

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

PENNSYLVANIA ASSOCIATION FOR :
RETARDED CITIZENS, et al., : CIVIL ACTION
: :
Plaintiffs :
: :
v. :
: :
COMMONWEALTH OF PENNSYLVANIA, :
ROBERT G. SCANLON, et al. :
SCHOOL DISTRICT OF PHILADEL- :
PHIA, et al. : NO. 71-42

RESPONSE BY PETITIONERS TO
COMMONWEALTH DEFENDANTS SECOND SET OF INTERROGATORIES
AND REQUEST FOR PRODUCTION OF DOCUMENTS

Following a telephone conference with Judge Becker, Commonwealth Counsel John Alzamora, and pursuant to the Court's oral order regarding the nature of the response required, Petitioners, FIALKOWSKI, et al., file the following response to Commonwealth Defendants Second Set of Interrogatories and Request for Production of Documents:

1. The names of Commonwealth defendants petitioners contend are responsible for the acts or omissions described in paragraphs 16, 17, 18 and 19 of the Petition are:

Robert G. Scanlon, Secretary of the Department
of Education of the Commonwealth of Pennsylvania

Ronald H. Lewis, Commissioner for Basic Education
Department of Education of the Commonwealth of
Pennsylvania

Gary J. Makuch, Director of the Bureau of Special
Education of the Department of Education of the
Commonwealth of Pennsylvania

William W. Murphy, Regional Monitor for the
Philadelphia School District of the Bureau of
Special Education, Department of Education,
Commonwealth of Pennsylvania

2. Petitioners contend that the acts and omissions of the above named state officials deny them the right to "a free public appropriate education" as provided for under the Orders of this Court of May 5, 1972; under the Education of All Handicapped Children Act of 1975, 20 U.S.C. §1401 et seq.; §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 and the Pennsylvania School Code and the regulations thereunder.

3. Specifically, Petitioners contend that Secretary Scanlon and his subordinates have denied severely and profoundly retarded children in Philadelphia appropriate education under the consent decree and state law as follows:

a. As part of his duty to enforce the provisions of the special education laws of Pennsylvania, the Secretary must monitor District services to determine whether they comply with the laws. If they do not, the Secretary must take reasonable steps to assure compliance. (Source: Finding in Frederick L., C.A. No. 74-52, E.D. Pa., Opinion of Aug. 2, 1976)

b. Primary responsibility for providing special education services lodges with local districts and intermediate units, but the Secretary is responsible for establishing and enforcing proper quality standards (same source as (a)).

4. Petitioners contend the Secretary has failed to establish quality standards for the education of severely and profoundly retarded students and has failed to monitor quality of services for SPI students in Philadelphia.

5. Among the powers of Secretary Scanlon to secure the discharge of their duties by school district are his powers:

a. under Section 1372 (5) of the School Code, 24 Purd. Stat. Sec. 13-1372 (5), providing "where in the judgment of the [Secretary of Education], the provisions of this act relating to the proper education and training of exceptional school children have not been complied with or the needs of exceptional children are not being adequately served, the Department [of Education] is hereby authorized to provide. . . , maintain, administer, supervise and operate classes and schools for the proper education and training of exceptional children;

b. under Section 1357 of the School Code, 24 Purd. Stat. §13-1357, providing "The [Secretary of Education] upon due hearing, . . . may withhold and declare forfeited any part, or all, of the State appropriation of any school district which refuses or neglects to comply with and to enforce the provisions of this article in the manner satisfactory to him."

6. Petitioners contend despite the fact that Murphy, Makuch, Lewis and Scanlon knew or should have known that proper education was not provided to severely and profoundly handicapped children in Philadelphia, none took any steps to discharge their duties as stated above.

7. The Special Education Regulations of the State Board of Education §13.2 charge Secretary Scanlon with the responsibility to execute the State Board's policy "to provide exceptional school-aged persons with quality special education programs and services which will ultimately enable them to participate as fully as possible in appropriate activities of daily living."

8. Secretary Scanlon has failed to make reasonable provision to monitor Philadelphia programs and has failed to direct Lewis or Makuch to do so and has disclaimed responsibility to the extent that he has established a clear policy that quality standards are not to be established and no quality criteria are to be applied to programs.

9. Mr. Murphy, following the policies set by Scanlon, Makuch and Lewis, executes his monitoring function without regard to regulation §13.2 or Pennsylvania Standards for Special Education 22 Pa.Code §341.55(c) and (d) which state:

"Life skills. Special education curricula shall be designed to stress general life skills and to maximize independence for. . .school-aged exceptional persons. . .

"Competencies. The curricula shall call for the acquisition of special competencies in all areas of development, that is, cognitive, language, social, motor, self-help, vocational, and the life, in accordance with the Individual Education Program of the student."

10. The PARC decree provides at paragraph 50 of the Consent Agreement, that "by April 1, 1972, Commonwealth defendants shall formulate and submit to the Masters for their approval a plan, to be effectuated by September 1, 1972, to commence or recommence a free public program of education and training for all mentally retarded persons described in paragraph 47 above, and for all mentally retarded persons of such ages hereafter. The plan shall specify the range of programs of education and training, their kind and number, necessary to provide an appropriate program of education and training to all

mentally retarded children, where they shall be conducted, arrangements for their financing, and, if additional teachers are found to be necessary, the plan shall specify recruitment, hiring, and training arrangements. The plan shall specify such additional standards and procedures, including but not limited to those specified in paragraph 39 above, as may be consistent with this Order and necessary to its effectuation." Paragraph 39 specifies standards for hours of instruction, pupil-teacher ratios, curriculum, facilities, and teacher qualifications.

