



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ZAKUNDA-ZE HANDBERRY, ET AL.,

Plaintiffs,

-against-

WILLIAM C. THOMPSON, JR., ET AL.,

Defendants.
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MEMORANDUM OPINION
AND ORDER

96 Civ. 6161 (GBD) (JCF)

GEORGE B. DANIELS, United States District Judge:

Originally filed in 1996, this case concerns the deficiencies in the education provided to school-eligible inmates held in New York City jails. This matter was referred to Magistrate Judge James Francis on October 2, 2013 to adjudicate Plaintiff’s Motion to Modify the Existing Injunction. (ECF No. 185.) The parties jointly recommended Peter Leone, Ph.D, to serve as Special Master pursuant to Federal Rule of Civil Procedure 53(a)(1)(C), and Magistrate Judge Francis appointed Dr. Leone on June 10, 2014. (See June 10, 2014 Order, ECF No. 203.) After about two decades of litigation and appeals and upon reviewing the findings of Dr. Leone’s May 11, 2015 Amended Status Report, (ECF No. 231-4), Plaintiffs move for entry of an amended injunction.¹ (See Pl.’s Proposed Am. Inj., ECF No. 231-3.)

Before this Court is Magistrate Judge Francis’ December 2, 2015 Report and Recommendation, (“Report,” ECF No. 230), recommending that Plaintiff’s motion for an Amended Injunction be granted in part and entered accordingly. (Report at 30.) This Court adopts those recommendations to the extent reflected in this Court’s new order of injunctive relief dated March 31, 2016.

¹ The relevant procedural and factual background is set forth in greater detail in the Report, and is incorporated herein. (See Report, at 2-8.)

This Court may accept, reject, or modify, in whole or in part, the findings set forth in the Report. 28 U.S.C. § 636(b)(1)(C). When there are objections to the Report, the Court must make a *de novo* determination of those portions of the Report to which objections are made. *Id.*; *see also* *Rivera v. Barnhart*, 423 F. Supp. 2d 271, 273 (S.D.N.Y. 2006). The district judge may also receive further evidence or recommit the matter to the magistrate judge with instructions. *See* Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1)(C). The Court need not conduct a *de novo* hearing on the matter. *See United States v. Raddatz*, 447 U.S. 667, 675-76 (1980). Rather, it is sufficient that the Court “arrive at its own, independent conclusion” regarding those portions of the Report to which objections were made. *Nelson v. Smith*, 618 F. Supp. 1186, 1189-90 (S.D.N.Y. 1985) (quoting *Hernandez v. Estelle*, 711 F.2d 619, 620 (5th Cir. 1983)). When no party files objections to a Report, the Court may adopt the Report if “there is no clear error on the face of the record.” *Adee Motor Cars, LLC v. Amato*, 388 F. Supp. 2d 250, 253 (S.D.N.Y. 2005) (quoting *Nelson*, 618 F. Supp. at 1189).

Magistrate Judge Francis advised the parties that failure to file timely objections to the Report would constitute a waiver of those objections on appeal. (Report at 30); *see also* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b). The City filed timely objections to the Report.² (City Def.’s Objs., ECF No. 241.) Plaintiffs responded to the City Defendant’s objections. (Pls.’ Resp. to City Def.’s Objs. (“Pls.’ Resp.”), ECF No. 244.) The City filed a reply to Plaintiffs’ response. (City Def.’s Reply, ECF No. 247.)

This Court has considered the issues raised in these objections and reviews *de novo* the objected-to portions of the Report. The City Defendant’s objections did not provide this Court a

² The State Defendant objects to the Report only to the extent that the Report does not make clear the State’s exclusion from the recommended relief. (State Def.’s Objs., ECF No. 238, at 1.) The State Defendant also requested that this Court dismiss it from this action, but stated that it anticipated moving to dismiss itself or requesting a referral to Magistrate Judge Francis for adjudication without formal motion practice. (*See id.* at 1-2.) Plaintiffs contest the State’s dismissal from this action as premature. (*See* Pls.’ Resp., at 18.) As such motion is not yet before this Court, the State’s dismissal is unripe for adjudication here.

compelling reason to change the language as entered in the Report. As to the portions of the Report to which the City Defendant did not object, Magistrate Judge Francis' findings and recommendations were not clearly erroneous.

The City Defendant's objections are hereby OVERRULED and DENIED.

Dated: New York, New York
March 31, 2016

SO ORDERED:



GEORGE B. DANIELS
United States District Judge