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United States District Court, E.D. Pennsylvania.

Terri Lee HALDERMAN, et al.

v.

PENNHURST STATE SCHOOL and HOSPITAL,
et al.

No. CIV. A. 74-1345. | Oct. 13, 1995.

Opinion

MEMORANDUM%

BRODERICK, J.

*1 On September 18, 1995, the Special Master submitted a “Philadelphia Quality Assurance Plan” as required by the Court’s Order of April 18, 1995. Submitted with the Plan is an Agreement executed by the Halderman Plaintiffs, plaintiff-intervenor ARC/PA, the United States, defendant Commonwealth of Pennsylvania and defendant Philadelphia County. In this Agreement all parties have consented to the adoption and implementation of the Quality Assurance Plan.

The Court has reviewed both the Quality Assurance Plan and the Agreement and will enter an Order approving both documents. The Court is delighted to herald the adoption of the Quality Assurance Plan particularly because it has the approval not only of the Special Master but also of all the parties and promises to establish a system which will assure that all members of the Philadelphia *Pennhurst* class receive adequate habilitation in the community. Moreover, the parties’ ability, with the guidance of the Special Master, to produce the Plan and the Agreement through a process of collaboration, negotiation and compromise reassures the Court that this twenty-one year old litigation may, at long last, be reaching a meritorious conclusion.

Twenty-one years of *Pennhurst* litigation has highlighted the obligation of the Commonwealth of Pennsylvania and Philadelphia County to provide adequate habilitation in the community to every member of the *Pennhurst* class. Providing adequate habilitation to all members of the *Pennhurst* class has always been the prime objective of the 1985 Court Decree.

I. Background

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. *Halderman, et al. v. Pennhurst State Sch. & Hosp.*, 154 F.R.D. 594 (E.D.Pa. March 28, 1994) (“Contempt Order”). (The text of the Court Decree is set forth in this Court’s 1992 opinion, *Halderman, et al. v. Pennhurst State Sch. Hosp. et al.*, 784 F.Supp. 215 (E.D.Pa.1992)). The Contempt Order set forth fourteen requirements to insure adequate habilitation for the members of the *Pennhurst* class and established fines that may be imposed on the defendants in the event they failed to comply.

On May 12, 1994, the Court appointed Tony Records as Special Master to monitor and facilitate compliance with the terms of the Court Decree. He has done an excellent job in all respects. Most notably, he has built an understanding among all the parties that now is the time to channel their efforts into enabling members of the *Pennhurst* class to achieve their fullest potential.

In accordance with the Contempt Order, the Commonwealth of Pennsylvania and Philadelphia 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 has been providing the Court with monthly compliance reports and other reports to alert the Court to specific issues requiring the Court’s attention.

*2 On April 18, 1995, the Court issued a Memorandum and Order in response to a “Special Report by the Special Master”. *Terri Lee Halderman, et al. v. Pennhurst State School and Hospital*, 1995 U.S. Dist. Lexis 5129 (E.D. Pa. April 18, 1995). The Special Report documented the Philadelphia County and Commonwealth defendants’ delay in providing ninety-nine (99) class members with revised Individual Habilitation Plans (“IHP”) following the annual IHP review meeting. Although the Court found this delay to be a violation of the Court Decree, the Court also recognized that since the appointment of the Special Master, the Defendants had made significant progress toward assuring that each member of the Philadelphia *Pennhurst* class receives a program of individualized care and services in the community.

The defendants’ progress toward full compliance with the Court Decree has continued. Over the past eighteen months, the defendants have accomplished several important goals. The parties have determined that the Philadelphia class presently consists of 587 members, and the defendants are close to fulfilling their obligation to

provide every member of the class who is a Philadelphia resident with an adequate community living arrangement. Only four members of the Philadelphia class presently remain in large facilities. It appears, however, that the defendants are now in the process of securing adequate community living arrangements for these four members of the class. The Defendants have also improved the process for producing and disseminating updated IHPs to class members.

