02 school year." On December 26, 2001, claimants submitted an invoice for tuition and speech/language therapy provided by the Dominion School

in September and October 2001. Of the original invoice for 8,062, DCPS paid 7,586 but not the balance of 476.00. In her letter of November 25, 2002, Ms. Smith stated, “The documentation that you submitted in support of the invoices (letter from The Dominion School dated 12/3/01) reflects that the parent has only paid \$7,586.” This position was reiterated at the hearing in July 2003. Following the hearing, the claimant submitted an affidavit from James Weaver, the Chief Financial Officer of Dominion. In that affidavit, Mr. Weaver stated that Dominion billed the family of John for services prior to November 2001. In November 2001, DCPS began remitting payment directly to Dominion. Dominion has since received payment on all invoices for services provided to John “except a single charge in the amount of 476.00 for speech/language therapy” that Dominion provided to John in October 2001.

Finding

The services at issue were provided by Dominion School during the period of time covered by the HOD. Inasmuch as the affidavit from Mr. Weaver directly addresses the concern of DCPS, and clarifies the proper recipient of the reimbursement, it is the recommendation of the Special Master that the Court order the payment of 476.00, plus interest from the date of August 26, 2003.

Bryan Lambey (DOB:05/04/83)

Invoice Number 120701 –1

Contention

Two claims were presented on behalf of Bryan Lambey. First, the Proceeding Request alleges that DCPS failed to pay an invoice dated December 7, 2001 for 420.68 for Psychological Testing and Group Therapy services provided by Children’s Faculty Associates (Children’s

Hospital) during 1995 and 1996. It appears that the bills were submitted to the parents in April 1996. In furnishing the invoice to DCPS, the claimant included an HOD dated November 8, 1996, which required DCPS to fund a placement for Bryan at Bancroft Institute.

DCPS responded to this invoice in a letter dated November 25, 2002. In that letter Ms. Smith stated, “You have not provided enough explanation or documentation as to why DCPS is responsible for charges not reimbursed through our Bodnar V. D.C. proceeding.” The letter also stated “the HOD does not specifically order these services.”

At the hearing on July 29, 2003, another letter was furnished by Ms. Smith. The letter stated “Given the exceedingly old date of these charges, which prevents me from adequately research the “necessity”, and absent a more clear indication in the HOD, I am again denying reimbursement for this amount.”

Finding

There is no basis for concluding that the school system assumed, or was ordered to assume, the cost of the testing or therapy at Children’s Hospital in 1995 and 1996. In the November 1996 HOD, the hearing officer stated,

The parents seek to have DCPS pay for the entire bill at [Kennedy Krieger Institute] once it was advised that the insurance coverage would terminate but failed to propose a placement for Bryan. I declined to hear that issue during this proceeding, since it was imperative that a placement be identified and I did not want to cloud the focus of the hearing. *Since no funds had been expended, the parties would not be prejudiced by the delay in resolving this issue. The parties agreed* (emphasis added).

There is no mention, however, of any funds that had been expended for services at Children’s Hospital or payments that might be owed for services provided by Children’s Hospital. Therefore, the denial of reimbursement by DCPS, based on the information presented by all parties, is appropriate.

Invoice Number 120701 – 2

Contention

In addition to the dispute described above, the claim of Bryan Lambey includes an allegation that DCPS failed to pay a second invoice dated December 7, 2001, for 757.12 for Psychological Testing and Group Therapy services provided by Bancroft Rehabilitation Services. At the hearing on July 29, 2003, a letter was furnished by Ms. Smith. The letter stated “the remaining charges do not provide me with sufficient support or explanation that DCPS is obligated to pay these amounts and that they are not duplications of charges previously paid by DCPS.” During the hearing, DCPS reiterated its position that the charges on the invoice were unclear and that it could not be determined what services the invoices covered. Following the hearing, the claimants submitted a chart that lists the date the service was provided, the type of service, the cost of the service, the amount paid by the parent and an indication as to whether insurance provided any reimbursement or Bancroft “wrote off” any portion. It appears that even though insurance paid 365.00 and Bancroft wrote off an additional 520.00, the parent has paid 757.20 for services addressed by the November 8, 1996 HOD.

