

1991 WL 166960

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United States District Court, N.D. Illinois.

PEOPLE WHO CARE, et al., Plaintiffs,

v.

ROCKFORD BOARD OF EDUCATION SCHOOL
DISTRICT # 205, Defendant.

No. 89 C 20168. | Jan. 14, 1991.

Attorneys and Law Firms

Robert C. Howard, Hartunian Futterman & Howard,
Chicago, Ill., for plaintiffs.

John Schmidt, Conde, Stoner & Killoren, Rockford, Ill.,
Anthony Scariano, Scariano, Kula, Ellch & Himes,
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Stephen G. Katz, Katz, Friedman, Schur & Eagle,
Chicago, Ill., for Intervenor, Rockford Board of
Education.

Opinion

ORDER OF REFERENCE

ROSZKOWSKI, District Judge.

*1 In accordance with Federal Rule of Civil Procedure 53, the inherent equitable powers of this court, the Interim Agreed Order entered in this case on July 7, 1989 and the provisions of this Order of Reference, Dr. Eugene Eubanks (hereinafter "Special Master") is hereby appointed to serve as a Special Master (a) to evaluate Defendant's compliance with the July 1989 Order; (b) to monitor Defendant's implementation of and to advise this court on Defendant's compliance with the plan to effectuate the July 1989 Order and (c) to recommend a remedy for any deficiencies in Defendant's compliance with that Order. Special Master shall have the responsibilities and powers specified in the following paragraphs of this Order.

Special Master shall have four principal duties:

(1) to examine in detail and to evaluate Defendant's compliance with the July 1989 Order, including the issues brought forth in Plaintiffs' October 1990 contempt petition, and to report to the court as promptly as possible with recommendations on this subject. (As part of this duty, Special Master is authorized to fully examine and

evaluate Defendant's implementation of and compliance with Paragraph III.C.8 of the July 1989 Order, and to make recommendations with respect thereto;

(2) to develop, by a date certain to be determined by this court, a recommended remedial plan (using such input from consultants, experts, the parties and others as Special Master deems appropriate), to be presented to this court as a proposed remedial order, in order to fully effectuate the July 1989 Order and to recommend a fair and effective remedy for the Plaintiff class for any deficiencies in Defendant's compliance with the July 1989 Order;

(3) to supervise implementation by Defendant of the July 1989 Order and this court's supplemental remedial order;

(4) to report periodically to this court regarding Defendant's compliance with the two remedial orders and the other orders of this court that have been and may be entered in this action, and to recommend to this court such modifications and alterations in the remedial orders as appear necessary and proper.

Special Master shall have the authority to employ all necessary administrative, clerical and support staff. All such persons, as well as the amount of their compensation, shall be approved by this court in advance of their employment. In addition, with advance permission of this court as to the persons and their compensation, Special Master may hire monitors, consultants and experts to consult with him and otherwise to assist him in fulfilling the duties and responsibilities assigned to him by this order. All costs of such staff, monitors, consultants and experts, as approved by this court, shall be paid by Defendant.

Special Master shall have all of the rights and powers provided under Federal Rule of Civil Procedure 53. Specifically, and not by way of limitation, Special Master and (when authorized and directed by Special Master) his monitors, consultants, experts and members of his staff shall have:

*2 (1) complete and unrestricted access to the facilities of School District 205, including unrestricted access to all records, files, reports, memoranda, correspondence, plans, notices, budgets, compliance reviews and other documents relevant to Special Master's duties;

(2) authority to conduct, at reasonable times and places, interviews with persons who he believes have information that will assist him in performing his duties, including Defendant's employees, agents and staff (with respect to whom Defendant is ordered to use its best efforts to encourage the full cooperation of such persons), and counsel for the parties, Plaintiffs, parents and students;

(3) authority to attend any formal institutional meetings or proceedings conducted by Defendant regarding subject matter relevant to his duties;

(4) authority to require written reports from any of Defendant's employees, agents, staff or attorneys with respect to compliance with this court's orders; and

(5) authority to conduct hearings (with proper notice to the parties) on implementation of and compliance with the July 1989 Interim Order, to which end Special Master (a) shall have the power to require the attendance of witnesses, including Defendant's employees, agents and staff, and (b) shall exercise all other powers described in Federal Rule of Civil Procedure 53(c).

The court suggests that Special Master perform his functions with relative informality, so long as that is consistent with the prompt and effective discharge of his duties.

All actions of Special Master, his monitors, consultants, experts and members of his staff will be under the direct control and supervision of this court. Special Master and his monitors, consultants, experts and members of his staff shall not be empowered to direct Defendant or any of its personnel to take or to refrain from taking any specific action to achieve compliance. Sole power to direct compliance and to punish noncompliance remains with this court, although Special Master may make such recommendations as he deems necessary and as may be based upon input from his monitors, consultants, experts or members of his staff, to direct compliance or punish noncompliance.

Special Master shall file quarterly reports with this court describing the activities in which he has engaged, Defendant's compliance with Part III of the Interim Order and other matters that he deems appropriate. Special Master shall serve the reports on the parties, and either party may file written comments to them within fourteen (14) calendar days. Where Special Master's report is based upon hearings conducted by him, the report shall be in the form of findings of fact and conclusions of law, and either party may file written comments to them within fourteen (14) calendar days and request a hearing or oral argument. As provided in Federal Rule of Civil Procedure 53(e)(2), this court will overturn such findings or conclusions only if clearly erroneous.

*3 Special Master shall be compensated at his usual hourly rate for services performed in accordance with this order, with a daily cap to be determined by the court for services on any one day. Appropriate compensation for members of Special Master's staff, monitors, consultants and experts shall be established by this court upon the recommendation of Special Master and after notice to all parties. All reasonable expenses incurred by Special Master, his monitors, consultants, experts and members of his staff in the course of the performance of their duties shall be reimbursed by Defendant.

All expenses of the mastership, including payments to the Special Master, his monitors, consultants, experts and members of his staff, shall be borne by Defendant.

This court retains jurisdiction in this matter.