11. The only state agency that monitored compliance of School Districts with PARC was the Right to Education Office which ceased to exist by 1976 and its functions abolished by Makuch circa 1977.

12. Mr. Murphy does not monitor or enforce provisions of the PARC decree.

13. Dr. Makuch has never advised Scanlon or Lewis of their duties under the PARC Decree.

14. Makuch has failed to monitor the provisions of the PARC Decree or take any responsibility for enforcement except as Chairman of the State Task Force. The State Task Force has not undertaken any tasks during the Thornburgh-Scanlon Administration and the Secretary has neither inquired nor been informed as to its functioning by Makuch.

15. Petitioners also contend that Scanlon, Makuch and Lewis have denied severely and profoundly retarded children their right to an appropriate education by failing to take steps to provide

funds and monitor expenditures in accordance with 24 P.S. §13-1372. (See opinion of Judge Blatt, Delaware City I.U. #25 and Rose Tree Media School District v. Scanlon (Commonwth Ct. Pa. #2103 C.D. 1980.))

16. Petitioners contend that the above stated acts and omissions in violation of the PARC Decree and state law also violate federal federal law as follows:

17. Under P.L. 94-142, Scanlon, Lewis and Makuch are required to develop and implement "a comprehensive system of personnel development which shall include (1) the inservice training of general and special educational instructional and support personnel, (2) detailed procedures to assure that all personnel necessary to carry out the purposes of this chapter are appropriately and adequately prepared and trained, (3) effective procedures for acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects, and (4) adopting, where appropriate, promising educational practices and materials developed through such projects." 20 U.S.C. §1413(a)(3) and §1414(6).

18. Despite the fact that it has been widely acknowledged by the Commonwealth (e.g. 1202 Commission and State Plan) that inservice training for staff working with severely and profoundly retarded students was and is a top priority, Scanlon and Makuch failed to take steps to assure that personnel in Philadelphia were adequately prepared, or that promising educational practices were adopted. Their policy in fact assured that the inadequacy of instruction admitted

in 1972, 1973 would continue until the present and continue into the indefinite future.

19. P.L. 94-142 requires that Scanlon and Makuch assure that "to the maximum extent appropriate, handicapped children [be] educated with children who are not handicapped."

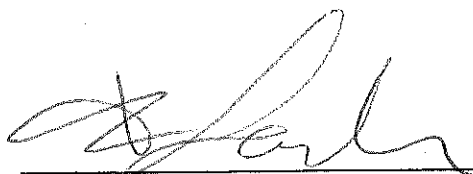
20. Scanlon and Makuch have condoned the maintenance of handicapped only schools for severely and profoundly retarded students throughout the Commonwealth, thereby limiting the opportunity for interactions among severely handicapped students and non-handicapped students in Philadelphia.

21. Vocational education program options for all handicapped children, including severely and profoundly impaired children are required by federal law 20 U.S.C. §1412(2)(A), 1414(a)(1)(C), 45 C.F.R. 121a 305; and state standards 22 Pa. Code §341.55(d).

22. Scanlon, Lewis, Makuch and Murphy have not assured that vocational education is available to severely handicapped children in Philadelphia. They have failed to implement long standing state policy to prepare handicapped students, including severely handicapped students, for post school vocational tasks and have not monitored vocational programs for severely handicapped persons in Philadelphia and have neglected to direct federal funds available for vocational education to end exclusion and discrimination against severely handicapped students in Philadelphia.

23. In addition to the duties, acts, and omissions noted above for each and every inadequacy specified in paragraph 18 of the Petition, Petitioners contend that the state Department of Education has the responsibility for effective monitoring, oversight, assistance (including personnel development) and enforcement, and that Scanlon, Makuch, Lewis and Murphy have in each particular failed to do so.

Respectfully submitted,



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Attorneys for Petitioners

DATED: June 3, 1981

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

PENNSYLVANIA ASSOCIATION FOR : CIVIL ACTION
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 COMMONWEALTH OF PENNSYLVANIA, :
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 SCHOOL DISTRICT OF PHILADELPHIA, :
 et al., :
 :
 Defendants : NO. 71-42

CERTIFICATE OF SERVICE

I hereby tesify that the Response of Petitioners to Commonwealth Defendants Second Set of Interrogatories and Request for Production of Documents has been served on the parties listed below in the following manner on this 4th day of June, 1981:

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FRANK J. LASKI, ESQUIRE

DATED: June 4, 1981.

LIST OF PETITIONERS' EXHIBITS
PROPOSED AND AGREED TO BY
COMMONWEALTH AND SCHOOL DISTRICT
DEFENDANTS.

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August 28, 1981

John J. Harding, Clerk
United States District Court
Eastern District of Pennsylvania
United States Court House
6th and Market Streets
Philadelphia, Pennsylvania 19106

Re: The Pennsylvania Association For Retarded
Children, etc., et al v. The Commonwealth
of Pennsylvania, etc., et al
Civil Action No. 71-42
Our File No. 0158-20229

Dear Mr. Harding:

We enclose herewith Motion to Participate as Amicus
Curiae together with Memorandum of Law in support thereof,
on behalf of the Bucks County Schools, Intermediate Unit
No. 22, for filing in the above-captioned matter.

Very truly yours,

ORIGINAL SIGNED BY
PAUL L. STEVENS

For CURTIN and HEEFNER

PLS:ces

Enclosure

cc: Judge Edward R. Becker
Dr. George E. Raab
All counsel