IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAYSHAWN DOUGLAS,

Plaintiff,

v.

DISTRICT OF COLUMBIA,

Defendant.

Civil Action No. 13-1758 (PLF)

PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND COSTS

COMES NOW Plaintiff Jayshawn Douglas ("Mr. Douglas") to reply to Defendant District of Columbia's ("Defendant") Opposition to his request for reasonable attorneys fees and pleads the following in support of his Reply.

INTRODUCTION

Plaintiff is an adult student of District of Columbia Public Schools ("DCPS") entitled to special education and related services under the Individuals with Disabilities Education Act, as amended ("IDEA"), 20 U.S.C. §§ 1400, et. seq. On November 7, 2013, Mr. Douglas filed a Motion for Preliminary Injunction pursuant to the "stay-put" provision of the IDEA because D.C. had barred Mr. Douglas from his educational placement and location of services, Dunbar High School ("Dunbar"). This Court found that Defendant was improperly denying Mr. Douglas access to his educational placement and granted a preliminary injunction issuing a stay put order on November 14, 2013. Defendant, pursuant to the stay put order, has now permitted Mr. Douglas entry to Dunbar and Mr. Douglas has been attending Dunbar since the issuance of the

stay put injunction. Mr. Douglas filed his Motion for Attorneys Fees and Costs on November 27, 2013.

Defendant now argues that Mr. Douglas is not entitled to recover attorneys' fees and costs, failing to recognize Mr. Douglas' prevailing party status pursuant to the preliminary injunction. Further, Defendant argues that counsel's requested hours should be cut and that counsel's hourly rate is capped at $90 because counsel was appointed. Mr. Douglas now respectfully request that this Court order Defendant to pay attorneys' fees and costs spent in obtaining the preliminary injunction in the amount of $25,499.65.

ARGUMENT

I. Mr. Douglas Obtained Prevailing Party Status When This Court Granted the Preliminary Injunction.

Plaintiffs who are prevailing parties in litigation against the school system under the IDEA are entitled to an award of reasonable attorneys' fees and costs. 20 U.S.C. § 1415(i)(3)(B)(i)(I). A prevailing party is one who has achieved a court-ordered "material alteration of the legal relationship between the parties." *Buckhannon Bd. & Care Home, Inc. v. W. Virginia Dep't of Health and Human Res.*, 532 U.S. 598, 604 (2001) (quoting *Texas State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 792 (1989)). A plaintiff does not need to obtain complete relief to be considered a prevailing party, but must obtain some relief that modifies a defendant's behavior to directly benefit the plaintiff. *See id.* (citing *Farrar v. Hobby*, 506 U.S. 103, 111-12 (1992)). In the District of Columbia, party who has obtained a preliminary injunction pursuant to the IDEA can be considered a prevailing party for the purpose of attorneys' fees. *Laster v. D.C.*, 2006 WL 2085394 *2-3 (D.D.C. 2006) (finding plaintiffs were entitled to attorneys' fees when a stay put injunction was granted and the complaint in the case was still pending); *Berke v. Fed.Bureau of Prisons*, 942 F. Supp. 2d 71, 76 (D.D.C. 2013)

(noting that the issuance of the preliminary injunction in favor of plaintiff conferred prevailing party status of the plaintiff because the preliminary injunction caused "a change in the legal relationship between the parties that directly benefits plaintiffs"). Those two decisions are consistent with the ruling by the District of Columbia Circuit Court in *Select Milk Producers Inc. v. Johanns*. 400 F.3d 939 (D.C. Cir. 2005).

