

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.)	
_____)	

MEMORANDUM OPINION AND ORDER

This matter is before the Court on three motions: (1) defendants' emergency motion for a status conference; (2) defendants' motion to enter an order establishing a process to return control of the Division of Transportation to the District of Columbia; and (3) a request of the Transportation Administrator to modify the Court's Order of June 25, 2003 and establish the Division of Transportation's budget for Fiscal Year 2010. All have been thoroughly briefed by the parties and the Transportation Administrator. The Court agrees with plaintiffs that no emergency exists despite representations made in defendants' motion. In view of the Court's busy schedule over the next month, it therefore will not schedule an immediate status conference with respect to these matters and instead urges the parties to resolve their differences promptly and in the best interests of the students they serve.

The Court is concerned, however, that during the course of briefing these matters the parties may have grown further apart in their positions than they were on December 2, 2009, when the defendants filed a motion to enter an order establishing a process to transfer control of

the Transportation Division from the court-appointed Transportation Administrator back to the District of Columbia, a transfer endorsed by plaintiffs and the Transportation Administrator. All agree that at some point in the not-too-distant future control over the transportation function should return to the District of Columbia government and that the Transportation Administrator should have no further role -- except, briefly, during the transition phase when he will serve as Supervising Court Master. Indeed, the day-to-day operations of the Transportation Division already have been transitioned to a District of Columbia government official, the Chief of Bus Operations, by delegation of authority from the Transportation Administrator. See Defendants' Response to the Request of the Transportation Administrator to Increase the Budget of the Department of Transportation for Fiscal Year 2010, Dkt. No. 1749 at 6; see also Response of the Transportation Administrator to Defendants' Emergency Motion for a Status Conference ("TA Resp. to Emerg. Mot."), Dkt. No. 1756 at 2-3.

While the briefing on the transition motion suggests that all parties believe that termination of the transportation phase of this lawsuit is in sight, some of defendants' arguments and rhetoric in their more recent briefing regarding the Department of Transportation's budget appear to have undermined the emergent consensus. See, e.g., TA Resp. to Emerg. Mot. at 4-5; Plaintiffs' Memorandum in Opposition to Defendants' Emergency Motion for a Status Conference, Dkt. No. 1754 at 8-10.¹ Their papers suggest that they may have forgotten what caused transportation issues to be added to this lawsuit in the first place, and ultimately to the

¹ The Court will not comment here on the proper way to apply various provisions of the June 25, 2003 Consent Order to this dispute, inasmuch as plaintiffs, defendants and the Transportation Administrator all misread, misconstrue or take out of context different provisions of that Order.

agreed-upon appointment of a Transportation Administrator by the Court. The Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., requires the District of Columbia to provide both a free appropriate public education to special needs students and “related services” -- which, importantly, include transportation as needed -- to those students. See 20 U.S.C. § 1401(26)(A); Petties v. District of Columbia, 888 F. Supp. 165, 171 (D.D.C. 1995) (“The IDEA provides that transportation is a related service that a public school system is required to provide as part of its obligation to provide a free, appropriate public education for students with disabilities.”) This is not a privilege or an amenity, but a federally protected right created by Congress which the District of Columbia must satisfy.

The defendants suggest that a way to reduce the transportation budget from the amount requested by the Transportation Administrator is to increase ride times for special needs students. This suggestion rightfully raises concerns on the part of plaintiffs, inasmuch as it was the length of ride times that motivated the addition of the related service of transportation to this lawsuit in the first place. See Consent Order Appointing Transportation Administrator, Dkt. No. 1118. Any *significant* increase in ride times could again constitute the deprivation of rights to which special needs students are entitled under the IDEA at the very time when the parties and the Transportation Administrator agree that the transportation portion of this lawsuit is ripe for termination. On the other hand, plaintiffs and the Transportation Administrator should be open to discussing the possibility of short increases in ride times for some small number of students if this would “significant[ly] decrease . . . the number of 1-2 student routes, with a correspondingly significant savings in costs,” Defendants’ Initial Response to the Transportation Administrator’s Request, Dkt. No. 1740 at 6 -- so long as assurances can be obtained that such a step is not the

first of many such increases that incrementally result in significantly lengthier ride times.

