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United States District Court,
E.D. Pennsylvania.

Terri Lee HALDERMAN, et al.
v.
PENNHURST STATE SCHOOL and HOSPITAL,
et al.

CIV. A. 74-1345. | April 18, 1995.

Opinion

MEMORANDUM

BRODERICK

*1 Presently before this Court are several documents resulting from non-compliance by the Commonwealth and County defendants (the “defendants”) with provisions of ¶ 7 of the Court’s March 28, 1994 Contempt Order (“1994 Contempt Order”) and ¶ A4 of the Final Settlement Agreement, which was approved and entered by the Court as a Consent Decree and Order of this Court on April 5, 1985 (“1985 Court Decree”). Specifically before this Court are the following: (1) The “Special Report from the Special Master” (“Special Report”), submitted on November 28, 1994, in which the Special Master presents findings and recommendations regarding the defendants’ non-compliance; (2) the Plaintiffs’ “Motion for Assessment of Fines For Contempt of Paragraph 7 of March 28, 1994 Order”; (3) the plaintiffs’ “Renewed Motion for Assessment of Fines and Motion for Acceptance of the Master’s Report”; (4) the plaintiffs’ “Motion for Sanctions Against Defendants for Providing Incorrect Information to the Special Master”; and (5) Comments from the parties concerning the Special Report of the Special Master.

The Court is now ruling on all of the motions listed above. For the reasons hereinafter set forth, the Court will adopt certain of the Special Master’s findings and recommendations as provided in the Special Report and will deny plaintiffs’ motion and renewed motion for assessment of fines and motion for sanctions for providing incorrect information to the Special Master.

The history of the *Pennhurst* litigation is summarized in this Court’s 1992 published opinion, *Halderman, et al. v.*

Pennhurst State School and Hospital, et al., 784 F.Supp. 215 (E.D. Pa.), *aff’d*, 977 F.2d 568 (3d Cir.1992). This opinion also contains the text of the 1985 Court Decree. Only a brief overview of the recent history of the case is necessary as background to the issue presently before this Court.

On March 28, 1994, after approximately nine days of testimony, the Court found the County of Philadelphia and the Commonwealth of Pennsylvania in contempt of the 1985 Court Decree. The Court issued a Memorandum and Order setting forth fourteen requirements and establishing fines that may be imposed in the event the defendants failed to comply with the terms of the Contempt Order. On May 12, 1994, the Court appointed a Special Master to monitor and facilitate compliance with the terms of the 1985 Court Decree and the 1994 Contempt Order. In accordance with the 1994 Contempt Order, the Commonwealth and the County are required to submit monthly reports to the Special Master detailing their compliance with the terms of the Court’s Orders. The Special Master provides the Court with monthly compliance reports and other status reports as needed to alert the Court to specific issues requiring its attention.

To date, the Special Master has submitted nine monthly reports. These reports have convinced this Court that the defendants have made substantial strides towards achieving full compliance with the 1994 Contempt Order and the 1985 Court Decree since March 28, 1994.

*2 Indeed, in just over a year, the defendants have accomplished several important goals. The parties have determined that the Philadelphia class presently consists of 593 members. At long last, the defendants are close to fulfilling their obligation of providing all members of the class who are Philadelphia residents with adequate community living arrangements. Only a few members of the Philadelphia class remain institutionalized, and it appears that the defendants will complete the process of placing these few in adequate community living arrangements by June 30, 1995. Twenty years of *Pennhurst* litigation has highlighted the obligation of our government to provide adequate habilitation in the community to every member of the *Pennhurst* class. Providing community living arrangements to all members of the *Pennhurst* class has always been the prime objective of the 1985 Court Decree.

Another significant accomplishment since the 1994 Contempt Order was the Special Master’s approval and initial implementation of Philadelphia County’s plan to investigate and resolve incidents of abuse, neglect, injury and death. Some of the most troubling testimony at the Contempt Hearings stemmed from the County’s failure to adequately address incidents of abuse and neglect.

