

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

MAY 05 2010

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

_____)
NIKITA PETTIES, <u>et al.</u> ,)
)
Plaintiffs,)
)
v.)
)
DISTRICT OF COLUMBIA, <u>et al.</u> ,)
)
Defendants.)
_____)

Civil Action No. 95-0148 (PLF)

**ORDER ESTABLISHING PROCEDURES FOR
TRANSITION OF THE DIVISION OF TRANSPORTATION
BACK TO CONTROL OF THE DISTRICT OF COLUMBIA**

Upon consideration of the Recommendations of the Transportation Administrator Concerning Transition of the Operations of the Transportation Services of the D.C. Public Schools to Management by the District of Columbia, the document entitled "A Plan for the Transition of Management and Ongoing Operations of the Division of Transportation" submitted by the Transportation Administrator (the "Transition Plan"), and submitted to this Court on May 15, 2009 as Exhibit Q to Defendants' Reply Brief in Support of its Motion to Vacate the Payment Orders (Docket No. 1643), the Motion of the Defendants for Appointment of a Supervising Court Master to serve during the transition, and the record in this case; and

WHEREAS, the Transportation Administrator has advised the Court that the Division of Transportation is consistently providing safe, timely, and appropriate transportation services to eligible District of Columbia special education students and that in his judgment it is appropriate to initiate a process of transition of the Division of

Transportation back to the management of the District of Columbia, under a set of safeguards to assure the continued provision of safe, timely, and appropriate transportation services during a transition period in which the District of Columbia will resume day-to-day responsibility for the operation of the transportation program;

WHEREAS, the Transportation Administrator has submitted, and the Parties have accepted, a Transition Plan that sets forth the processes that should be followed to produce a successful transition and the substantive criteria that should be used in evaluating whether the transition of authority and responsibility for the Division of Transportation back to the District of Columbia has occurred successfully;

WHEREAS, it is appropriate to create the position of Supervising Court Master to supervise the transition process and to assume control, if necessary, of the management and operations of the Division of Transportation if the District of Columbia is in material breach of the substantive criteria that are to be met during the transition period;

WHEREAS, the transition process will benefit if a Supervising Court Master is appointed to supervise the efforts of the District of Columbia to assume management and operation of the Division of Transportation, pursuant to criteria set forth in the Transition Plan, and to resume control of the management and operations of the Division of Transportation if the District of Columbia is in material breach of the substantive criteria that are to be met during the transition period;

WHEREAS, David Gilmore possesses the requisite management qualifications and experience in the management and operation of the Division of Transportation to assume the position of Supervising Court Master, it is hereby,

ORDERED, based upon the Transportation Administrator's Recommendations concerning transition of the operations of the Division of Transportation back to management and operation by Defendants and upon the Transition Plan submitted by the Transportation Administrator, that the position of Supervising Court Master is created under the terms and conditions set forth below;

ORDERED, that the Supervising Court Master shall have the same immunity provided to District of Columbia public officials;

ORDERED, that the following terms and conditions shall govern the transition of responsibility for management and operation of the Division of Transportation back to the Defendants:

1. For a transition period ending on October 1, 2010, the Supervising Court Master shall possess all the powers and authorities possessed by the Transportation Administrator under the Consent Order Appointing Transportation Administrator issued on June 25, 2003. However, during the transition period, the powers and duties under the June 25, 2003 Consent Order associated with the operation of the Division of Transportation, in particular but not limited to the power to hire and discharge personnel; to negotiate and enter into contracts; and to negotiate and enter into labor agreements, are delegated to Office of the State Superintendent of Education.

2. During the transition period, the Defendants shall remain subject to the duties and obligations imposed upon them by the Consent Order of June 25, 2003.

3. Defendants agree that for Fiscal Years 2010 and 2011, they shall provide sufficient funding necessary to operate the Division of Transportation in a manner that complies with the Court's underlying substantive Orders in this matter.

4. Effective upon the date of this Order, the District of Columbia shall assume responsibility for conducting the day-to-day operations of the Division of Transportation.

