

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

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

**REPLY OF SUPERVISING COURT MASTER TO RESPONSES TO HIS FURTHER
REPORT AND RECOMMENDATIONS CONCERNING THE TRANSITION OF THE
DEPARTMENT OF TRANSPORTATION BACK TO DEFENDANTS' CONTROL**

Supervising Court Master David Gilmore hereby submits this Reply to the Responses filed by the parties to his Recommendation that the Transition Period established by the Transition Order dated May 5, 2010 be extended by one year, until October 31, 2012.

Plaintiffs support the proposed extension but note serious reservations about potentially shortening the length of the Transition Period. (Pl. Resp. at 2). Defendants do not explicitly oppose the recommended extension of the Transition Period, but state that they will request a formal review by this Court of possible termination of the Transition Order by April 30, 2012. (Def. Resp. at 2).

I submit that the Court should extend the Transition Period until October 31, 2012, as I originally recommended. Under this approach, Defendants would, of course, have the right to come before the Court at any time if they believe that actual, objective performance measures demonstrate that they are in durable compliance with the Court's Orders. Based on the Responses, I also recommend that the Court's Order should include an additional provision that

will require Defendants during the Transition Period to provide Plaintiffs' counsel and the Supervising Court Master with appropriate reports on the operation of the Division of Transportation (the "Division") as discussed below.

DISCUSSION

In their Response, Defendants take substantial liberties in characterizing the findings and recommendations set forth in the Supervising Court Master's submission. Defendants have mistakenly interpreted my decision not to retake control of the Division as an indication that they are not in material breach of the Court's Orders. In fact, the Report and Recommendations concluded no such thing. Rather, I found that Defendants remain in material breach based on the current level of performance of the Division under the control of the Office of the State Superintendent of Education ("OSSE"). I determined not to resume day-to-day control of the Division based on my confidence in City Administrator Allen Lew's commitment to upgrade the performance of the Division so that it operates in durable compliance with the Court's Orders and the efforts that Defendants have taken since Mr. Lew's intervention.

The OSSE Response is structured around contentless bureaucratic rhetoric, rather than an actual description of the performance of the Division based on direct observation and verifiable data. It is based on the liberal use of the terms "substantial compliance" and "partial compliance" with the Court's Orders. (Docket No. 1942-2, Compliance Status as of September 30, 2011). These are meaningless concepts. The Division is either "in compliance" with the performance levels established by the Court's Orders or it is not. From the Compliance Status Report, it is not possible to determine in which of the 34 Areas of Operation the Defendants believe they currently are in actual compliance. While I disagree with Defendants' self-

assessment of their level of performance, nothing would be gained by refuting their conclusions. All parties agree that the Transition Order should be extended. The only facts that will matter are those that concern the degree of compliance that Defendants will obtain once they have completed the purchases, installed, and initiated use of the new buses, technology, and information management systems described in the OSSE Report. If, after implementation of the substantial reforms they have promised, Defendants believe that they have, in fact, achieved durable compliance with the Court's Orders, they are free to approach the Court at that time.

I welcome Defendants' commitment to acquire a significant number of new buses to upgrade the aging fleet that I have described in my prior reports. In assessing that initiative, I will give special attention to the vans that Defendants propose to acquire, to make certain that they comply with the requirements of law and the Court's Orders. Further, I appreciate that KPMG has focused on the crucial role of information systems and data management in operating the Division and obtaining compliance. In that connection, I note that KPMG has stated that it has "had difficulty reviewing route timing compliance with readily available data raising concerns about the Routing and Scheduling System." (Docket No. 1942-3, at 8) This statement reinforces my repeated expressions of concern in prior reports to the Court about the bus routing system and its effect on compliance. I will review carefully the results of the replacement of the current, inadequate technology with the new systems to be acquired, to determine if they assist Defendants in achieving actual compliance with the Court's Orders.

Finally, I recommend that the Court's Order specifically address the required flow of information about the Division to Plaintiffs' counsel and the Supervising Court Master during the extended Transition Period. I support the request of Plaintiffs' counsel that the Order should

direct Defendants to provide Plaintiffs with adequate and current information regarding their ability to provide transportation in accordance with the Court's Orders. (Pl. Resp. at 2).

Further, to assist my monitoring efforts, I have repeatedly asked Defendants to forward all of the work products and periodic reports produced by KPMG in the course of its analysis of the operation of the Division. Defendants never complied with that request. The first time I saw the results of KPMG's assessment was when Defendants filed Version 0.5 of its Needs Assessment Report with the Court. (Docket No. 1942-3) Accordingly, I request that the Court order that Defendants shall provide the Supervising Court Master with copies of all the KPMG work products and interim reports that they have been provided to date, as well as earlier drafts of the Needs Assessment Report; and that for the remainder of the Transition Period, Defendants shall promptly provide the Supervising Court Master with any work product and reports that KPMG will provide in the future.

Respectfully submitted,

/s/ David Gilmore

David Gilmore
Supervising Court Master

October 17, 2011