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Philadelphia County appears to be in the process of working diligently to institute procedures to monitor and rectify incidents of abuse and neglect.

Although it presently appears that the defendants are committed to fulfilling their obligations under the 1994 Contempt Order and 1985 Court Decree, there are a few remaining areas requiring their immediate attention. For instance, the Court is not satisfied that Philadelphia County has made sufficient progress in providing a plan which will assure that Philadelphia class members have access to adequate dental and medical services.

In October, 1994, the Special Master informed the Court that the defendants had failed to fully comply with ¶ 7 of the 1994 Contempt Order and ¶ A4 of the 1985 Court Decree. The Special Master followed up with a detailed report on this issue on November 28, 1994. On December 2, 1994, the Court issued an Order giving all parties an opportunity to comment on the Special Report and received responses from the plaintiff class, ARC, the United States, and the County and Commonwealth defendants. Plaintiffs' response was in the form of a "Renewed Motion for Assessment of Fines and Motion for Acceptance of the Master's Report."

The Special Master's report points out that the defendants have failed to provide ninety-nine (99) class members with revised IHPs within forty-five days of the IHP annual review meeting. The days late ranged from one to eighty-eight, and the total days late was 1,338. The Special Master considered a delay of more than forty-five days between the IHP review meeting and mailing of the revised IHP to the class member to be a violation of the Court's 1994 Contempt Order and 1985 Court Decree. To reach his findings, the Special Master reviewed the records of all active members of the Philadelphia Class to determine the scope of the problem of delayed production and dissemination of IHPs to class members following the IHP annual review meeting.

*3 The Court finds and concludes that the defendants failed to fully comply with ¶ 7 of the 1994 Contempt Order and ¶ A4 of the 1985 Court Decree in that there were considerable delays in the production and dissemination of revised IHPs to the members of the Philadelphia class following the IHP annual review meeting. Paragraph 7 of the Contempt Order requires that IHPs "shall be developed in accordance with Paragraph A4 of the Court decree." The 1985 Court Decree requires that a copy of the IHP shall be timely delivered to each member of the plaintiff class and each service provider charged with the implementation of the revised IHP.

Some progress has been made, however, toward assuring that each member of the class receives a program of individualized care and services. Since the 1994 Contempt Order, each member of the Philadelphia class

has received a timely IHP review. While, as pointed out above, some members of the class were delayed in receiving a copy of their revised IHP, changes are already being made to assure that a copy of the revised IHP will be delivered to each class member and his or her service provider within thirty days after the meeting.

IHPs should be mailed or delivered to service providers and class members within *thirty days* after the IHP annual review meeting because this time frame is in accordance with professional standards. The production and dissemination of revised IHPs is critical to assuring that the class members receive appropriate supports and services commensurate with the needs and goals identified by those professionals responsible for their care.

The Special Master has not as yet completed his study concerning the timely implementation of the habilitation plan adopted at the annual review meeting. However, ¶ 7 of the 1994 Contempt Order requires that the revised habilitation plan be implemented as soon as is practicable after the IHP annual review meeting, but in no event shall implementation be delayed more than sixty days from the date of the IHP annual review meeting.

Although the Court considers the defendants' delay in providing a revised IHP to ninety-nine (99) members of the Philadelphia class and their service provider to be a clear violation of ¶ 7 of the 1994 Contempt Order and ¶ A4 of the 1985 Court Decree, the Court will not impose fines for this violation. The Special Master, who has been working closely with the parties for almost a year, and in whom the Court has great confidence, does not believe that fines are appropriate at this time.

While the Court has decided not to impose fines, the Special Master has convinced the Court that it is imperative that the defendants develop and implement an effective quality assurance system to guarantee future compliance with the Court's Orders and to eliminate the need for ongoing supervision by the Special Master and the Court. Such a quality assurance system must not only address the non-compliance with ¶ 7 of the 1994 Contempt Order and ¶ A4 of the 1985 Court decree, but must be designed to facilitate compliance with all provisions of the Court's Orders. The non-compliance at issue here has made the Court acutely aware of the need for a system that will enable the defendants to independently and accurately monitor compliance before a failure erupts into a crisis requiring the Court's intervention.

