

**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.)	

**REPORT OF THE SPECIAL MASTER
REGARDING THE USE OF FUNDS IN THE COURT REGISTRY**

Introduction

The purpose of this report is to request approval from the Court to use funds in the Court Registry for an endeavor that would benefit students with disabilities who are residents of the District of Columbia. In particular, funds from the Court Registry are requested for specific costs necessary to develop a non-profit association composed of nonpublic special education programs or schools and public charter schools that serve District students. The first section of this report discusses the specific goals that may be furthered by the proposed use of funds. The second section provides information regarding current and future requests for funds. The third and final section briefly discusses the actions needed to conclude that portion of the Petties litigation relating to payments to nonpublic providers.

1. Goals and objectives that may be furthered by the proposed use of the funds.

During the course of this litigation, the defendants have been ordered to place funds in the Court Registry when they failed to take actions required by Court Orders. Fines were first collected in the fall of 1995 when the District of Columbia Public Schools (“DCPS”) failed to

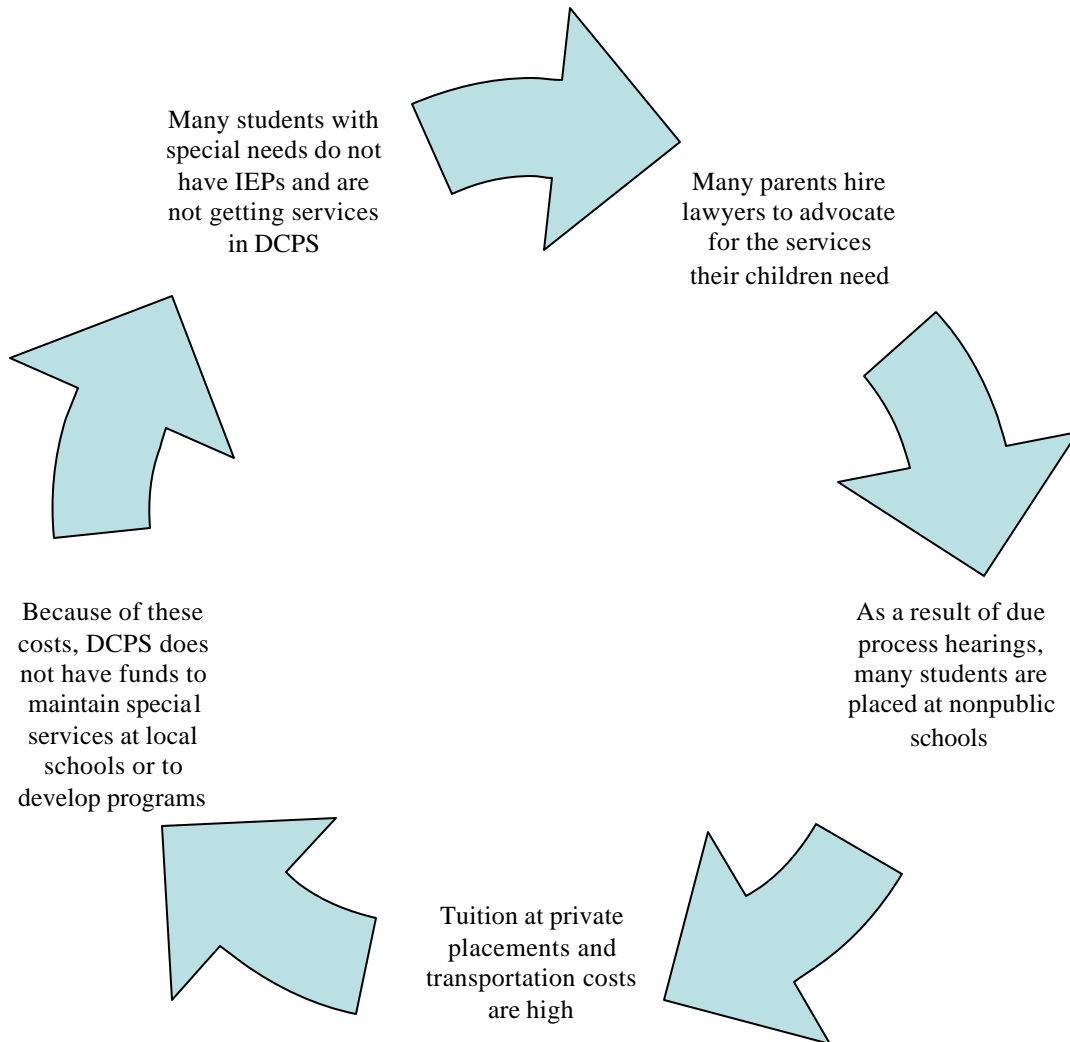
make nonpublic tuition payments that had been ordered by the Court.¹ Throughout the duration of this case, the Court has expressed the view that some portion of the fines should be used in a manner designed to benefit class members. This section describes the direct and indirect benefits to class members from the recommended use of funds.

