IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DUANE B., et al.,	:	CIVIL ACTION
Plaintiffs,	:	
	:	NO. 90-396
v.	:	
	:	
CHESTER UPLAND SCHOOL DISTRICT, et al.,	:	
	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, J. December 20, 2002

Defendants filed a Motion for Relief from All Judgments and Orders Pursuant to F.R.C.P. 60(b)(5), Relinquishment of Court Oversight and Dismissal of Class Action. Intervenor Pennsylvania State Education Association advised the Court by letter from its counsel, Leslie A. Collins, Esquire dated September 3, 2002 that "Intervenors do not oppose this motion and will not be filing a response."

The Court held a hearing on December 19, 2002. Notice of the hearing was given by mail to all 307 class members as of June, 2002 and those added since June, 2002. The mailed notice was accompanied by a self-addressed, stamped envelope for ease in returning written statements of the specific matters a member wanted to testify about. The addressee of the envelope was Janet F. Stotland, Esquire, attorney for the Plaintiffs. In addition, a notice addressed to the parents of Duane B. class members and others concerned with the Duane B.

lawsuit was published in the November 8, 15 and 22, 2002 editions of the *Delaware County Daily Times*.

In response to these notices, as represented by counsel for Plaintiffs, eight (8) written statements were received at the Education Law Center and admitted into evidence at the hearing as Plaintiffs' Exhibits 2(a) through 2(h). Six (6) of the letters opposed the dismissal; one (1) was somewhat ambivalent but seemed to favor dismissal (P-2(e)); and one felt the suit should never have been brought in the first place. Five (5) of those who submitted written statements testified at the hearing regarding problems they have had in the past.

Defendants offered as a rebuttal witness, Casimir Witkowski, Director of Special Education of the Chester Upland School District. The court also accepted into evidence the affidavits submitted by Defendants in support of their motion and the reports of The Urban Special Education Leadership Collaborative Audit Team dated April 11, 2002 (Defense Exhibit 2) and June 20, 2002 (Defense Exhibit 3).

The history of this case is well known to the parties and will not be recited herein other than to mention that my late and esteemed colleague, Judge Robert S. Gawthrop, III, undertook the supervision of this lawsuit and set the tone early that he expected the parties to follow in this classic Gawthropism:

> "This Court shall be watching developments in the school district like a hawk and shall not hesitate to swoop down upon the recalcitrant, who may see fit to stand in the way of the swift, yet orderly, educational evolution presaged by this worthy plan." *Order dated April 27, 1992.*

The evolution was a lot slower than certainly hoped for by the Plaintiffs and the ultimate plan in this lengthy litigation was adopted by this Court on June 9, 2000 (as modified by a July 18, 2000 order).

This plan came about after a Motion for Contempt Hearing in March of 2000 resulted in the Court assessing a $50,000 fine against the Pennsylvania Department of Education (see Order of March 16, 2000), and the court's directing the parties to submit proposed plans to bring this then 10 year-old lawsuit to a successful resolution.

The plan contemplated that the Defendants could seek dismissal of this suit if they had successfully implemented certain programs and corrective practices during the school year 2000-2001. However, well before the school year 2000-2001 was over, Plaintiffs moved for an extension of the June and July, 2000 orders (see Docket 334 dated January 19, 2001). This motion created a flurry of legal activity, including various discovery motions and significant preparations for a hearing on Plaintiffs' motion.

On almost the eve of trial, a stipulation of the parties dated June 13, 2001 was reached and later approved by the court in its order dated June 27, 2001. The stipulation, as is pertinent to the motion now before the Court, provided:

> 3. Two times during the school year 2001-2002 there will be an independent review performed by an independent and impartial person(s) or agency (hereafter "reviewer") mutually agreed to by the Plaintiffs and Defendants. Such reviewer shall have appropriate experience in special education. The purpose of the review will be to report on the Department of Education's compliance with the PDE's Report Regarding Chester Upland School District School Year 2001-2002 (hereinafter "April, 2001 Report"), and whether the Defendants are complying with the "Special Education Considerations," which is Exhibit 1 to the April, 2001 Report. The costs of the independent review will be paid by the Defendants. The results of the review will be reported in writing and

shared with Plaintiffs and the Court in mid-January, 2002 and mid-May, 2002, or at such time as is agreed to by the parties.