More troubling is the fact that in none of their papers on these motions do the defendants mention the dramatically increased number of bus routes even though this factor, along with bus maintenance costs, is the primary cause of the increase in the Transportation Administrator's budget request. The number of required bus routes is related directly to the number and location of special education student placements which, in turn, is directly related to the ability or inability of DCPS to provide services to special needs children within the public schools. It has been the Court's hope for years -- and certainly one of the goals of Chancellor Rhee -- that a substantial number of special needs children can be brought back into the public schools as soon as their needs can adequately be met there. This change would reduce the amount of money required to be paid to private providers and the number of special needs students required to be transported by bus -- and thus the number of bus routes required and the size of the transportation budget. Placement decisions are the responsibility of the District of Columbia, not the Transportation Administrator.²

For the Court to return control of the Division of Transportation to the District of Columbia and end the transportation portion of this lawsuit, these matters must be addressed realistically by the District of Columbia. It is fundamental that plaintiffs' class counsel and ultimately the Court be satisfied that the transition of these services will not undermine the statutory rights of special needs students in the District of Columbia under the IDEA.

² The Transportation Administrator represents that the number of bus routes increased from 680 to 740 in Fiscal Year 2010, due in part (but certainly not entirely) to the closure of 23 public schools, at an average of \$100,000 per bus route. See Request of the Transportation Administrator to Modify the Court's Order of June 25, 2003 and Establish the Division of Transportation's Budget for Fiscal Year 2010 ("TA's Request"), Dkt. No. 1738 at 4.

Attached to their respective filings, each party and the Transportation Administrator have submitted a proposed order to establish a process to return control of the Division of Transportation to the District of Columbia. Because these orders were filed only after extensive discussions and negotiations, there is substantial agreement on various provisions in these orders, see Recommendation of the Transportation Administrator Concerning the Transportation Order, Dkt. No. 1717 at 6-8, but there remain a number of serious disagreements as well. In the Court's view, litigation and judicial resolution of these matters would be counterproductive. The Court therefore directs the parties and the Transportation Administrator to resume their discussions in good faith about what a realistic order establishing a process to return control of the Division of Transportation to the District of Columbia should look like. The Court hopes that the comments contained in this Memorandum Opinion and Order will assist them in that process. The parties should submit a single joint proposed order to the Court on or before April 19, 2010; that order should reflect their agreements and, where necessary, any disagreements that still exist among them.

As for the request of the Transportation Administrator to modify the Court's Order of June 25, 2003 and to establish a Division of Transportation budget for Fiscal Year 2010, the Court notes that disputes about the Transportation Administrator's budget have arisen in prior years as well, and they have been resolved by negotiations between the District of Columbia and the Transportation Administrator (albeit sometimes on the eve of a hearing before the Court with respect to the dispute). The Court urges the Transportation Administrator and the District of

Columbia to sit down again this year and resolve their differences about budget.³ Good faith discussions and a good faith resolution of any continuing disagreements will go a long way toward persuading the Court that it is appropriate to transfer the transportation function back to the District of Columbia soon, and then to terminate the transportation portion of the case without further court involvement.

For the reasons stated above, it is hereby

ORDERED that Defendants' Emergency Motion for a Status Conference [1753] is DENIED.

SO ORDERED.

/s/

PAUL L. FRIEDMAN
United States District Judge

DATE: March 19, 2010

³ The Court notes that the amount requested by the Transportation Administrator for Fiscal Year 2010, \$88,659,559.64, is indeed approximately \$27.5 million more than the \$61,203,000 authorized by this Court in its Order of June 25, 2003 for Fiscal Year 2002, but the Transportation Administrator states that it is only \$650,000 more than the Court authorized for the Division to expend for Fiscal Year 2009. See TA's Request at 3. As the District of Columbia recognizes, the passage of eight years and the history of these disputes and agreements between the parties in recent years certainly suggests that the place to start these discussions is not at the Fiscal Year 2002 dollar amount. Indeed, the District of Columbia proposes a budget of \$75,749,000.