Finding

Although claimants provided this information on August 8, 2003, it does not appear that DCPS has responded to the information or alleged that it is incorrect. Accordingly, it is the recommendation of the Special Master that the Court order the payment of 757.20, plus interest from the date of August 8, 2003. In making, this recommendation, the Special Master takes no position on the merits of any argument the defendants might have been able to make had they chosen to do so in a timely manner. If DCPS has paid this invoice without notice to the Special Master, a check for the amount above should be deposited in the Court Registry for a use to benefit the class members.

Michele Lipow (DOB: 8/9/99)

Invoice Number ML 062002

Contention

Claimants allege that DCPS did not pay 1,812 for speech and language services provided by Metropolitan Speech Pathology and billed first by the Lowell School, and subsequently by the claimants. The Lowell school, a nonpublic school in the District of Columbia, sent DCPS an invoice in November 2001 for approximately 7,000.00 that included tuition from July 2001 through November 2001 and well as a 1,400 charge for speech therapy services from another private provider, delivered between August 2001 and October 2001. It appears that most of the invoice was paid, but a balance of 3,853 remained. Although the records do not indicate where the payment was to be applied, it is assumed that DCPS meant to apply it toward the tuition charges. In April 2002, the Lowell School resubmitted the 3,853 balance again along with tuition charges through April 2002 and speech invoices through February 2002.

Later that same month, counsel for claimant sent a letter reiterating the need to reimburse the Lowell for both the tuition and the speech/language bills. On June 20, 2002, the claimants submitted an invoice with a cover letter that read, "Enclosed please find documentation for reimbursement of speech and language therapy expenses incurred on behalf of Michelle Lipow in the amount of 5,665.00 We have enclosed a copy of the Hearing Officer's Determination to support our request." Although the cover letter does not expressly refer to it, the 5,665 includes the speech/language bills from 2001 and early 2002 that previously were submitted by the Lowell School as well as some charges from later months. The June 2002 invoice does not include tuition charges for Lowell.

In a November 25, 2002 letter, Ms. Smith indicated that of the bill for 5,665, DCPS would approve 3,853. The letter states,

The HOD supplied specifically indicates that these services are to be billed through the Lowell school. The invoices supplied have duplicative charges in some instances and some are not billed through the Lowell school. Further, as you know, invoices for tuition and related services should be submitted directly to the OCFO, preferably by the provider, and in a manner consistent with the Petties order issued by Judge Paul Friedman (most recent order dates October 11, 2002, modifying and supplementing prior orders), rather than to the [Office of Mediation and Compliance]. The majority of schools follow this procedure. There appears to be no reason why this procedure could not have been followed for this student, however, given the delay in processing by DCPS, I will approve this bill and submit it to OCFO. Future submissions should follow the procedure mentioned above.

Finding

A review of the records shows that the outstanding amount of 1,812.00 is not duplicative but instead reflects additional months of the same service DCPS agreed to pay in November 2002. Accordingly, it is the recommendation of the Special Master that the Court order the payment of 1,812.00, plus interest from the date of June 20, 2002.

Omar Lufti (DOB: 7/17/90)

Invoice Number OL052402

Contention

The first claim pertaining to Omar Lufti involves charges for a variety of services rendered during the summer of 2001 and the 2001-02 school year. The invoice was submitted on May 24, 2002, in the amount of 15,095. In a letter dated November 25, 2002, Ms. Smith indicated that the claim required “further research before processing.”

At the hearing in July 2003, Ms. Smith took the position that it appeared to her that the initial submission was not supported by the HOD, but did not specifically identify which particular charges fell outside the parameters of the HOD. Both parties conceded that the underlying HOD initially referred to DCPS’ obligation to reimburse for properly documented

related services provided to Omar during the 2000-01 school year. However, the plaintiff asked for a clarification in that case as it was his view the hearing officer made a clerical error and that the correct dates should have read 2001-2002 school year. In his request for clarification, counsel stated, *“At the time that we filed this request, DCPS had, in fact, already paid for services provided to Omar during the 2000-01 School Year.”*(emphasis added). On January 27, 2003, the hearing officer filed a corrected HOD so that relief read: “DCPS will reimburse the parent for properly documented related services provided to Omar during the 2001-02 School Year.”

