

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

JAMIE S., on behalf of the class,

Plaintiffs,

v.

Case No. 01-C-928

MILWAUKEE PUBLIC SCHOOLS, et. al.,

Defendants.

ORDER APPOINTING INDEPENDENT MONITOR

In this court's Decision and Order Following Phase III, (Docket No. 598), the court concluded that an independent monitor is necessary to oversee and implement the court ordered class remedy. On July 24, 2009, the parties each submitted the names of three nominees to serve as the independent monitor as well as affidavits required under Rule 53(b)(3)(A). (See Docket Nos. 624, 627, 628, 629, 630.) On July 31, 2009, each party submitted a response to the other party's proposal. (Docket No. 633, 635, 636.)

Having carefully reviewed these submissions and conducted telephone interviews with certain candidates, the court hereby appoints **Elise T. Baach** to serve as the independent monitor in this case pursuant to Rule 53 of the Federal Rules of Civil Procedure. (Rule 53 refers to "masters." The court uses the term "monitor" here because it is the term used by the parties, and it better connotes the role envisioned by the court. Substantively, the distinction is one without consequence.)

The independent monitor shall proceed with all reasonable diligence to implement the remedy set forth within this court's Decision and Order Following Phase III, (Docket No. 598), which is incorporated herein by reference.

The independent monitor is empowered to “regulate all proceedings” necessary to effectuate the court ordered remedy and to “take all appropriate measures to perform the assigned duties fairly and efficiently.” Rule 53(c)(1). The independent monitor shall have the primary authority to fill in the details to the framework the court constructed in its Decision and Order Following Phase III, (Docket No. 598), regarding the means by which purported class members shall be evaluated to determine whether they are entitled to compensatory services. A primary concern for the independent monitor shall be ensuring that this remedy is implemented in an expeditious manner, including establishing deadlines for completing all phases of this remedy, so as to not unnecessarily further delay any relief for class members.

In accordance with Rule 53(d), the independent monitor shall issue orders necessary to effect the remedy the court discusses in more detail below, including, for example, orders appointing permanent members to the hybrid IEP team, and establishing the guidelines that the hybrid IEP team shall apply in making the individualized determinations necessary for each purported class member. Further, in accordance with the Appendix to this court’s Decision and Order Following Phase III, (Docket No. 598), which is incorporated herein by reference, the independent monitor shall be tasked with establishing firm deadlines to complete all tasks necessary to implement this remedy. The independent monitor is authorized to issue orders establishing such deadlines throughout the implementation process.

The independent monitor may communicate ex parte with any party whenever the independent monitor concludes that it is necessary to effectuate her designated responsibilities. However, in general, the independent monitor should act with a presumption that ex parte communication is an exception to the norm of communicating with the parties. Examples where ex parte communication might be appropriate are scheduling or other administrative tasks or when the independent monitor assumes the role of mediator in an effort to bring the parties to a mutually agreeable conclusion.

The independent monitor may communicate ex parte with the court if the independent monitor concludes that it is necessary to effectuate her designated responsibilities. Such ex parte communications with the court shall not involve substantive matters over which the independent monitor has responsibility, but shall be limited to matters of administrative concern. For example, at no point should the independent monitor communicate ex parte with the court regarding individuals considered to be appointed to the hybrid IEP team, specific guidelines under consideration by the hybrid IEP team, whether an individual claimant is or is not a class member, or the nature of compensatory services that are appropriate for any individual class member. From time to time, the court may engage in ex parte status conferences with the independent monitor to inquire generally as to the progress in implementing the remedy.

The court may periodically require the independent monitor to file reports with the court pursuant to Rule 53(e).

The independent monitor shall preserve all documents relating to communications between the independent monitor and the parties and potential and actual class members. The independent monitor need not preserve her individual work product, which might include items such as draft documents created by her or her own personal notes. At a later date, the court shall issue an order identifying which preserved documents should be filed as the record of the independent monitor's activities.

Pursuant to Rule 53(g)(2)(A) and in accordance with Rule 53(g)(3), the MPS defendants shall pay all costs associated with the independent monitor. The independent monitor shall be compensated as follows:

- \$225 per hour for all work performed by the independent monitor that is necessary to effectuate this court ordered remedy;
- \$35 per hour for work performed by an administrative assistant that is necessary to effectuate this court ordered remedy;

- When travel to the Milwaukee area is necessary to effectuate this court ordered remedy, travel expenses including, but not necessarily limited to, actual cost of coach class airfare to Milwaukee and ground transportation in the Milwaukee area which may include either cab fare or economy rental car expenses;
- When travel to the Milwaukee area is necessary to effectuate this court ordered remedy, a per diem rate for meals and lodging for days spent in the Milwaukee area. The per diem rates shall be determined in accordance with United States General Service Administration ("GSA") Regulations;
- Reimbursement for duplication costs, ECF charges, teleconferencing fees, postage and delivery fees, and transcription services if the expense is necessary for the independent monitor to fulfill her duties.

The independent monitor shall submit a statement to the court within five business days of the end of every month in which she engages in compensable activity during the period of her appointment. The statement shall set forth the duties performed under this appointment in the preceding month, briefly describe the nature of the work performed, and indicate the time expended for each duty. The independent monitor shall also retain all receipts for expenses for which she seeks reimbursement and upon request shall provide copies of receipts to DRW, MPS, or the court.

If MPS believes that any change on the statement is improper, within 10 days of the independent monitor filing her statement with the court, MPS may file an objection. If the court believes a response to the objection is necessary, the court shall permit the independent monitor and DRW to submit their respective responses within 5 days. No reply shall be permitted absent leave of the court. The court shall then issue an order resolving the objection.

If no objection is filed, MPS shall have 30 days from the date the statement is filed to pay in full the statement submitted by the independent monitor. Payments shall be made directly to the independent monitor.

The independent monitor shall utilize this district's Electronic Case Filing ("ECF") system for filing all documents such as statements or orders that this court has indicated must be filed on the docket. This will ensure that all parties, including the court, shall receive prompt notice of any

filings and shall avoid the need for the execution of traditional service upon each party. Further, the Clerk shall add the independent monitor as a party in this case. This shall enable the independent monitor to be informed about all other filings that may occur in this case during the pendency of the independent monitor's appointment.

As a party, when a document is electronically filed the independent monitor shall be permitted to view the document once for free. If the independent monitor fails to save the document during this "free view" or wishes to view a previously filed document, the independent monitor shall be billed at the rate of \$0.08 per page. Any such charges are processed through the Public Access to Court Electronic Records ("PACER") system. Therefore, if she has not already done so, the independent monitor shall register with PACER. <http://pacer.psc.uscourts.gov/psco/cgi-bin/register.pl>.

Because the independent monitor shall be using this district's ECF system as an independent monitor and not as an attorney, the court hereby waives the requirement that she be an attorney admitted to practice in this district. Information about this district's ECF system, including User Manuals, can be found on this district's website, <http://www.wied.uscourts.gov>.

Upon registering with PACER, the independent monitor shall contact the district's Quality Control Administrator at 414-297-3418 so that the independent monitor may be added as a party in this case and the Clerk's office may complete the independent monitor's ECF registration.

SO ORDERED.

Dated at Milwaukee, Wisconsin this 19th day of August 2009.

U.S.

s/AARON E. GOODSTEIN
Magistrate Judge