

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

MICHELLE McCRAE, <i>et al.</i> ,)	
)	
Plaintiffs,)	C.A. No. 2013 CA 0004758B
)	Judge John M. Mott
v.)	
)	
DISTRICT OF COLUMBIA,)	
)	
Defendant.)	
)	
)	

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS’
OPPOSITION TO DEFENDANT’S CROSS-MOTION FOR SUMMARY JUDGMENT
AND REPLY IN SUPPORT OF PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT**

The issue in this breach-of-contract case is the hourly rate Defendant District of Columbia (“Defendant”) is required to pay Plaintiffs under the terms of settlement agreements that require Defendant to pay “reasonable and documented attorney fees . . . conforming to the DCPS attorney fee guidelines,” which set a range of \$200 to \$275 as the reasonable hourly rate for attorneys with the experience level applicable here.¹ As Plaintiffs explained in their opening brief, this Court has found that settlement agreements using the language at issue in this case incorporate the hourly rates set forth in the guidelines. *Adams v. District of Columbia*, No. 2012-SC2-002801, Mem. at 9 (D.C. Super. Ct. July 11, 2012) (attached as Exhibit K to plaintiffs’ statement of facts). In its response, Defendant ignores this Court’s decision in *Adams*, makes the same argument rejected in that case, and asserts that it need not pay attorney fees in conformance with the guidelines because Plaintiffs were represented by counsel appointed under the Criminal

¹ The settlement agreements are attached as Exhibits D & E to plaintiffs’ statement of facts. The DCPS attorney fee guidelines are attached as Exhibit F to plaintiffs’ statement of facts.

Justice Act (CJA). For the reasons explained below, the Court should enter summary judgment for Plaintiffs.

I. The Hourly Rate Due Plaintiffs is Set by The Settlement Agreements, Not by Statute.

Defendant argues that “the hourly rate of compensation in this case” is set by D.C. Code § 11-2604(a) rather than by the terms of the contracts. Def. Mem. at 4. Defendant is wrong. Plaintiffs’ counsel *would* have been entitled to be paid \$90 per hour by the Superior Court *if* Plaintiffs had been unable to recover attorney fees from Defendant either by settlement agreement or as prevailing parties under the IDEA’s fee-shifting provision. *See* Appointment Orders (attached as Exhibits B & C to plaintiffs’ statement of facts) (providing that “the District of Columbia Courts will compensate the Educational Attorney pursuant to the Criminal Justice Act . . . if he is not compensated by the District of Columbia Public Schools.”). Because Plaintiffs entered into settlement agreements requiring Defendant to pay attorney fees, the rate that would otherwise be available to Plaintiffs’ counsel from the Court pursuant to the CJA is irrelevant. The applicable rate is the rate required by the terms of the agreements.

Defendant further errs by suggesting that D.C. Code § 11-2606(b) prohibits Plaintiffs from receiving attorney fees in excess of the CJA rate. Def. Mem. at 5. Section 11-2606(b) provides that an attorney appointed under the CJA may not demand additional compensation *from the client* for services the attorney is already obliged to perform. The CJA does not expressly prohibit a settling party with counsel appointed under the CJA from negotiating for attorney fees to be paid by the opposing party, and Defendant cites no decision supporting this claim.

II. The Settlement Agreements Do Not Limit Plaintiffs to Reimbursement for Attorney Fees They Paid Out-of-Pocket.

Defendant contracted to pay Plaintiffs their “reasonable and documented attorney fees, as full and final payment of any attorney fees and related costs incurred, or to be incurred, in this matter.” Settlement Agreements, ¶ 12 (attached as Exhibits D & E to plaintiffs’ statement of facts). Defendant now argues that, by using the terms “documented” and “incurred,” Defendant agreed only to reimburse Plaintiffs for “attorney fees they paid during the course of the representation” and Plaintiffs “did not incur any fees because counsel was appointed to represent them free of charge.” Def. Mem. at 6. Defendant cites no authority to support its novel interpretation of the agreements, and the legal context in which the agreements were made demonstrates that the attorney fee provision is not limited to reimbursement of fees that Plaintiffs have paid out-of-pocket.