Persuaded by the Special Master's position that fines should be a remedy of last resort for the defendants' non-compliance with the Court Decree, the Court ordered the defendants to produce a quality assurance plan. In ordering a quality assurance plan, the Court's objective was to guarantee future compliance with the provisions of the Court Decree and to eliminate the need for continuing supervision and intervention by the Special Master and the Court.

On July 10, 1995, after meeting with the parties, the Court granted the defendants' request for a thirty day extension to submit their proposed quality assurance plan to the Special Master for his review and approval. The Court also amended its April 18, 1995 Order to make clear that during the sixty days following the submission of the defendants' proposed quality assurance plan to the Special Master, the Plaintiffs were to have an active role in the formulation of the final plan. The Special Master subsequently reported to the Court that during that sixty day period, the parties participated in a series of meetings during which the plaintiffs had an opportunity to comment and propose changes to the defendants' draft quality assurance plan as part of a collaborative effort to develop a final version for submission to the Court.

II. The Philadelphia Quality Assurance Plan and the Agreement for the Adoption of the Quality Assurance Plan

*3 The Quality Assurance Plan signals the parties' commitment to assuring that each member of the *Pennhurst* class will receive adequate habilitation in the community. The Plan fulfills the Court's three primary expectations: (1) It is a realistic, practical and workable plan; (2) It is driven by the core principle the *Pennhurst* litigation established—that it is the right of members of the *Pennhurst* class to receive adequate habilitation in the community through a system of individualized planning and care; and (3) It concentrates on building systems necessary to prevent non-compliance and to assure compliance with the Court Decree without continuing supervision by the Court and the Special Master.

The Quality Assurance Plan will insure that the Commonwealth and Philadelphia County fulfill their obligation to provide the members of the *Pennhurst* class

with adequate habilitation in the community. The Plan sets in place the structures necessary to provide each member of the *Pennhurst* class with high quality supports and services. Put another way, in order to assure sustained compliance with the specific provisions of the Court Decree, the Quality Assurance Plan strengthens and reforms the system in which individualized planning and care takes place.

As set forth in the preface to the Plan, the Plan is divided into ten (10) substantive sections. The substantive sections are then divided into "Desired Outcomes" followed by a list of activities tailored to achieve those outcomes. For each activity, the Quality Assurance Plan sets forth a deadline for implementation, the person or persons responsible for the activity, and measures of success. As the Court understands it, the "Implementation Milestones" listed in Appendix G to the Quality Assurance Plan are those activities the Special Master and the parties consider essential to meeting the requirements of the Court Decree.

The Agreement sets forth terms and conditions for the implementation of the Quality Assurance Plan and delineates an appropriately limited role for the Court in the resolution of compliance problems that may arise during the Plan's implementation phase. By agreement of the parties, timely implementation will be measured from the date of entry of the Court's Order approving the Quality Assurance Plan and Agreement. While implementation of the milestones will not be complete for approximately two years, most milestones will be implemented within one year of the Court's approval of the Quality Assurance Plan.

Because the parties and the Special Master anticipate that modifications to the milestones may be needed from time to time during the Plan's implementation phase, the Quality Assurance Plan sets forth a process for making such changes. The role of the Court is appropriately limited to resolution of appeals from the Special Master's determinations regarding such modifications.

If properly implemented, the Quality Assurance Plan will hopefully replace the need for continuing supervision by the Court and the Special Master. However, the Parties did not set forth in the Plan a calendar for the phasing out of this litigation, and it would be premature for the Court to do so at this time.

*4 Accordingly, the Court will approve the Philadelphia Quality Assurance Plan and the Agreement for the Adoption of the Quality Assurance Plan as submitted and approved by the Special Master and the parties.

ORDER

AND NOW, this 13th day of October, 1995; for the reasons set forth in this Court's Memorandum of October 13, 1995;

IT IS ORDERED:

1. The Philadelphia Quality Assurance Plan satisfies the

requirements of the Court's April 18, 1995 Order and is hereby *Approved*.

2. The Agreement for Adoption of the Philadelphia Quality Assurance Plan is hereby *Accepted*.