At the hearing in July 2003, counsel for the claimant indicated that his January letter to the hearing officer contained an error: the claimant now contends that DCPS had not fully reimbursed the parents for services delivered during the 2000-01 school year. At the hearing, the claimants argued that DCPS had paid for services in question up until January 2001 but at that point all payments stopped. Claimants’ counsel contends, therefore, that DCPS is responsible for the last half of the 2000-01 school year as well as the 2001-2002 school year.

Contained in the invoice submitted by the claimant are claims from the 2002-01 school year. Specifically, the invoices submitted include: a) 9,445 for services furnished by LindaMood Bell between January and June 2001, a time period covered by the 2000-01 school year; and b) 2,480 for services furnished by Behavior Therapy Center between February 2001 and July 2001, also within the 2000-01 school year.

Finding

The invoices in dispute are for services delivered during the 2000-01 school year. At the request of the claimant, the HOD covers services delivered during the following school year. Nevertheless, the claimant has made an argument that DCPS had paid for the same services

during the first part of the 2000-01 school year and should be estopped from denying reimbursement for the remainder of the year.

Claimant's position might be successful if, indeed, DCPS paid for LindaMood Bell and Behavior Therapy Center prior to January 2001. Although there is nothing in the record that expressly supports or refutes that claim, the supporting documentation for the invoices suggests that DCPS had not paid for services from LindaMood Bell or the Behavior Therapy Center prior to January 2001. Specifically, the invoice includes charges for *initial* evaluations from both LindaMood Bell and Behavior Therapy Center administered in January or February 2001, with therapy sessions beginning thereafter.

Invoice Number OL011703

Contention

The second claim pertaining to Omar Lufti involves charges for psychotherapy services provided between April 2002 and October 2002. On or about January 17, 2003, the claimant presented to DCPS an invoice for 2,595 for services provided by Behavior Therapy Center. DCPS had not responded to the invoice prior to the proceeding in July 2003. At the hearing, Ms. Smith indicated that she had only taken a few minutes to review the claim the night before and that she hadn't looked at the invoice in any detail.

Finding

DCPS' utter lack of attention to this matter, even after a claim had been made under the Payment Order, is indefensible. It is the recommendation of the Special Master that the Court order the payment of 2,595, plus interest from the date of January 17, 2003. In making, this recommendation, the Special Master takes no position on the merits of any argument the defendants might have been able to make had they chosen to do so in a timely manner. If DCPS

has paid this invoice without notice to the Special Master, a check for the amount above should be deposited in the Court Registry for a use to benefit the class members.

David Pearl (DOB: 11/26/86)

Invoices Dated 3/12/03 (6)
Contention

On March 12, 2003, the claimant submitted six separate invoices. Those invoices were for the following amounts and services:

1. Invoice for 190.00 for psychotherapy services provided by Dr. F. Xavier Castellanos in June 2002.
2. Invoice for 600.00 for speech-language therapy provided by Rhona Gordon Epstein in August 2002;
3. Invoice for 607.50 for tutoring services provided by Tara Hanlon between September 2002 and January 2003;
4. Invoice for 1,195 for speech-language therapy provided by Interactions between September 2002 and January 2003;
5. Invoice for 1,125 for psychotherapy services provided by Dr. Roger Friedman between October 2002 and January 2003.
6. Invoice for 200 for psychiatric consultation services provided by Dr. Jay Giedd in January 2003.

Of these invoices, four contain requests for reimbursement of services provided prior to October 2002: psychotherapy in June 2002 (190), speech-language therapy in August (600), tutoring in September (135) and speech-language therapy in September (255). These pre-October 2002 charges will be addressed following the submission of briefs, discussed above.

With respect to the services rendered after September 30, 2002, the disputes over payment for those services are governed by the procedures set forth in the October 11, 2002, Payment Order. Under the Payment Order, if DCPS disputes any charges contained on an invoice, the agency must provide a written dispute notice to the provider “no later than 20 days after the invoice was submitted (i.e. by the 25th of the month for timely submitted invoices).” These invoices were date-stamped by DCPS on March 19, 2003. The first responses to these invoices were delivered in letters dated April 21, 2003, more than 20 calendar days after receipt. Thus, DCPS did not dispute these invoices in a timely manner.¹²

Finding

Accordingly, it is the recommendation of the Special Master that the Court order the payment of 2,737.50, plus interest from the date of April 28, 2003.