*4 The Court is optimistic that after twenty years, this litigation is finally nearing a satisfactory conclusion and believes that the climate is now right for the development of a quality assurance system. The Court is aware that a productive dialogue is emerging among the parties which

will facilitate the formation of this plan. The Court is of the belief that the implementation of an effective quality assurance system will provide a happy conclusion to more than twenty years of litigation.

Accordingly, the Court will deny the Plaintiffs' Motion and Renewed Motion for Assessment of Fines For Contempt of Paragraph 7 of March 28, 1994 Order, and Motion for Sanctions Against Defendants for Providing Incorrect Information to the Special Master. Consistent with this memorandum, the Court will grant the Plaintiffs' motion for acceptance of the Master's Report and will (1) order that IHPs be mailed or delivered within thirty (30) days of the annual IHP review meeting to each member of the Philadelphia class and his or her service provider; (2) order that implementation of the services and therapies prescribed by each revised IHP begin as soon as is practicable after the IHP annual review meeting but in no event shall implementation be delayed more than sixty (60) days after the IHP annual review meeting; and (3) order the County of Philadelphia and the Commonwealth of Pennsylvania to submit a quality assurance plan which sets forth a system of accountability to assure sustained compliance with all provisions of the 1994 Contempt Order and the 1985 Court Decree.

ORDER

AND NOW, on this 18th day of April, 1995, for the reasons set forth in this Court's Memorandum of this date;

IT IS ORDERED: Plaintiffs' Motion and Renewed Motion for Assessment of Fines For Contempt of Paragraph 7 of the March 28, 1994 Order are *DENIED*.

IT IS FURTHER ORDERED: Plaintiffs' Motion for Sanctions against defendants for providing incorrect information to the Special Master is *DENIED*.

IT IS FURTHER ORDERED: To the extent consistent with this Court's Memorandum of this date, Plaintiff's Motion for Acceptance of the Master's Report is *GRANTED*.

IT IS FURTHER ORDERED: For the purpose of clarification and implementation, ¶ 7 of the Court's Contempt Order of March 28, 1994 is amended to become effective on or before May 15, 1995 as follows:

The County shall provide every Philadelphia class member with a current individual habilitation plan ("IHP") within one-hundred twenty (120) days from the date of this Order. Such IHP shall be developed in accordance with Paragraph A4 of the Court Decree. *The County shall mail or deliver to each member of the Philadelphia class, his or her next friend, and his or her service provider a revised IHP within thirty (30) days following the Philadelphia class member's IHP annual review meeting. Implementation of the services and therapies prescribed by each revised IHP shall begin as soon as is practicable after the IHP annual review meeting, but in no event shall implementation be delayed more than sixty (60) days from the date of the IHP annual review meeting.* The County and Commonwealth each shall be subject to a fine of not less than \$5,000 per day for each class member who has not received an IHP or the services and therapies prescribed by the IHP in accordance with the terms of Paragraph 4 of the Court Decree and this paragraph of the Court's Order.

*5 IT IS FURTHER ORDERED: In an effort to eliminate the need for ongoing supervision and intervention by the Special Master and the Court, within sixty (60) days of the date of this Order, the County and the Commonwealth shall submit to the Special Master, for the his review and approval, a Quality Assurance Plan which sets forth a system of accountability to assure sustained compliance with all provisions of the Court's Contempt Order of March 28, 1994 and the Consent Decree of April 5, 1985. Within one-hundred twenty (120) days of the date of this Order, the Special Master, after reviewing the plan and after further consultation with the County and the Commonwealth, shall submit the Quality Assurance Plan to the Court for the Court's approval.