

2002 WL 31557460

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United States District Court, District of Columbia.

Nikita PETTIES, et al., Plaintiffs,  
v.  
THE DISTRICT OF COLUMBIA, et al. Defendants.

No. Civ.A. 95-0148(PLF). | Nov. 14, 2002.

## Opinion

### *PRELIMINARY INJUNCTION*

FRIEDMAN, J.

\*1 Upon consideration of the Plaintiffs' Motion for a Preliminary Injunction, the Defendants' response thereto, the arguments of counsel at a hearing on the Motion on November 12, 2002, and for the reasons stated in open court on November 12, 2002 and to be explicated in this Court's Opinion to be issued next week, it is hereby

ORDERED that, in order to maintain the placements for the class members currently attending Rock Creek Academy ("Rock Creek") and Education Transition Services ("ETS"), the Motion for Preliminary Injunction is GRANTED; it is

FURTHER ORDERED that the parties will work together to ensure that: (1) the *Petties* class members are provided a free appropriate special education and related services (including transportation), without interruption and at a reasonable cost to defendants; and (2) the *Petties* class members are afforded all procedural rights to which they are entitled under the IDEA, 20 U.S.C. §§ 1400 *et seq.*, the prior orders of this Court and the Court's Opinion in this matter; it is

FURTHER ORDERED that defendants shall pay ETS and Rock Creek the following sums on the following dates:

\$ 1,000,000 by 12:00 p.m. on November 15, 2002 (hand-delivered to ETS and Rock Creek); and

\$ 500,000 on November 29, 2002; it is

FURTHER ORDERED that defendants continue to make regular monthly payments, and that disputes regarding payments be resolved, in accordance with this Court's October 11, 2002 Order; it is

FURTHER ORDERED that defendants will engage in negotiations with ETS and Rock Creek related to both past due (*i.e.*, Cycle 5 and September) payments and the prospective rates that DCPS will pay for any class member remaining at these providers. The Special Master will monitor the negotiations and report to the Court by December 13, 2002 whether defendants, ETS and Rock Creek have negotiated in good faith and the likelihood that the Special Master's further involvement will be required; it is

FURTHER ORDERED that the Special Master shall facilitate discussions among the parties with respect to procedures to be put in place to ensure the review of or establishment of individual IEPs with respect to the students at ETS and Rock Creek and to ensure that their due process rights are secured and that they receive timely due process hearings and decisions on an expedited basis; in doing so, she shall specifically facilitate a discussion of all of the matters proposed by defendants in Paragraph 7 of their proposed preliminary injunction order that have not been specifically included herein; it is

FURTHER ORDERED that if negotiations regarding the past due payments and future rates or payments are unsuccessful by December 13, 2002, the dispute will be formally referred to the Special Master for resolution pursuant to Rule 53 of the Federal Rules of Civil Procedure; it is

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FURTHER ORDERED in the event this matter is referred to the Special Master and it appears that future payments to Rock Creek and ETS will be reduced, resulting in the closure or alteration of programs, the Special Master shall endeavor to structure any such changes so that any detrimental impact on class members is minimized and that all procedural protections of class members are preserved; it is

\*2 FURTHER ORDERED that such procedures shall include notice to parents and an opportunity for the parents to invoke their due process rights prior to removing any student from ETS and Rock Creek; it is

FURTHER ORDERED that such procedures shall include ensuring that the student's educational placement stay-put at ETS or Rock Creek during the pendency of any proceedings if, after notice, a parent objects to moving the child and alleges that a fundamental change to some element of the educational placement will occur if the child is moved to the proposed placement; it is

FURTHER ORDERED that District of Columbia Public School ("DCPS") students (whether currently in an "interim," permanent, or equivalent placement) attending ETS and Rock Creek and entitled to transportation as a related service shall continue to be provided with transportation by DCPS pending any proceeding under the IDEA; it is

FURTHER ORDERED that the defendants shall hold due process hearings for any ETS or Rock Creek student requesting such hearing within 30 days of the request except to the extent otherwise agreed; it is

FURTHER ORDERED that defendants shall provide plaintiffs, the Special Master, and private providers of special education and related services with reasonable notice of any new policy, including any attendance policy, directive, rule, regulation or guideline pertaining to payments for special education and related services for class members; and it is

FURTHER ORDERED that a status hearing shall be held on December 19, 2002 at 9:30 a.m.

SO ORDERED.