Benjamin Rieland (DOB: 12/21/90)

Invoice Number BR030501

Contention

In March 2001 claimants submitted a single invoice, for 4,634.61, listing charges for psychotherapy, occupational therapy, and “consultations regarding depression and treatment” during 2000. In May 2001, DCPS made a partial payment of 2,230.33. Another check was mailed to counsel in July 2001 for 2404.38. The voucher noted that the payment was for an

¹² Once the claimants responded to the dispute notice, DCPS was required to issue an administrative decision within x days. In this case, the claimants filed timely objections on April 25, 2002 but DCPS did not respond until May 20, 2003, outside the time frame permitted under the October 11, 2002 Order. It should be noted that the Office of Special Education dated its final administrative decision on May 8 (within the window allowed under the Payment Order) but the office of the Chief Financial Officer did not fax decision until May 20, 2003.

invoice date June 11, 2002 for Benjamin Rieland. However, the claimants had not submitted a claim on June 11, 2002 and counsel applied the check of 2,404.28 to attorney's fees they believed to be owed. In the context of the Cloninger litigation DCPS furnished a letter in November 2002, in which they declared that the full amount of the invoice had been paid, noting the final payment of 2,404.28 in July 2001. At this point, counsel notified DCPS that that check had been applied to attorney's fees and that the remainder on the March 2001 invoice was still owed.

Finding

It is unfortunate that the check issued in July 2001 for 2,402.28 did not accurately reflect the fact that it was for the balance of the invoice submitted in March. Nevertheless, it was the intent of DCPS to fulfill such obligation and the check was furnished to the appropriate party. What happened to the money after that is not DCPS' responsibility. Based on the evidence provided, DCPS is justified in the denial of further payment.

William Bradford Ross (DOB: 2/9/83)

Invoice Number WBR072001

Contention

The claim pertaining to William Bradford Ross involves reimbursement for payments made in connection with William's schooling during the 2000-01 school year at the Gow School in New York. On or about July 20, 2001, counsel for the parents of William presented DCPS with an invoice for 2,749.53 of which 1,998.26 was for transportation and 751.27 was for school supplies and personal expenses. In November 2002, DCPS approved payment in the amount of 1,666.76 for costs of four round trips to the school in New York. The letter of November 25, 2002, stated as follows:

DCPS generally provides transportation or reimbursement for four visits per year for students in residential programs. The approved amounts include transportation and lodging for the initial trip in September, the graduation trip in May, and transportation for two additional trips. Reimbursement for the three additional trips is denied. In addition, reimbursement for 751.27 in miscellaneous expenses (such as clothing, umbrella, batteries, items absent receipt/description, illegible descriptions) are denied as not supported by the HOD and not related to the provision of special education services for the student.

Neither the claimants nor DCPS provided any further information prior to the hearing on July 29, 2003. At that time, Ms. Smith reiterated her earlier position that approximately 750 of the invoice was denied because the invoice includes a number of items that are not compensable. She stated, "I do not believe DCPS is responsible for paying every living expense of a child, such as a key chain clothing, umbrella, batteries, pencils, zip disk, key chains, cards, jerseys, shorts, socks, batteries, an umbrella, and clothing. DCPS maintains that these items are not "tuition related" and are not reimbursable." Additionally, Ms. Smith reiterated that part of the transportation request was denied on the basis that it is established policy for DCPS to reimburse parents for approximately four trips between home and a residential school.

Finding

Based on a review of the invoice submitted, DCPS appears to have been justified in denial of reimbursement requests for most of the personal and school supply items. Of the approximately thirty-five items for which reimbursement was sought, some were clearly personal, such as an umbrella and batteries. The school supplies on the invoice (such as pencils, computer disks, composition notebooks) are items which students – whether in general education or special education – are typically required to supply on their own. The only possible reimbursable expenses are three books (Great Gatsby, Heart of Darkness and a book by Bill Moyers) and a book (or perhaps video) on geometry. DCPS argued that nonpublic schools

generally included the cost of books in their tuition bills, but DCPS was not prepared to show that William's tuition for Gow included costs for all required books.