11. At the conclusion of the School Year 2001-2002, the parties will file a joint Rule 60(b) motion, asking the Court to enter an Order dismissing the case without benefit of a hearing based solely upon whether Defendants substantially complied with their obligations as set forth in the April, 2001 Report, the "Special Education Considerations," and this Stipulation.

12. If Plaintiffs and/or Intervenors are unwilling to join in the motion, they will notify Defendants by letter no later than June 3, 2002, outlining the basis for their refusal to concur on dismissal of the lawsuit.

As previously noted, the Intervenors do not oppose the motion. The Plaintiffs' position on the motion is succinctly stated in their reply to Defendants' motion on page 4 of their brief:

> Defendants correctly state that the Plaintiffs do not oppose this motion. Plaintiffs are unable to rebut the conclusion of the Review Team that there is evidence that defendants have substantially complied with the terms of the Stipulation. Hence, under the terms of the Stipulation, we have no basis for opposing the dismissal of this lawsuit.

The Plaintiffs also in their reply brief urged the Court in its discretion to schedule a "Fairness Hearing" reminding the Court that:

> This lawsuit has had a long and torturous history, and over the years class members, and the public in general, have expressed considerable interest in its progress. Plaintiffs believe that a public hearing, and an opportunity for class members to inform the Court directly of their views, is an appropriate way of ending this important litigation.

The Court adopted the Plaintiffs' suggestion and virtually all of the Plaintiffs' procedural requests for the hearing, although the stipulation did not require this.

The response to the 307 individual mailings and public advertisement falls somewhat short of demonstrating considerable public interest in the motion before the Court. Nevertheless, it was important to allow for an opportunity to be heard for class members and the public.

The Defendants have substantially complied with their obligations under paragraph 11 of the stipulation. The reports of the Audit Committee (Defendants' Exhibits 2 and 3) make that clear.

Indeed, it is evident from practically all that has come before this Court either by testimony or exhibits that great strides have been made in the area of special education in the Chester Upland School District. I use the words "practically all" in the preceding sentence because the testimony I heard from those who are not in favor of the dismissal hints at a concern that once the Court is out of this, the school district might revert to former practices which the Plaintiffs have fought so long to correct.

No one of course can predict the future with accuracy. My belief, however, is that this lawsuit has reached a point where the school district is prepared to handle the problems of special education students without court intervention.

Since August 5, 1999, when this case was assigned to me, I have witnessed a determined effort on the part of both sides to reach a solution to a myriad of problems associated with special education needs. The Plaintiffs' cause has been steadfastly promoted and monitored by the Education Law Center, whose lead counsel, Janet F. Stotland, reminded those at the hearing that she will remain available to help those children who have a bona fide need.

Just as importantly, counsel for the school district, Leo F. Hackett, and the Pennsylvania Department of Education, Amy Foerester, gave assurances that significant changes have been made since the beginning of this suit that will meet the needs of the special education students as intended by laws promulgated for this purpose.

And finally, an independent review performed by an independent agency mutually agreed to by Plaintiffs and Defendants, the aforementioned Urban Special Education Leadership Collaborative Audit Team, has found in each of the 39 audited activities sufficient evidence that each activity has been accomplished.

An Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DUANE B., et al.,	:	CIVIL ACTION
Plaintiffs,	:	
	:	NO. 90-396
v.	:	
	:	
CHESTER UPLAND SCHOOL DISTRICT, et al.,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 20th day of December, 2002, upon consideration of Defendants' Motion for Relief from All Judgments and Orders Pursuant to F.R.C.P. 60(b)(5), Relinquishment of Court Oversight, and Dismissal of Class Action, it is hereby ORDERED that:

1. Defendant Chester Upland School District is hereby purged of all findings of contempt.

2. Defendant Pennsylvania Department of Education is hereby purged of all findings of noncompliance.

3. All previous Orders are hereby vacated.

4. The March 16, 2000 Order assessing $50,000 against the Department of Education is hereby rescinded.

5. The above-captioned lawsuit is hereby dismissed with prejudice, and all court oversight is relinquished.

6. Notice to class members of the dismissal of the action to be approved by the Court and sent via first class mail to class members and published in a newspaper of general circulation in the school district once a week for three consecutive weeks.

This case is CLOSED for statistical purposes.

BY THE COURT:

RONALD L. BUCKWALTER, J.