First, the settlement agreements provide for recovery of reasonable attorney fees because the cases being settled were brought under the IDEA, which has a fee-shifting provision. It is well-settled that statutory attorney fees are not calculated on the basis of actual cost. *See, e.g., Blanchard v. Bergeron*, 489 U.S. 87, 93 (1989) (holding that fee-shifting statutes “allowing a ‘reasonable attorney’s fee’” contemplate “reasonable compensation, in light of all the circumstances, for the time and effort expended by the attorney for the prevailing plaintiff, no more and no less. Should a fee arrangement provide less than a reasonable fee calculated in this manner, the defendant should nevertheless be required to pay the higher amount”). Second, the fact that the settlement agreements reference the DCPS attorney fee guidelines as the source for determining a reasonable hourly rate demonstrates that the settling parties did not intend that the attorney fees be based on actual cost to the Plaintiffs.

III. As This Court Held in *Adams*, The Contracts Incorporate The Guideline Rates.

In *Adams*, clients who, to resolve their IDEA claims, had entered into settlement agreements with DCPS using the same language at issue here sought attorney fees at the rates in the *Laffey* matrix, which are substantially higher than the rates in the guidelines. The plaintiffs argued that the provision in the agreements requiring payment of “reasonable” attorney fees allowed for fees based on prevailing market rates. *Adams* at 2; 4-5. Defendant argued in *Adams* that a reasonable attorney fee under the settlement agreement is determined by the schedule of hourly rates set forth in the guidelines. *Id.* at 6. The Court held for Defendant, finding “absolutely no ambiguity” in the settlement agreement and holding that the hourly rates set forth in the guidelines were the applicable rates under the settlement agreement because the guidelines were incorporated into the settlement agreements by reference. *Id.* at 8-9.

Defendant now reverses its position and presses the argument expressly rejected by the Court in *Adams*. Specifically, Defendant argues that the hourly-rate schedule in the guidelines is inapplicable and that an attorney’s reasonable hourly rate must be determined by reference to the prevailing market rates in the community for similar services. Def. Mem. at 7-8. For the same reasons the Court rejected that argument in *Adams*, this Court should reject it here. The settlement agreements unambiguously incorporate the guidelines’ schedule of hourly rates to determine the reasonable attorney fee that Defendant is required to pay pursuant to the settlement agreements.

CONCLUSION

Defendant breached its contracts with Plaintiffs by failing to pay attorney fees in conformance with the Defendant attorney fee guidelines incorporated by reference in the settlement agreements. Accordingly, the Court should grant Plaintiffs’ Motion for Summary

Judgment, deny Defendant's Cross-Motion for Summary Judgment, and order Defendant to pay Plaintiffs an additional \$13,408 in attorney fees, plus interest and costs.

Date: January 24, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of January 2014, a copy of the Plaintiffs' Opposition to Defendant's Cross-Motion for Summary Judgment and Reply in Support of Plaintiffs' Motion for Summary Judgment and supporting documents was served on the following via CaseFileXpress:

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_____/s/
Charles A. Moran, Esq.

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_____)	

ORDER

Upon consideration of plaintiffs’ motion for summary judgment, any oppositions and replies thereto, and the record herein, it is this ____ day of _____ 2014:

ORDERED that plaintiffs’ Motion for Summary Judgment is GRANTED; and it is further

ORDERED that defendant’s Cross-Motion for Summary Judgment is DENIED; and it is further

ORDERED that defendant District of Columbia shall pay plaintiffs an additional \$13,408 in attorney fees, plus interest and costs, within thirty (30) days of the issuance of this Order.

SO ORDERED.

Judge John M. Mott
Superior Court of the District of Columbia

Copies to: Charles Moran, Esq.
Michael T. Kirkpatrick, Esq.
Counsel for Plaintiffs

Victoria Healy, Esq.
Counsel for Defendant