With respect to the transportation expenses, both class counsel and claimant's counsel noted that DCPS had no written policy regarding the limitation on the number of trips that would be reimbursed. While this is troubling, it should be noted that there is no contention that Williams parents were told they would be reimbursed for a different number of trips or that DCPS' "policy" has been applied in a discriminatory manner. Moreover, although there was a suggestion that William needed to come home for three breaks because the school was "closed" during those breaks, there is no evidence in the record regarding this, other than a note that the school was closed over spring break. As claimants had ample time to provide evidence that school was also closed over the "Winter Designated Weekend" in February 2001 but did not do so, DCPS should not be required to pay for trips in excess of the four that were reimbursed. Accordingly, it is the recommendation of the Special Master that the Court order reimbursement of the textbooks above, in the amount of 83.75, plus interest from the date of April 28, 2003.

Adam Scherr (DOB: 5/14/86)

Invoices dated 11/13/01 and 7/15/02

Contention

The claims pertaining to Adam Scherr involve charges for services during the 2000-01 school year and the first semester of the 2001-02 school year. On or about November 13, 2001, counsel for the parents of Adam presented to DCPS an invoice for 3,983.61 for transportation services paid for by parents. The November 2002 status list states that this invoice had been "Paid directly to parent." A second invoice, dated July 15, 2002, was submitted for 1,847.98,

also for transportation services provided by the parents. The Proceeding Request alleges DCPS had not provided any response to that request as of April 2003.

At the hearing on July 29, 2003, Ms. Smith testified with respect to both of these invoices “My understanding is that payment has been made directly to the parent” but DCPS did not furnish any written documentation to support this request. Despite the fact that the invoices had been in DCPS’ possession for a year, Ms. Smith testified at the July 2003 that someone on her staff “was trying to get CFO documentation for me this morning.” DCPS requested, and was granted, the opportunity to produce such documentation of payment(s), agreeing to do so by August 11, 2003. On August 13, 2002, counsel for the parent of Adam wrote to the Special Master, with copies to the defendants, as follows:

It was our understanding that by August 11, 2003, DCPS was to provide a follow-up on Adam Scherr and also advise the Special Master if there were any previous payments made by DCPS on any of the claims. Please be advised that we have received no such follow-up. By copy of this letter, I am requesting that if a follow-up was prepared, DCPS counsel forward it to our office immediately.

No further communication has been received as of the date of this Report.

Finding

DCPS’ lack of attention to this matter, even after a claim had been made under the Payment Order, is indefensible. Accordingly, it is the recommendation of the Special Master that the Court order the payment of 5,831.59, plus interest from the date of April 28, 2003. In making, this recommendation, the Special Master takes no position on the merits of any argument the defendants might have been able to make had they chosen to do so in a timely manner. If DCPS has paid these invoices without notice to the Special Master, a check for the amount above should be deposited in the Court Registry for a use to benefit the class members.

Robert Spilsbury (DOB: 6/15/85)

Invoice Number RS082802

Contention

The claim pertaining to Robert Spilsbury involves charges for transportation services provided during the 2001-02 school year. On or about August 28, 2002, counsel for the parents of Robert presented to DCPS an invoice that included 2,795 for transportation services provided by Cluster Services, Metrorail, and for bus service. The Proceeding Request alleges that DCPS did not provide any response to that request for payment. Between the date of the Proceeding Request and the hearing before the Special Master, DCPS neither disputed this contention nor furnished information regarding the dispute, nor did DCPS challenge the substance of the allegation. However, at the hearing on July 29, 2003, Ms. Smith testified “ I don’t have any information as to whether we paid it directly to McLean for them to reimburse the parent. I understand Mr. Eig is saying that that did not happen. I don’t have any information to support that or to the contrary”.

Finding

Absent the documentation that DCPS has already provided compensation for the transportation services delivered, DCPS should provide reimbursement to parents as requested. Accordingly, it is the recommendation of the Special Master that the Court order the payment of 2,795, plus interest from the date of April 28, 2003. If DCPS has paid this invoice without notice to the Special Master, a check for the amount above should be deposited in the Court Registry for a use to benefit the class members.

David Taboh (DOB: 2/23/93)

Invoice Number DT072601

Contention

The claim pertaining to David Taboh involves charges for services that were rendered between June 2000 and the end of the 2000-01 school year. On or about July 26, 2001, counsel for the parents of David presented to DCPS an invoice for 10,188.50. In the context of the Cloninger litigation, DCPS approved payment for 7,191.97. The dispute here concerns the balance: 2,810 billed for reimbursement of vision therapy services provided by Harry Wachs and 1,062.08 for transportation provided by parents during the 2000-01 school year.