Defendant cites cases from the Third Circuit to argue that prevailing party status cannot be conferred on a party that has been awarded a preliminary injunction unless the party ultimately wins on the merits. *See* Def.'s Resp. at 4. However, the Third Circuit adopts the view taken by only one other circuit court that has ruled on the question.[1] The majority of circuits have determined that a preliminary injunction can alter the legal relationship between the parties sufficiently to confer prevailing party status on the plaintiff who obtains the preliminary injunction. *See, e.g., Aronov v. Napolitano*, 562 F.3d 84, 90 (1st Cir. 2009) (recognizing that injunctive relief can confer prevailing party status for the party who obtains the injunction, but denying it here because the injunctive was not based on the merits but on the failure of defendant to file any documents and the absence of an order from the court); *Garcia v. Yonkers School District*, 561 F.3d 97, 102 (2d Cir. 2009) ("[T]he entry of an enforceable judgment, such as a stay or preliminary injunction, may permit the district court to confer prevailing-party status on the plaintiff notwithstanding the absence of a final judgment on the underlying claim"); *Dearmore v. City of Garland*, 519 F.3d 517, 524 (5th Cir. 2008) (noting that a party can qualify as a prevailing party for the purpose of attorneys' fees when the party wins a preliminary injunction, where there is an "unambiguous indication of probable success on the merits," and

[1] *See Smyth v. Rivero*, 282 F.3d 268, 277 (4th Cir. 2002) (stating that prevailing party status could not be conferred on a plaintiff who obtained a preliminary injunction due to a "less stringent assessment of the merits of the claim"); *J.O. ex rel. C.O. v. Orange Twp. Bd. of Educ.*, 287 F.3d 267, 274 (3d. Cir. 2002) (denying attorneys' fees based on prevailing party status to a plaintiff when the court determined that the stay put injunction was not "derived from some determination on the merits").

even if the plaintiff does not obtain final relief on the merits because the defendant moots the action); *McQueary v. Conway*, 614 F.3d 591, 599 (6th Cir. 2010) (acknowledging that a plaintiff is the prevailing party for the purposes of attorneys' fees where the defendant changes its conduct based on the injunctive order and where the plaintiff receives the relief sought); *Dupuy v. Samuels*, 423 F.3d 714, 723 n. 4 (7th Cir. 2005) (disagreeing with the notion that "a preliminary injunction can never serve as a predicate for an interim fee award"); *Northern Cheyenne Tribe v. Jackson*, 433 F.3d 1083, 1086 (8th Cir. 2006) (indicating that a plaintiff who obtains a preliminary injunction is a prevailing party when there is a judicially sanctioned material alteration in the relationship between parties); *Watson v. County of Riverside*, 300 F.3d 1092, 1096 (9th Cir. 2002) ("A preliminary injunction issued by a judge carries all the 'judicial imprimatur' necessary to satisfy *Buckhannon*"); *Kansas Judicial Watch v. Stout*, 653 F.3d 1230, 1237 (10th Cir. 2011) ("[T]o be a prevailing party on the basis of a preliminary injunction requires 'relief on the merits') (quoting *Lorillard Tobacco Co.*, 611 F.3d 1209, 1217 (10th Cir. 2010)); *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1356 (11th Cir. 2009) (finding plaintiffs to be prevailing parties where "the preliminary injunction they obtained materially altered their legal relationship" with the defendants); *Rice Services Ltd. v. United States*, 405 F.3d 1017, 1027 (Fed. Cir. 2005) (noting that to find a plaintiff to have prevailing party status for the purpose of attorneys' fees, the order should carry "sufficient judicial imprimatur to materially alter the legal relationship between" parties).

Defendant also improperly categorizes the relevant case law in this Circuit by stating that relief obtained pursuant to a preliminary injunction does not permit the recovery of attorneys' fees. Def.'s Resp. at 7. On the contrary, as mentioned above, this Circuit has stated that a party that obtains a preliminary injunction may be a prevailing party when there is a court-ordered

change in the legal relationship between the parties, a judgment[2] has been rendered in favor of that party, and that party has received actual judicial relief. *See Select Milk Producers Inc.*, 400 F.3d at 947. Further, this Court has previously held that where the court has not yet ruled on the complaint, the allegations in the complaint are the same as those in the motion for a stay put injunction, and the preliminary injunction provides the relief sought, plaintiffs "are prevailing parties for the purposes of IDEA's attorneys' fees provision." *Laster*, 2006 WL 2085394 *3.

