



work intensively with the Defendants to implement this court's Remedial Orders and to develop the procedures and resources necessary to achieve full implementation of those Orders. If, upon review at the end of the period, it appears that Defendants have made substantial progress towards full implementation of the court's Orders, the Special Master's powers will be revised so that he will assume a more limited role of monitoring and reporting upon the Defendant's progress for the 1996-97 school year. If, on the other hand, the Defendants fail to make substantial progress over the course of the next eighteen months, the court will review the situation to determine whether the Special Master needs new or additional powers, or whether additional sanctions or remedies must be implemented, in order to achieve substantial compliance with the court's Orders. For the remainder of the current school year, and the 1995-96 school year, the Special Master shall provide on-site assistance for a minimum of 8 days per month.

3. The Special Master shall have the following responsibilities, powers and duties:

a. The Special Master shall immediately assist the District in recruiting and hiring a permanent Director of Special Education, as well as an interim Director, if necessary. The finalists for that position during the District's most recent recruitment efforts shall be considered in that process.

b. The Special Master shall file a Workplan for each school year with this court, with copies to all parties,

recommending to this court the specific remedial action to be taken by the Special Master and Defendants in order to achieve substantial compliance with three Remedial orders, including priorities, additional resources (both financial and otherwise) needed, and specific timetables. The initial Workplan will cover the period through September 1, 1995, and shall be filed within thirty days of the date of the Special Master's appointment. The initial Workplan shall be focused upon accomplishing the goals and achievements mandated by this court's Remedial Orders in this case and shall be guided generally by the Evaluation of the Chester Upland School District Submitted by the Court-Appointed Evaluation Team on July 11, 1994 and, in particular, those findings of that Team which were embraced by this court in its December 29, 1994, contempt opinion; further Workplans shall be developed after consultation with the parties (including the Superintendent and the governing body of the Chester-Upland School District) and the Right to Education Task Force. Workplans for subsequent school years shall be filed by June 1 of the preceding school year, and shall be compatible with the Remedial plan developed pursuant to the Final Remedial Stipulation entered March 13, 1992. The parties may submit written comments and recommendations concerning each Workplan within ten working days of its filing with the court. Unless modified by the court, each Workplan shall be implemented as an order of the court, 15 days after the expiration of the comment period;

c. The Special Master may make recommendations to the Court regarding actions needed to secure substantial compliance with the court's Remedial Orders, including recommendations for additional Orders;<sup>1</sup>

d. Prior to hiring or assigning any and all personnel, including consultants, necessary to the implementation of the Remedial Orders, Defendants shall consult with the Special Master, and other parties whom the Master recommends should be consulted,<sup>2</sup> in a manner which will enable them to have meaningful input in the selection process. Positions necessary to the implementation of the Remedial Orders include both those directly mandated by the Court's Remedial Orders, and those administrative positions which are necessary to assure full compliance with the Remedial Orders, including but not limited to the positions of PDE Monitor, Superintendent, Assistant Superintendent, Director of Special Education (also known as Director of Student Support Services) and building principals. The Special Master shall be an integral part of the recruiting, screening and interviewing

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1. The District does not want the Master to be permitted to recommend additional measures to the Court. I do. Not only do I welcome and encourage his recommendations, its not my wont to gag people, always being mindful of the First Amendment.

2. The Department thinks that it should be left to the Master's discretion whether to include the Task Force and the community in hiring decisions. I agree. Although I welcome the input of interested citizens, that does not mean that every aspect of this exercise must be invariably in the nature of a continuing town meeting. My purpose, inter alia, is to imbue this Master with considerable powers, frankly. To require all such decisions as these to be completely collegial, a group effort, would defeat that end, and the end of getting our goals achieved as soon as reasonably possible.

process.<sup>3</sup> If the Special Master has reason to believe that a candidate proposed by the Department will not be able to discharge the duties required by that position to the extent necessary to implement the Remedial Orders, the Special Master shall make recommendations to the court concerning actions which should be taken with respect to the position in question, and the Defendant shall not act to fill the position permanently while the Special Master's recommendations are pending before the court. All parties shall have a full opportunity to be heard when the Court considers the Master's recommendations. Nothing in this Order shall limit Plaintiff's rights to participate in the hiring process, as set forth in the Remedial Orders;

e. The Special Master shall have the authority to engage the authority of other experts and consultants to help carry out his duties under this court's Orders, or to assist Defendants in compliance activities, subject to the budgetary provision in paragraph five of this Order.

f. The Special Master shall have the authority to make written recommendation to the Defendants concerning disciplinary action, including termination, against any employee of the District or PDE who fails or refuses to obey the Remedial Orders

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3. PDE and the District think that it would be highly intrusive to have the Master involved in the recruiting and interviewing process, and they thus object to this provision. That, I overrule. The success and lack thereof in the District's inertial recruitment program is outlined in damning detail in the contempt opinion; PDE's less than provocative goadings in that regard are outlined as well. The time has hence come to make it a part of the Master's duties to oversee all levels of the hiring process.

or cooperate with the Special Master in attempting to implement them. Such recommendation by the Master shall include specific reason and justification for such proposed action, along with any documentation to support the recommendation. In the event that Defendants refuse to follow such recommendations, the Special Master may report such refusal to the court and the parties.