At the hearing on July 29, 2003, Ms. Smith testified that the vision therapy portion of the invoice was denied because the service was not required by the IEP that immediately preceded the delivery of the services. The most recent IEP for David appears to be one developed 1996 when he was 3 years old. That IEP did not refer to the need for vision therapy. However, in 2000 David was evaluated and a recommendation for vision therapy was made. Following a request for a due process hearing, a Settlement Agreement was executed on July 16, 2001 which required DCPS to “Reimburse or fund (any unpaid amounts) the student’s tuition and related services for attendance at the Harbour School for year 2000-01.” The agreement also required that DCPS “Reimburse any unpaid amounts for tuition and related services as outlined on the student’s IEP for school year 1999-00.” That IEP, if it exists, was not produced.

The Proceeding Request also alleges that DCPS failed to pay 1,062.08 for related transportation services costs provided by parents. This cost reflects the difference between the mileage allowances at the time the transportation was provided (.325/mile) and the mileage allowance requested by parents (.35/mile).

Findings

Even though no IEP was produced for the 1999-00 school year, or the 2000-01 school year, the July 2001 settlement agreement itself establishes a sufficient foundation to require payment of related services provided by Dr. Wachs. Accordingly, it is the recommendation of the Special Master that the Court order the payment of 2,810, plus interest from the date of April 28, 2003.

With respect to the reimbursement for transportation, the proper reimbursement rate is the one in force at the time the transportation service occurred. Therefore, parents have received the proper reimbursement for transportation from DCPS and no further reimbursement is supported.

Miles Tag (DOB: 9/21/93)

Invoice Number MT 120701-1

Contention

In December 2001, claimants submitted an invoice for tutoring and psychotherapy totaling 11,075. In March 2002, DCPS paid 9,510. In November 2002, DCPS stated that the remaining balance of 1,565 would not be paid because the supporting only totaled 9,510.

Finding

The documents submitted support the following findings: 103 tutoring sessions at 60.00, plus 145.00 in materials, equal 6325; 14 therapy sessions at 140 per hour and 17 therapy sessions at 150 per hour equals 4510. The sum of the tutoring and therapy equals 10,835, or 1,325 more than DCPS has reimbursed (and 240.00 less than originally billed). Accordingly, it is the recommendation of the Special Master that the Court order the payment of 1,325, plus interest from the date of August 1, 2003.

Invoice Number MT 120701-2

Contention

Also in December 2001, claimants submitted a bill for 15,400 for tuition at the Sheridan School for the 2001-2002 school year. On July 11, 2003, DCPS paid all but 60.00 of this invoice. At the hearing in July 2003, DCPS conceded that the 60.00 balance was the result of a clerical error.

Finding

It is the recommendation of the Special Master that the Court order the payment of 60.00, plus interest from the date of July 11, 2003. If DCPS has paid this balance without notice to the Special Master, a check for the amount above should be deposited in the Court Registry for a use to benefit the class members.

***Invoice Number MT 062002
Contention***

In June 2002, claimants submitted an invoice for tutoring and occupational therapy totaling 4,070. In November 2002, DCPS paid all but 145 claiming that “invoices and payments” only supported the amount of 3,925. At the hearing in July 2003, Ms. Smith reiterated the position that DCPS had reimbursed the amount presented in the supporting documentation.

Finding

It is not clear how either the claimants or DCPS reached their respective conclusions based on the information submitted to the Special Master. Those documents suggests that the cost of the services totaled 4,500: 48 OT sessions at 22.50 and 57 tutoring sessions at 60.00. In any event, the documents support at least the amount of the invoice. Accordingly, it is the recommendation of the Special Master that the Court order the payment of 145, plus interest from the date of August 1, 2003.

Invoice Number MT 080702-1

Invoice Number MT 080702-2
Contention

Two invoices were submitted by claimants for occupational therapy provided by the Lab School between May 2002 and October 2002. The first, submitted in August 2002, was for 900 and the second, submitted in January 2003, was for 1,980. At the hearing in July 2003, Ms. Smith stated that she didn't have any information on these invoices.

Finding

DCPS' lack of attention to this matter, even after a claim had been made under the Payment Order, is indefensible. It is the recommendation of the Special Master that the Court order the payment of 2,880 plus interest from the date of April 28, 2003. In making, this recommendation, the Special Master takes no position on the merits of any argument the defendants might have been able to make had they chosen to do so in a timely manner. If DCPS has paid these invoices without notice to the Special Master, a check for the amount above should be deposited in the Court Registry for a use to benefit the class members.

