

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NIKITA PETTIES, et al.,

Plaintiffs,

v.

DISTRICT OF COLUMBIA, et al.,

Defendants.

Civil Action No. 95-0148 (PLF)

FILED

JUL 21 1995

CLERK, U. S. DISTRICT COURT
DISTRICT OF COLUMBIA

ORDER MODIFYING CLASS CERTIFICATION AND PRELIMINARY INJUNCTION

This matter having come before the Court on Plaintiffs' Motion to Modify Preliminary Injunction and Class Certification Order, and upon consideration of said motion, the supporting and opposing papers filed by the parties, including plaintiffs' declarations and exhibits, the arguments presented in open court and the entire record in this matter, and consistent with the Court's Opinion issued this same day, the Court finds as follows:

1. Pursuant to the Individuals With Disabilities Education Act ("IDEA"), 20 U.S.C. §§ 1400, et seq., and its implementing regulations, the Rules of the Board of Education of the District of Columbia, and the Administrative Issuance System of the District of Columbia, the District of Columbia Department of Human Services ("DHS"), an executive agency of the defendant District of Columbia, has assumed funding responsibility for the private special education placements and/or related services of certain District of Columbia Public Schools ("DCPS") students with disabilities.

2. DCPS students with disabilities whose private special education placements

17

and/or related services are funded by DHS are entitled to, and receive, those placements and/or services pursuant to the IDEA, and are entitled to all of the substantive and procedural rights and safeguards of the IDEA.

3. DCPS, as the designated State Educational Agency ("SEA"), is responsible for ensuring that all District of Columbia students entitled to special education and related services pursuant to the IDEA receive those services in accordance with the requirements of the IDEA.

4. DHS has not paid the costs of private special education placements or related services for which it has been billed either fully or on a current or timely basis for at least the 1994-95 school year. DCPS has not taken steps to ensure the full and timely payment of these costs in the absence of payment by DHS. Consequently, defendants have violated the IDEA and other laws and regulations intended to ensure that District of Columbia students with special education needs receive a free, appropriate education.

5. Unless defendants fully and immediately pay for the private special education placements and/or related services of the DHS-funded students and give satisfactory written assurances that such payments will be made on a current basis in the future, many, if not most, of these students will have their placements and/or services terminated, and there is no indication that appropriate alternative placements are available to meet the students' individual needs.

6. Plaintiffs have demonstrated that the DHS-funded students with disabilities are suffering and will continue to suffer irreparable harm as a result of defendants' ongoing failure to meet their financial obligations, which has placed the DHS-funded students' education in constant jeopardy, already has caused some DHS-funded students to be deprived

of their placements and prevented others from attaining appropriate placements.

Plaintiffs' Motion to Modify Class Certification and Preliminary Injunction is, therefore, GRANTED, and it is hereby

ORDERED that the plaintiff class in this action shall be modified to specifically include all DCPS students with disabilities whose private special education placements and/or related services are funded by the District of Columbia Department of Human Services ("DHS"), and

IT IS FURTHER ORDERED that

(1) Defendants shall, within fourteen (14) calendar days of the date of this Order, fully pay all costs outstanding as of the date of this Order, including the costs of tuition and related services, of all private special education placements and/or related services of DCPS students for which the District of Columbia Department of Human Services ("DHS") has been billed; and

(2) Defendants shall give written assurances, in a form satisfactory to the Court, that future payments for the costs of any and all private special education placements and/or related services for DCPS students for which DHS has been billed, will be made on a current basis (in accordance with the billing procedures and requirements of each private provider);¹ and

(3) Defendants shall report to this Court, or its designee, on a regular basis, to be determined by the Court, regarding defendants' compliance with this Order, until such

¹ The written assurances for DHS-funded students shall take the same form and have the same content as those issued with respect to the DCPS-funded students pursuant to this Court's separate Order regarding the same, dated June 29, 1995.

time as this Court determines that the rights of the plaintiff class, or of any members thereof, are no longer being violated or in immediate jeopardy of violation, thereby making continued monitoring by the Court unnecessary.²

SO ORDERED.


PAUL L. FRIEDMAN
United States District Judge

DATE: 7/20/95

² The same reporting requirements shall apply with respect to DHS-funded students as for the DCPS-funded students, as set forth in this Court's separate Order regarding the same, dated June 29, 1995.