

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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NIKITA PETTIES, <u>et al.</u>,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 95-0148 (PLF)
)	
DISTRICT OF COLUMBIA, <u>et al.</u>,)	
)	
Defendants.)	
_____)	

**REPORT AND RECOMMENDATION OF THE SUPERVISING COURT
MASTER CONCERNING THE TRANSITION OF THE DIVISION OF
TRANSPORTATION BACK TO THE CONTROL OF DEFENDANTS**

Under Section 9 of the Transition Order of May 5, 2010, as amended, I am submitting this Report and Recommendation to inform the Court and the Parties of (1) the results of my analysis of the current status of the management and operations of the Division of Transportation under the day-to-day control of Defendants; and (2) my recommendations about the appropriate steps the Court should take to address the compliance problems that the Division currently is experiencing.

On February 7, 2011, I wrote the Court to report the results of a review that Gilmore Kean had conducted to determine the extent of continuing non-compliance by Defendants with the Orders that the Court has entered in this litigation. That report was not favorable. I stated that I was awaiting submission of an improvement plan by the Office of the State Superintendent for Education (“OSSE”), the administrative "parent" of the Division. The plan was submitted within hours of my communication to the Court. It was quite disappointing in its quality and substance, much like almost every other plan

prepared by Defendants during my involvement with this litigation. I spoke with the new State Superintendent that evening. While acknowledging the poor quality of the plan, the State Superintendent contended that real progress was being made to improve the transportation system. I agreed to give her more time to substantiate her contention before I determined whether to declare that Defendants were in material breach of the Transition Order. By mutual agreement, our respective teams met in mid-March.

My report on the results of this latest review is attached. (Attachment A) Though the Division continues to be non-compliant in key areas with Orders of the Court, notably the on-time arrival and ride time requirements, I am pleased to report that substantial progress has been made and that the Division now appears able to substantiate its performance with hard data.

As the Court is aware, I have never been a supporter of the previous administration's decision to place the Division under the supervision of OSSE. I did not believe OSSE possessed the interest, expertise, or cultural sensitivity to absorb and supervise this unique operation, which is more than five times the size of the rest of OSSE. Moreover, when the Division was transferred from oversight by the Superintendent of the D.C. Public Schools to supervision by OSSE, the Division became subject to the control of the District's central human resources and procurement operations – offices that, in my opinion, hinder the functionality of the Division from the perspectives of their regulatory environment, bureaucratic mindset, and inconsistent competence. In addition, I continue to be concerned about OSSE's unfortunate propensity for making decisions about the Division in a less than transparent manner and its failure to communicate its decisions to the Supervising Court Master and the Plaintiffs

in a regular manner so that they may remain informed about developments in the Division. These decisionmaking and communications problems have necessitated more frequent and intensive scrutiny of the Division's operations.

I continue to have many of the same reservations. However, I must recognize the improvements that have been made in the Division's performance in recent weeks. In particular, I have observed that the new State Superintendent has taken a direct interest and hand in promoting the Division's functionality, where her two predecessors appeared completely disinterested and clueless.

Based on the progress that has occurred to date under the leadership of the new State Superintendent and the reasonable expectations that efforts will continue to bring the Division back toward full compliance, I have determined that a declaring a material breach under the terms of the Transition Order would not serve any useful purpose at this time. However, substantial work remains to be done.

I also believe that termination of the transportation part of the *Petties* litigation on the time schedule currently set forth in the Transition Order would not be in the best interests of special education students who are entitled to transportation to school.

For these reasons, I recommend that the Court enter an Order which will provide:

1. The *Petties* Transition Order shall remain in effect until at least October 31, 2011 to allow sufficient time to determine whether or not the Division's performance improvements carry through the opening of the 2011-12 School Year.
2. The Supervising Court Master shall conduct periodic unannounced reviews to determine if performance claims made by the Division are accurate and whether compliance is being achieved. The Supervising Court Master also shall conduct a comprehensive review of the management and operations of the Division after the start of the 2011-12 School Year and submit a report to the Court and the Parties by October 11, 2011 with his analysis of the status of the Division and his recommendations as to further actions that he believes should be taken.

I believe it appropriate that the current transition process should remain in effect through the start of the next School Year. The Division usually experiences some adjustment problems at the start of a new School Year. Once a reasonable adjustment period has passed, I believe it would be appropriate for the Supervising Court Master to make a thorough review of the management and operations of the Division under Defendants' control and then for him to submit a further Report and Recommendation analyzing the state of compliance and advising the Court and the Parties as to his views as to what steps should be taken next.

I have informed the Parties of my position so that they may submit their views to the Court within the time periods established by the Transition Order.

I have attached a draft Order that would implement these Recommendations.

Respectfully submitted,

/s/ David Gilmore

David Gilmore
Supervising Court Master

April 15, 2011