Colleen Walentynowicz (DOB: 2/9/89)

Invoice Number CW 011603
Invoice Number CW 2/35/03
Invoice Number CW 3/15/03
Contentions

The invoices above all reflect requests for reimbursement of services delivered after September 30, 2002. In January 2003, the claimant submitted an invoice for 1440.00 for 18 speech/language therapy sessions delivered by a private provider at McLean School between October 2 and December 19, 2002. On February 25, 2003, an invoice was submitted for four sessions in January 2003 and on March 15, 2003, an invoice was submitted for services delivered

in February 2003. Claimants stated that DCPS had not responded to these invoices as of the time of the hearing and DCPS did not dispute that assertion.

Findings

As the services in question were rendered after September 30, 2002, the disputes over payment for those services are governed by the procedures set forth in the October 11, 2002, Payment Order. Under the Payment Order, if DCPS disputes any charges contained on an invoice, the agency must provide a written dispute notice to the provider “no later than 20 days after the invoice was submitted (i.e. by the 25th of the month for timely submitted invoices).” In is uncontroverted that DCPS failed to dispute any charges with 20 calendar days. Accordingly, it is the recommendation of the Special Master that the Court order the payment of 2,240, plus interest from the date of April 28, 2003.

John Francis Young (DOB: 12/23/89)

Invoice Number JFY 110701 **Contention**

In April 2002 an invoice was submitted for therapy services rendered in March 2002 (it is unclear why this invoice was numbered 110701 – a number that would suggest the invoice was submitted on November 7, 2001). In November 2002, DCPS requested, without explanation, that the parent resubmit this invoice. The submission of the claimants includes a cover letter dated April 30, 2003, resubmitting this invoice; the invoice may have been submitted prior to that time as well. It does not appear that DCPS has responded to the resubmission.

Finding

At the hearing in July 2003, Ms. Smith represented that DCPS would either submit proof of payment of the invoice listed above or would pay the invoice. Accordingly, it is the recommendation of the Special Master that the Court order the payment of 164, plus interest

from the date of August 1, 2003. If DCPS has paid this invoice without notice to the Special Master, a check for the amount above should be deposited in the Court Registry for a use to benefit the class members.

Invoice Number JFY 062002
Contention

On May 22, 2002, the claimant submitted an invoice of 2,549.68 for transportation expenses incurred by the parent. The transportation expenses included both mileage costs as well as parking. On November 25, 2002, DCPS approved payment in the amount of 1,471.68 for mileage. The letter of that date stated, "Parking charges of \$1078 are denied pending further explanation for the justification of reimbursement of daily parking of \$9 per day for transporting the student to school." In response to this inquiry, the parent responded on December 3, 2002, with the following explanation: "

I agreed to DCPS' request to provide transportation for my son in order to save the school system a reported \$10,000 per student for bus transportation. However, since I work full time downtown, I could only do that if I went straight to my office after leaving him at school in Georgetown. When DCPS transported him to school, I was able to ride with a neighbor to work and didn't have to pay parking. Please let me know if this is a sufficient justification. Of course, if I am going to be 'out of pocket' if I agree to transport my son, I will not agree to do so and DCPS can transport him at a cost of \$10,000, as opposed to one-third that amount.

Finding

Although DCPS' transportation policy does require DCPS to reimburse parents for expenses in transporting their own children in lieu of DCPS transportation, the policy is silent as to reimbursement for expenses that are not directly related to the student's transportation, such as the parking fees above. In the absence of a representation that DCPS would pay parking costs in this case, no obligation can be found.

Invoice Number Dated 2/25/03
Contention

An invoice for 475 was submitted on February 25, 2003, for psychotherapy session during December 2002, January 2003 and February 2003. As of the date of the hearing in July 2003, DCPS had not responded to the request or paid.

Finding

At the hearing in July 2003, Ms. Smith represented that DCPS would either submit proof of payment of the invoice listed above or would pay the amount of 475. Accordingly, it is the recommendation of the Special Master that the Court order that DCPS provide proof of payment for the invoice noted above or pay the invoice, plus interest from April 28, 2003.