g. The Special Master shall file quarterly reports with this court concerning Defendant's compliance with the Workplan and the court's Orders;

h. If the Special Master determines that the District "is unable or unwilling to establish or maintain programs of free and appropriate public education which meet the requirements established" by the IDEA, the Special Master may make written recommendations to the Court<sup>4</sup> with regard to whether PDE should be required to withhold special education funding from the District and "use the payments which should have been available [to the District] to provide special education and related services directly to [class members]." All parties shall have an opportunity to be heard before the court acts on such a recommendation.

i. In performing his duties, the Special Master shall consult regularly with the parties (including the Superintendent and the governing body of the Chester Upland School District) and the Chester Upland Special Education Task Force, and shall make

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4. The District disputes this provision, but PDE has not voiced an objection. I incorporate by reference my observations and reasoning set forth in footnote 3.

every effort to ascertain the views of class members; their families; other affected students; and community leaders;

j. In the event that the Special Master becomes unwilling or unable to serve, the parties shall promptly submit to the court names of suitable candidates for a replacement.

4. All parties shall cooperate fully with the Special Master and shall give him access to necessary documents and staff members. The Chester Upland School District shall further provide reasonable office space, access to a computer (for the purpose of word processing, calculating and analyzing data), and other supportive services at the District;

5. The Special Master shall be compensated by the Defendants. Each defendant shall pay half of the costs of the Special Master.<sup>5</sup> Within thirty days of the date of this Order,

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5. Fed.R.Civ.Proc. 53 provides: "Compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is the custody or control of the court as the court may direct."

I exercise my discretion to apportion the costs in this case to reflect three facts: first, under federal law, the Department has primary responsibility to provide special education students with a free and appropriate education. See 20 U.S.C. § 1412(6) (state ultimately responsible for local compliance with IDEA). If the Department had not fallen short of fulfilling its responsibility under the IDEA to monitor the District's compliance, it would not have been necessary, in all probability, to hire and compensate a special master. See Tonya K. v. Chicago Board of Education, 1987 WL 14699 at \*5 (N.D. Ill. July 22, 1987), aff'd, 847 F.2d 1243, 1249 (7th Cir. 1988).

In Tonya K., the district court equally apportioned fees and costs for a suit under the IDEA equally between the state and the local district. The court rejected the state's argument that it should not be responsible for half of the fees and costs because its "own liability amounted to more than 'passive acquiescence' in their supervisory statutory role under

(continued...)

the Special Master shall submit for the court's approval a budget through September 1, 1995. The budget for any subsequent school year shall be submitted by June 1 of the previous school year. Each budget shall propose and explain costs for, inter alia, the Special Master's services, all experts and consultants necessary to assist the Special Master (including the rationale for retaining such persons and, to the extent possible, their backgrounds and qualifications), travel expenses for the Special Master and experts, and other costs of implementation and incidental expenses. Modifications to the Special master's budget, if necessary, may be presented to the court for approval.

6. The court shall retain jurisdiction over this matter and full supervisory authority over the Special Master. Any party may raise objections to the Special Master's actions or failure to act which are inconsistent with this or any other Order of this court.

7. Defendants shall pay Plaintiffs and the class they represent all costs of this action and reasonable attorney's

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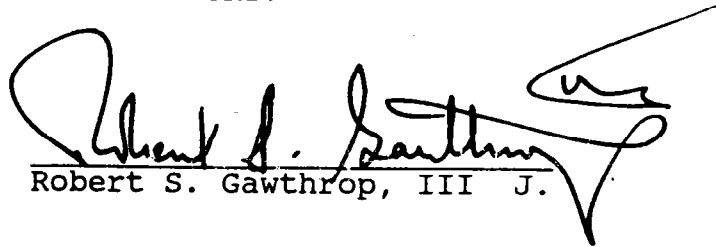
5. (...continued)  
the EHA."

Second, the court recognizes that the District is the poorer defendant.

On the other hand, I agree with the Department that the District's conduct has been more egregious. Its poor management and lax, laissez-faire attitude with regard to the Remedial Orders, and with regard to providing its disabled students with even a minimally adequate education, has necessitated taking the significant step of appointing a special master. Thus, the defendants shall share equally in providing the remedy.

fees.<sup>6</sup> If the parties are unable to agree upon the Plaintiff's claim for attorney's fees and costs, if any, on or before February 22, 1995, then the Plaintiffs may file an appropriate Petition with the court.

BY THE COURT:

  
Robert S. Gawthrop, III J.

ENTERED: 2-7-95

CLERK OF COURT

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6. International Brotherhood of Teamsters, Local 249 v. Western Pa. Motor Carriers Ass'n, 660 F.2d 76 (3d Cir. 1981) (civil contempt fine may include imposition of attorney's fees); Halderman v. Pennhurst State School and Hospital, 526 F. Supp. 414, 423 (E.D. Pa. 1981) (plaintiffs entitled to costs of preparing contempt motion where defendants violated consent decree); see also Barbara R. v. Tirozzi, 665 F. Supp. 141 (D.Conn. 1987) (party which achieves consent decree in IDEA case is "prevailing party" entitled to attorney's fees under IDEA); 20 U.S.C. § 1415(e)(4)(B).

