

**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 to benefit students with disabilities who are residents of the District of Columbia (“District” or “D.C.”). In particular, funds from the Court Registry are requested for administrative oversight necessary to provide assessments and evaluations to District students in nonpublic special education programs. The first section of this report discusses the specific goals that may be furthered by the proposed use of the funds. The second section outlines the agreement between the District and the District of Columbia Association for Special Education (“DCASE”) regarding the management tasks that will be financed by the funds.

I. 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. In 2008, the Court approved the use of funds to provide seed money to create the DCASE, a nonprofit association of nonpublic and charter special education schools (Dkt. 1437, July 2, 2007).

The current request is for funds to assist the District in the reduction of outstanding requests for evaluations and assessments. As the Court is aware, the District has yet to meet the targets set forth in the Consent Order in Blackman v. District of Columbia (“Blackman”), 97-1629 (Dkt. 497, August 24, 2006). The inability to conduct timely evaluations and assessments was, even at the time of the Consent Decree, known to trigger delays in the implementation of Hearing Officer Determinations (“HODs”) and Settlement Agreements (“SAs”). The Blackman Evaluation Team report of August 2008 (“August 2008 Report”) described the effort that had been made by DCPS to expedite assessments through a multi-year contract with a large national educational company (Dkt. 2118, August 28, 2008 at p.8). Among other reasons, the improvement in assessment rates was not realized in part due to staff shortages of the contractor, and poor management. Accordingly, the parties agreed in Defendants’ Blackman/Jones Implementation Plan (“Implementation Plan”) to focus on, among other things, increasing the capacity to conduct educational evaluations in DCPS and nonpublic schools (Dkt. 2142, December 1, 2008, at p.73). In fact, nearly 50% of all open HODs or SAs require a completion of an evaluation as the primary action that needs to be taken before the HOD/SA can be fully implemented (Implementation Plan at p.74).

Recognizing that: 1) many local special education providers have the capacity to assess and evaluate students; 2) the schools and related service providers already serve many

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.

students from the area; and 3) unlike national firms, the local programs have longstanding connections to the city and its residents, DCPS has expressed interest in contracting with DCASE to expedite the administration of assessments by local nonpublic providers. On April 14, 2009, DCASE and DCPS executed a contract to provide these services (Attch.1). In particular, DCASE will undertake three categories of evaluations and assessments:

- Implementation Plan Assessments: assessments in this category include all mandated assessments determined to be necessary by HODs or SAs²;
- Initial Assessments: assessments in this category are determined to be necessary by a school's Individual Education Program (IEP) team for newly emerging or suspected disabilities not previously assessed; and
- Other Assessments: assessments in this category include reevaluations determined to be necessary by the IEP team.

By referring these types of assessments to nonpublic schools, DCPS may be able to see greater progress in eliminating the backlog, as well as provide DCPS with time to build internal capacity to conduct these types of assessments in a timely fashion (Implementation Plan at p. 75).

II. Use of funds

While many nonpublic schools that serve DC students have the capacity to conduct the assessments, the referral process through DCASE permits the establishment of a single infrastructure to track and report on assessments referred by DCPS. At the same time, certain administrative tasks placed on the individual programs will be diverted to DCASE so that the school program staff can concentrate on the delivery of special education services rather than data entry and invoicing.

² Responsibility for then determining whether the matter is "closed" within the meaning of closure under that definition in Blackman will remain with the District.

Prior to the execution of the contract, DCASE developed a project handbook that set forth, among other things, procedures regarding: 1) the physical control of all requests and orders for assessments, 2) the responsibility for determining the sufficiency of information on a request or order; 3) the periodic review of project outcomes. This handbook forms the basis for the scope of work in the April 14 contract and is incorporated as part of that contract.

In addition to the project handbook, DCASE developed a database to track all aspects of the assessment project. Other start-up and administrative costs will be incurred during the course of the contract, such as the development of training materials, instruction on the use of the database, design and implementation of accounting practices and the purchase of necessary equipment and materials. To cover the costs of these materials, the parties to *Petties* have agreed to request start-up funding from the Court Registry. An itemization of the contract administration costs is contained in Attachment 2. In consideration of DCPS' payment of these costs, a request is made to reimburse DCPS in the amount of \$85,747.25. A proposed Order is attached.

Respectfully submitted,

Elise Baach
Special Master