As envisioned by this report, a portion of the funds in the Court Registry would be used to provide seed money to a nonprofit association, the District of Columbia Association for Special Education (“DCASE”). Nonpublic special education schools and charter schools that serve students with disabilities would be eligible for membership in the association. The Board of Directors would be composed of representatives from the members as well as an equal number of individuals from the broader community. For example, the Board could include a parent, a related service provider, staff from an advocacy organization, and a DCPS teacher. Among the stated goals of the proposed association would be to serve as a vehicle for communication and collaboration among nonpublic special education schools, special education charter schools, the District of Columbia government, the newly created State Office of the Superintendent, DCPS, and other public agencies that make decision affecting special education students. Along with other advocates for students, the association would available to: 1) promote efforts to provide services to students with disabilities who are unserved or underserved; and 2) support measures to provide adequate public funding for special education and related service in both public and non-public programs.

With representation on the Board from the broad community concerned with the education of students in the District of Columbia, the association could serve as a bridge between the various groups. In more frank terms, the association could break the interminable cycle of

¹ A second set of fines was collected between August and November 1999 for DCPS' failure to make efforts to adequately staff a sufficient number of bus routes. Some of the funds collected for transportation failures were later used by the parties to fund a study of DCPS transportation services.

blame that now surrounds the issue of special education in this city.² The cycle – and it does not matter at all where one begins on the cycle -- always sounds something like this:



Effort must be made to engage in meaningful dialogue about the actual needs of the students with disabilities. The truth is that DCPS does not now have the capacity to provide services, in safe and clean facilities, to all students with disabilities. The parents of more than

²The most recent iteration of this cycle appeared in a three-part *Washington Post* article regarding problems in DCPS. The June 11, 2007 segment included the following: “Lawsuits . . . wound up forcing the system to spend about \$120 million a year to pay private tuition for 2,400 students out of a system of 55,000, plus \$75 million for special education transportation. That left less money to fix the system’s own inadequate special education programs that sparked the lawsuits in the first place.”

15,000 students have abandoned local DCPS schools for public charter schools or private schools. Most of these students have no handicaps whatsoever. It can hardly come as a surprise to anyone that parents of the most vulnerable children then are also eager to move them to safe and appropriate settings outside DCPS schools. Despite these realities, with improved dialogue, DCPS and the nonpublic schools have the ability to:

- Improve the quality of services for students who need special education;
- Explore options for delivering special education and related services in the least restrictive environment; and
- Find ways to provide services to students in locations closer to their homes.

Beyond the effort to bring collaboration to the special education process, DCASE could provide even more tangible benefits to class members. A somewhat comparable association in a neighboring state, the Maryland Association of Nonpublic Special Education Facilities (“MANSEF”) provides several examples. MANSEF was founded in 1975, near the time Congress first enacted legislation requiring states to provide education to students with disabilities. In the three decades since then, MANSEF has developed into an association that provides valuable services for the nonpublic schools and programs. Moreover, the association provides the following direct benefits to the students served in those schools and programs:

- MANSEF has a contract with a “transition” specialist who is able to provide assistance when a student transitions back to the local school system from a nonpublic program;
- MANSEF and its members provide assistance to other members when requested (for example, referring professionals or consultants when a student needs very specialized services);

- MANSEF administers a scholarship program that provides students in nonpublic programs with additional funds, either for postsecondary programs or after-school enrichment programs that are not otherwise covered by tuition.

