

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**FILED**

**JUN 17 2008**

**NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT**

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

Civil Action No. 95-0148 (PLF)

**ORDER**

In early July 2007, the Special Master requested use of funds in the Court Registry to support the formation of an association, the District of Columbia Association for Special Education, in a filing titled "Report of the Special Master Regarding the Use of Funds in the Court Registry" (Dkt. 1437, July 2, 2007). The parties filed a joint memorandum in support of the request on July 13, 2007 and the Court approved the use of the funds on July 20, 2007. In her July 2007 Report, the Special Master noted that the Court and the parties could expect further requests for funds.

At the time of the July Report, a motion was before the Court for quarterly attorneys' fees and costs for plaintiffs' class counsel (Dkt. 1427, May 3, 2007). In response to that motion, defendants filed an opposition, claiming that the defendants were prevented from paying the attorneys' fees as a result of the cap on attorneys' fees enacted by Congress in Section 122 of the District of Columbia Appropriations Act of 2006, Pub. L. 115-109.

After the Special Master filed the July Report, plaintiffs' class counsel filed a reply brief in which the following request was made:

If the Court finds that the cap applies in this class action, the Court is not without a remedy since payment of class counsel's fees can come from funds that are not covered by the cap. Following precedent already set in this case, this Court can and should order that the funds paid by Defendants (as well as those that have accrued) into the Court Registry for violation of this Court's orders be used for the benefit of the class by paying the reasonable fees of class counsel. This would enable class counsel to continue to rigorously monitor and enforce the orders of the court. *Petties*, 55 F. Supp. 2d at 21. Funds in the Registry would not be subject to the cap since they were paid into the registry before this year's cap, or indeed, any of the caps, were enacted.

(Dkt. 1446, July 23, 2007). There was a second pending motion for attorneys' fees before the Court, which the defendants opposed for the same reasons (Dkt. 1439, July 8, 2007).

In light of the motions that were pending before the Court with respect to plaintiffs' class counsel's attorneys' fees, the Special Master refrained from requesting further funds from the Court Registry to reimburse for costs associated with the formation of DCASE. Instead, for costs submitted after the July 2 Report, the Special Master included those amounts as part of the monthly Special Master's Account of Activities. Nevertheless, the Special Master indicated that the costs associated with the start-up of DCASE should be paid from the Court Registry if (1) the ultimate holding with respect to plaintiffs' class counsel's motion for attorneys' fees made payment from the Court Registry unnecessary; (2) the Court denied class counsel's request for the use of funds in the Court Registry; or (3) there were funds remaining in the Court Registry after requests for attorneys' fees had been satisfied.

On March 11, 2008, the Court issued an Opinion concluding that the statutory cap on attorneys' fees applies per plaintiff class member and granting plaintiff's motions for quarterly attorneys' fees (Dkt. 1492, March 11, 2008). An accompanying Order required the parties to file a joint report with the Court estimating the total number of class members in the case, and informing the Court of the amount of plaintiffs' attorneys' fees that have been paid to date (Dkt. 1493, March 11, 2008). A report was filed which removed the need to use funds in the Court Registry for outstanding attorneys' fees (Dkt. 1498, April 11, 2008).

Accordingly, upon consideration of the Report and Recommendations of the Special Master dated May 14, 2008, and in light of the parties' opportunity to file objections pursuant to Rule 53 of the Federal Rules of Civil Procedure, and no objections having been filed, it is hereby

ORDERED that the Clerk of the Court is directed to issue a check from the Court Registry Investment System in the amount of \$175,404.50 dollars to the District of Columbia Public Schools for the following costs billed by the Special Master in Monthly Accounts of Activities and ordered by the Court to be paid by defendants pending resolution of the issue regarding attorneys' fees. The amount above reflects the sum paid during ten (10) months, as follows: the amount of \$2,968.38 for expenditures incurred in May 2007 (Dkt. 1460, September 10, 2007); the amount of \$24,200.70, for expenditures incurred in June 2007 (Dkt. 1462, September 19, 2007); the amount of \$17,230.33, for expenditures incurred in July 2007 (Dkt. 1470, October 22, 2007); the amount of \$12,704.55, for expenditures incurred in August 2007 (Dkt. 1470, October 22, 2007); the amount of \$11,889.84, for expenditures incurred in September 2007 (Dkt. 1485, January

16, 2008); the amount of \$19,672.44 for expenditures incurred in October 2007 (Dkt. 1487, February 4, 2008); the amount of \$26,790.43, for expenditures incurred in November 2007 (Dkt. 1494, March 12, 2008); the amount of \$15,478.00, for expenditures incurred in December 2007 (Dkt. 1496, March 20, 2008); the amount of \$16,083.03 for expenditures incurred in January 2008 (Dkt. 1503, April 28, 2008); and the amount of \$28,386.80 for expenditures incurred in February 2008 (Dkt. 1505, May 7, 2008);

FURTHER ORDERED that, such check be mailed to Mr. Noah Wepman, Chief Financial Officer, District of Columbia Public Schools, 825 North Capitol Street, 7<sup>th</sup> floor, Washington, D.C. 20002.

**SO ORDERED.**

  
PAUL L. FRIEDMAN  
United States District Court

Date: 6/17/08