5. While this Order is in effect, the Supervising Court Master shall monitor the Defendants' operation of the Division of Transportation and report periodically to the Court and the Parties as he deems appropriate as to his assessment of Defendants' performance.

6. While this Order is in effect and also for the period after the Consent Order of June 25, 2003 is vacated, the Defendants will generate and provide Plaintiffs' counsel with monthly performance reports, substantially similar to the monthly reports previously generated by the Transportation Administrator and filed with the Court, which measure the Defendants' compliance with the criteria concerning the transportation of special needs students that are established by the underlying substantive Orders in this case.

7. During the transition period, the Supervising Court Master may resume control of the day-to-day operation of the Division of Transportation if he determines that the Defendants are in material breach of any of the performance standards set forth in the Transition Plan.

8. The process by which the Supervising Court Master shall determine that the Defendants are in material breach of a performance standard shall be as follows:

(a) If the Supervising Court Master makes a preliminary determination that the Defendants are in material breach of a performance standard, he shall send a written notice to the Attorney General of the District of Columbia notifying the Attorney General informally of the Supervising Court Master's preliminary finding. Defendants shall have ten business days to cure the alleged material breach.

(b) Ten business days after he has submitted such informal notice, if the Supervising Court Master determines that the Defendants have not cured the alleged material breach, the Supervising Court Master shall submit a written notice to the Attorney General and the Director of the Office of the State Superintendent of Education formally notifying the Defendants of his determination that the District of Columbia is in material breach of the Transition Plan.

(c) The Defendants shall have 30 business days after receipt of such a formal notice of noncompliance in which to cure the alleged material breach of a performance standard identified by the Supervising Court Master. Upon the running of the 30 business day cure period, the Supervising Court Master shall determine whether the Defendants have cured the alleged material breach of the performance standards identified in his notification. If the Supervising Court Master determines that the Defendants have not cured the material breach, the Supervising Court Master shall submit a written notification to the Court and the Parties that he is assuming control of the management and operation of the Division of Transportation. If the Supervising Court Master determines that a good faith effort has been made to cure the material breach and that the cure is likely to be accomplished within a short period of time, he may, at his discretion, extend the cure period to a date certain of his own determination.

(d) Upon submission of such a Notification of Assumption of Control, the Supervising Court Master may assume authority and responsibility for direct day-to-day control of the Division of Transportation pursuant to the terms of the Consent Order of June 25, 2003. The Supervising Court Master shall be authorized to exercise any of the

powers and authorities provided to the Transportation Administrator under that Consent Order.

(e) The Defendants may file an objection with the Court to the Supervising Court Master's declaration of material breach and assumption of responsibility for the day-to-day management of the Division of Transportation. The Supervising Court Master's determination and actions shall be binding on the Defendants, unless and until modified by the Court.

9. No later than 21 days before the end of the transition period, the Supervising Court Master shall submit a report to the Court evaluating the Defendants' performance in managing and operating the Division of Transportation during the transition period and his recommendations concerning what further actions the Court should take or orders it should enter, if any, with respect to the transportation of special education students. Thereafter, within seven days after the Supervising Court Master submits his report, each Party shall have the opportunity to submit to the Court:

(a) a memorandum that reflects its position about the performance of the Division of Transportation during the transition period under the day-to-day management and operation of the Defendants; and

(b) any motion by Plaintiffs concerning any further actions they believe the Court should take with respect to the transportation of special education students, including in particular whether it is appropriate for the Court to vacate the Consent Order.


10. Absent the Supervising Court Master's finding of any material breach of a performance standard by the Defendants or any objections of the Plaintiffs that are sustained by the Court, at the end of the transition period, the Consent Order of June 25,

2003 regarding transportation services for D.C. Public Schools shall stand as vacated as of October 1, 2010.

ORDERED, that David Gilmore is appointed as the Supervising Court Master effective as of the date of this Order, with Gilmore Kean, LLC to provide support for that position;

ORDERED, that effective as of the date of this Order, David Gilmore is hereby discharged from the position of Transportation Administrator created by the Consent Order of June 25, 2003.

SO ORDERED.


Paul L. Friedman
District Judge

DATE: 5/5/10