Whether an association here will have the resources needed for these services and benefits will depend in large measure on the ability of the association to recruit members and raise funds from members and the larger community. However, the likelihood that these benefits could be provided is enhanced by a start-up that is financially sound.

Over the past three months, the Special Master has met with nonpublic providers with schools or programs in the District, Virginia and Maryland. An informal steering committee has pledged to: 1) recruit schools that serve students with all types of disabilities; 2) nominate a diverse group of individuals for a permanent Board of Directors, 3) design a dues structure that is both fair and reasonable; and 4) develop a set of standards and best practices for members to follow.

2. Budget information

This report requests payment for two activities. First, the proposed order requests a check for seventy dollars (\$70.00) payable to the D.C. Treasurer for the cost of filing the Articles of Incorporation with the D.C. Department of Consumer and Regulatory Affairs (see Attachment 1). The second specific request is for three thousand, eight hundred seventy-five dollars (\$3,875.00), for consulting services that have been provided by Judith Silber from April through June 2007 (see Attachment 2).³

The Court and parties may expect further requests for funds. Once the association has fully functioning committees, it is anticipated that requests for funds will be made for

³ Ms. Silber was the founder of City Lights School, a nonpublic school in the District of Columbia serving students with emotional disabilities. City Lights has since reorganized as a public charter school.

professional services to: 1) prepare a 501(c) (3) application for filing with the Internal Revenue Service; 2) develop financial record-keeping policies and procedures; 3) design a website and related print material; 4) secure liability insurance for elected Directors; and 5) develop a database.

3. Accomplishments necessary for the conclusion of the Petties

While DCASE can be a valuable tool in improving services to students, this measure does not supplant the ongoing obligations of the defendants to make the improvements necessary to close this case. In particular, a May 5, 2005 Status Report to the Court identified four indicators that would be necessary to ensure the execution of a reliable, fair and efficient payment process without judicial supervision. Those indicators were described as follows:

1. Every student who is placed in a nonpublic special education program receives, when required under the provisions of Individuals with Disabilities Education Act (“IDEA”), necessary evaluations and reevaluations, and an eligibility determination; b) every student who has been determined to be eligible for special education or related services who is receiving special education services from nonpublic providers has a current Individual Education Program (“IEP”); and c) pursuant to the provisions set forth in the IDEA, the placement of every student is determined annually.
2. Policies and procedures for payments are reduced to writing and included as Board of Education policies, or Superintendent Directives. All tasks and responsibilities associated with payment procedures are included in staff and management position descriptions and performance evaluations.
3. A special education advisory panel, constituted in accordance with the requirements of IDEA, regularly examines policies and regulations that affect the

education of students with disabilities, including changes to policies regarding nonpublic schools and programs that provide special educational and related services to DCPS students; and

4. DCPS can accurately project special education costs based on rates that 1) have been set in accordance with established policy; and 2) are commensurate with rates paid to that provider by surrounding jurisdictions.

Substantial progress has been made in some of the above, most notably in the ability to project costs as a result of the enactment of the Placement of Students with Disabilities in Nonpublic Schools Act of 2006. Other areas, however, remain incomplete; of particular concern is DCPS' inability to timely complete IEPs for all students. Hopefully, the D.C. Public Education Reform Act of 2007 will provide the leadership necessary to reach these goals, as well as the educational goals that are more commonly discussed in the media. In the meantime, increased collaboration between and among programs in the public and private sectors is absolutely critical to class members.

A proposed Order requesting the release of \$3,945.00 from the Court Registry is attached to this Report.

Respectfully submitted,

Elise Baach
Special Master