2003 WL 1797850
Only the Westlaw citation is currently available.
United States District Court,
S.D. New York.

Zakunda–Ze HANDBERRY, et al., Plaintiffs,
v.
William C. THOMPSON, Jr., et al., Defendants.

No. 96 Civ. 6161(CBM). | April 4, 2003.

Synopsis

Background: City prison inmates, between the ages of 16 and 21, brought class action against city officials under § 1983 and New York education code, alleging failure to provide adequate educational services. Injunction issued against city, 219 F.Supp.2d 525. On city's motion for stay pending appeal,

Holding: the District Court, Motley, J., held that allowing court-appointed monitor to make recommendations to court concerning how to effectuate relief did not infringe upon due process rights of city.

Motion granted in part.

West Headnotes (1)

[1] Constitutional Law
Judgment or Other Determination
Federal Civil Procedure
Particular Proceedings and Issues

Due process rights of city, which was required to provide adequate educational services to city prison inmates, were not infringed by allowing court-appointed monitor to make recommendations to court concerning how to effectuate relief under injunction, since federal law did not limit what court-appointed monitor could tell court in her reports, federal court had authority to modify injunction if compliance with its terms was not forthcoming or when aims of remedial order had not been realized, and monitor provision adequately defined and delimited proper scope of monitor's duties. U.S.C.A. Const.Amend. 5.

Cases that cite this headnote

Attorneys and Law Firms

Dori A. Lewis, Mary Lynne Werlwas, Prisoners' Rights Project, Legal Aid Society, Brooklyn, NY, for Plaintiffs.

Janice L. Birnbaum, Office of Michael A. Cardozo, Corporation Counsel of the City of New York, New York, NY, for City Defendants.

Opinion

MEMORANDUM OPINION & ORDER

MOTLEY, J.

***1** The City defendants have made what is styled as an "Emergency Motion" to stay the following sentences of the Injunction Order entered by the court on August 29, 2002:

> 12. [The Board of Education ("BOE")] and [the Department of Corrections ("DOC")] shall provide library materials and services to students in the Rikers Island Academies in accordance with sections 91.1 and 91.2 of [title 8] of the New York Compilation of Codes, Rules and Regulations. BOE and DOC shall have six months from the date of the entry of this order to comply with the terms of this paragraph;
>
> 21....The school based support team or pupil personnel team shall meet with the inmate within five days of the referral [from the CAP clerk].
>
> 22 ..... The school board support team or pupil personnel team shall meet with any inmate for whom identification as a special education student has been requested by any of these sources. The meeting shall take place within five days of the request.
>
> 26 ..... A TEP must be developed and implemented within thirty school days of the student's commencing participation in any BOE school or program at the Rikers Island Academies.
>
> 41 ..... Compulsory-age inmates [in punitive segregation] shall receive a minimum of one hour of [cell study] instruction per day.

In addition to the foregoing, the City asserts that the provision of the Injunction Order appointing Dr. Sheri Meisel to serve as a monitor until August 31, 2004 is "overbroad and beyond the court's power...." *See* City Br. at 20. This provision empowers Dr. Meisel to assess the City's compliance with the Injunction Order and to recommend specific changes to BOE and DOC policies and procedures and further modifications to the amended *Education Plan.* The City informs the court that it "reserve[s] the right to challenge" this provision of the Injunction Order, which it views as "patently unfair." *See* City Br. at 4.

Rule 62(c) of the Fed.R.Civ.P. provides, in pertinent part, that "[w]hen an appeal is taken from an interlocutory or final judgment granting ... an injunction, the court in its discretion may suspend [or] modify ... an injunction during the pendency of the appeal upon such terms [as] ... it considers proper for the security of the rights of the adverse party." The familiar analysis for the issuance of a stay pending appeal requires the defendants to meet the burden of showing that: (1) there is a strong likelihood of success on the merits; (2) they will be irreparably harmed absent a stay; (3) a stay would not substantially injure the other parties interested in the proceedings; and (4) the public interest favors a stay. *See, e.g., Cooper v. Town of East Hampton,* 83 F.3d 31, 36 (2d Cir.1996).

The court notes, as an initial matter, that the City endeavors to manipulate levels of generality and specificity pursuant to the repeated argument that neither federal nor state law requires the actions ordered in the disputed provisions of the Injunction Order. Of course, the more abstractly one describes a given right—for example, the right of entitled inmates to minimum levels of education—the more likely it is to be given protection under the relevant body of law. Rather than striking a sensible balance, however, the City begins its analysis by describing the relevant rights at issue at a far greater level of specificity, arguing that neither federal nor state law explicitly requires, for example, that certain meetings related to a prisoner's education take place within five days of a referral or a request. This is true: there is no federal or state statute in which these five-day-long maximum waiting periods for education-related meetings are prescribed. The City's conclusion that the court has therefore overstepped its bounds, however, is simplistic and is itself not grounded in the law. This court fashioned the disputed provisions of the Injunction Order in order to address the defendants' overall failure to comply with relevant legal requirements related to the provision of education to entitled inmates. For example, this court previously found that there was a "systemic failure" to provide special education at Rikers, *see Handberry,* 92 F.Supp.2d 244, 249 (S.D.N.Y.2000), and that the defendants' violations of the laws continued under the City's remedial plan. *see Handberry,* 219 F.Supp.2d 525, 540–45 (S.D.N.Y.2002). In order to force the City to remedy such violations of the law, the court provided the various narrowly tailored directives, formulated in light of the court's legal conclusions, which constitute the Injunction Order. Moreover, as the plaintiffs observe, "the federal law is actually much stricter [than the court's injunction].... The challenged portions of the order merely ensure that disabled youths' rights are protected in the unique context of a local jail system." Pl.'s Br. at 6.

***2** Notwithstanding this observation, after carefully studying the papers submitted by the parties and listening to the arguments made today, and upon due consideration, the court is satisfied that the City has met its burden with respect to the quoted portions of the Injunction Order. Accordingly, the City's motion for a partial stay pending appeal of these specific portions of the Injunction Order is hereby GRANTED. The court grants this stay on the *express condition* that the relevant appeal shall be taken in accordance with applicable time periods and without requests for extensions of time on the part of the defendants.

The court will not modify the provision of the Injunction Order which provides for the court-appointed monitor, a position which has been graciously assumed by Dr. Shari Meisel. A court-appointed monitor can make recommendations to a court concerning how to effectuate relief in a given case. The court can consider or even ignore such recommendations. Moreover, federal courts have the authority to modify an injunction when a defendant has failed to comply with its terms or when the aims of a remedial order have not been realized. The plaintiffs believe that "if the ... monitor informs the court that the purposes of the injunction-ensuring delivery of educational services on Rikers Island are not being met, nothing in the law prohibits the court from utilizing the monitor's observations to modify the relief as necessary." *See* Pl.'s Br. at 16. Of course, if the *court* believes that the purposes of an injunction are not being met, then, informed by a monitor's reports, it may modify relief accordingly.

That clarification aside, the court is satisfied that the monitor provision of the Injunction Order does not infringe upon the City's due process rights in any way. The City cites no authority for the proposition that federal law limits what a court-appointed monitor can tell the court in her reports. Finally, the City has failed to demonstrate why the monitor provision, as it is currently written and enforced, inadequately defines and delimits the proper scope of the monitor's duties. After due consideration, the court DENIES the City's request to modify the Injunction Order with respect to the court-appointed monitor.

SO ORDERED.