UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NIKITA PETTIES, et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 95-0148 (PLF)
THE DISTRICT OF COLUMBIA, et al.,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

This matter is before the Court on defendants' emergency motion to alter and amend the Court's Order of October 20, 2009 in which the Court ordered defendants to pay attorneys' fees and costs to plaintiffs' class counsel. Defendants argue that the payment of $1,122,114.67, which the Court ordered, violates the fee cap on IDEA attorneys' fees imposed by Congress and that it also violates the Anti-Deficiency Act which prohibits the District of Columbia from "mak[ing] or authoriz[ing] an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation." 31 U.S.C. § 1341(a)(1)(A). After careful consideration of the parties' papers, relevant case law, and the history of the case, the Court will deny defendants' motion.

Defendants rely upon Rule 59(e) of the Federal Rules of Civil Procedure in support of their motion, see FED. R. CIV. P. 59(e), and this appears to be the proper method for defendants to challenge the Court's Order, because defendants argue that the Court made errors of law. See MDB Commun's., Inc. v. Hartford Cas. Ins. Co., 531 F. Supp. 2d 75, 79 (D.D.C.

2008) (quoting Independent Petroleum Ass'n of America v. Babbitt, 178 F.R.D. 323, 324 (D.D.C. 1998)) ("Rule 59(e) motions to alter or amend judgment are 'not to be used to relitigate matters already argued and disposed of; they are intended to permit the court to correct errors of fact appearing on the face of the record, or errors of law.'"). A Rule 59(e) motion is discretionary and need not be granted unless the Court finds that there is "an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." Ciralski v. Central Intelligence Agency, 355 F.3d 661, 671 (D.C. Cir. 2004) (quoting Firestone v. Firestone, 76 F.3d 1205, 1208 (D.C. Cir. 1996)). "Such motions are 'disfavored and relief from judgment is granted only when the moving party establishes extraordinary circumstances.'" MDB Commun's., Inc. v. Hartford Cas. Ins. Co., 531 F. Supp. 2d at 79 (quoting Niedermeier v. Office of Max S. Baucus, 153 F. Supp. 2d 23, 28 (D.D.C. (2001)).

Defendants have provided no compelling basis for altering or amending the Court's ruling. As defendants themselves acknowledge, the Court previously has considered the applicability of the fee cap to class actions and concluded that the limit in recoverable fees *per action* did not apply to the class. See Petties v. District of Columbia, 538 F. Supp. 2d 88, 97 (D.D.C. 2008) ("because class counsel does not represent 'a party in an action' the fee cap cannot be applied in this circumstance such that class counsel is entitled to a total of only $ 4000 in fees. Rather, class counsel is entitled to reasonable attorneys' fees, so long as the District's payment of such fees does not exceed $4,000 *per plaintiff class member*.") (emphasis in original).[1] Defendants did not appeal this decision, move for reconsideration, or otherwise challenge it.

[1] As plaintiffs correctly note, for the purposes of this motion, there is no basis to distinguish between the fee cap as modified by Congress in March 2009 and the fee cap in place at the time of the Court's earlier ruling.

Rather, as pointed out by plaintiffs in their opposition to defendants' motion, defendants paid the full amount ordered by the Court.

The Anti-Deficiency Act argument defendants now present to the Court is an entirely new objection to paying plaintiffs' counsel their appropriately incurred fees and costs. Defendants did not raise this argument in their briefs on the recent attorneys' fees motion nor in oral argument made to the Court at the hearing on that motion. In fact, when asked by the Court at oral argument how long the District of Columbia would need before it could deliver a check to plaintiffs' counsel, counsel for the District represented that so long as fees would not be due until after the start of the new fiscal year (which began on October 1, 2009), the District would be able to deliver payment to plaintiffs *within ten working days*.[2] Counsel for the District did not raise the Anti-Deficiency Act as a bar to payment of any kind. New legal arguments such as this one are inappropriate in a Rule 59(e) motion, and the Court will not alter its ruling on this ground. See MDB Communications, Inc. v. Hartford Cas. Ins. Co., 531 F. Supp. 2d at 79.

The Court concludes that there is no basis for altering or amending its decision. Nor have defendants articulated a compelling reason to stay the payment to plaintiffs' class counsel. The possibility raised by defendants that they will be successful on an appeal of the fee cap issue in the Blackman case — a hypothetical appeal of an attorneys' fees decision that has not even been issued yet — simply is an inadequate ground on which to grant the stay. Even if a decision in Blackman were ripe for appeal, defendants have not articulated a basis on which to conclude they are likely to succeed on appeal; and the equities favor denying the stay. See

[2] Counsel also conceded at oral argument the appropriateness of imposing interest on the award under 28 U.S.C. § 1961(a) if the award were not paid within ten working days.

United States v. Philip Morris USA, Inc., 449 F. Supp. 2d 988, 989-90 (D.D.C. 2006). It appears to the Court that this motion is a stalling tactic by the District of Columbia to avoid paying attorneys' fees it indisputably owes — a trend on the part of the District of Columbia and its counsel which has become disturbingly common in recent months. See Blackman v. District of Columbia, Civil Action No. 97-1629, Plaintiffs' Report on Non-Payment of Attorneys' Fees to the Special Education Bar, Dkt. No. 2177 (Aug. 28, 2009).[3] Accordingly it is hereby

ORDERED that defendants' emergency motion to alter and amend the Court's Order of October 2009 [1697] is DENIED; and it is

FURTHER ORDERED that the request to stay the requirement that defendants make payment of $1,122,114.67 to plaintiffs' class counsel on or before November 3, 2009 is DENIED.

SO ORDERED.

/s/_____
PAUL L. FRIEDMAN
United States District Judge

DATE: October 30, 2009

[3] In fact, as defendants' counsel know, the Court gave priority to the attorneys' fees motion in this case because of the documented need of University Legal Services — which has actually laid off or furloughed staff members, including attorneys — for the fees the District has owed them and has opposed paying for well over a year. See Plaintiffs' Memorandum in Opposition to Defendants' Emergency Motion at 10; see also Blackman v. District of Columbia, 145 F. Supp. 2d 47, 54 (D.D.C. 2001) ("It simply is unfair to make plaintiff's counsel in this case and other similarly situated lawyers wait any longer to be paid the reasonable attorneys' fees they have been awarded.").