Defendant further mischaracterizes the relevant case law by assessing that "whether a plaintiff is entitled to attorneys' fees for the preliminary injunction rests on whether the plaintiff is ultimately successful in the case." Def.'s Resp. at 6. However, the Supreme Court in the case cited by Defendant, *Sole v. Wymer*, expressly states:

> We ***express no view*** on whether, in the absence of a final decision on the merits of a claim for permanent injunctive relief, success in gaining a preliminary injunction may sometimes warrant an award of counsel fees. We decide ***only*** that a plaintiff who gains a preliminary injunction does not qualify for an award of counsel fees under § 1988(b) if the merits of the case are ultimately decided against her.

Sole v. Wymer, 551 U.S. 74, 86 (2007) (emphasis added). *Sole* does not require the merits of a case to be decided prior to the award of attorneys' fees to a plaintiff who has succeeded in obtaining a preliminary injunction.

Prior to Mr. Douglas obtaining a preliminary injunction, Defendant barred Mr. Douglas from attending Dunbar. The stay put injunction was an Order from this Court that required Defendant to grant Mr. Douglas admission to Dunbar. Defendant did not voluntarily change its behavior but was required to do so under the judicial imprimatur of this Court. Thus, this Court's order changed the legal relationship between Defendant and Mr. Douglas. Although an injunction pursuant to the "stay-put" provision of the IDEA is considered an automatic

[2] The Court in *Select Milk Producers, Inc.* stated clearly that a preliminary injunction meets the legal definition of a judgment and therefore is a judgment that supports an award of attorneys' fees. *Select Milk Producers, Inc.*, 400 F.3d at 949.

injunction, this Court further examined the merits of Mr. Douglas' claim, noting that the Defendant's reasons for barring Mr. Douglas from his placement at Dunbar and providing alternative services at a different placement were "vague and belated" and that Defendant's alternative proposal would "impose a significant burden on Mr. Douglas." Mem. Op. of Nov. 14, 2013 at 6. Since there was a court-ordered material change in the legal relationship between Mr. Douglas and Defendant pursuant to the preliminary junction, and the Court granted the preliminary injunction based on the merits of Mr. Douglas' claim, Mr. Douglas has obtained prevailing party status for the purposes of recovering attorneys' fees under the IDEA.

II. Mr. Douglas' Counsel's Hours are Reasonable and Not Excessive.

Defendant argues that the majority of the entries on Mr. Douglas' counsel's invoice should be denied because they are excessive. Def.'s Resp. at 6. A review of the invoice demonstrates that this assertion is incorrect. Mr. Douglas' counsel billed a conservative number of hours for the preparation, drafting, and filing of a Motion for Preliminary Injunction and a Motion for Temporary Restraining Order, both of which are motions requesting unusual relief that is often difficult to obtain. Additionally, this Court has already determined that a party need not exhaust administrative remedies to pursue a stay-put injunction in this Court. Mem. Op. of Nov. 14, 2013 at 2. Therefore, Defendant's argument that these Motions were duplicative and excessive and "unreasonably and unnecessarily protracted this litigation" cannot stand. Def.'s Resp. at 10. Further, Mr. Douglas' counsel billed for reasonable hours after the issuance of the stay put injunction to ensure that Defendant was in compliance with the preliminary injunction and to ensure that Mr. Douglas' educational needs were being met at Dunbar, the school Defendant had refused to allow Mr. Douglas to attend and the school the Court ordered Defendant to allow Mr. Douglas to attend until all proceedings are completed. These hours were

necessary due to Defendant repeatedly barring Mr. Douglas from attending his educational placement.

Defendant further argues that certain billing entries are related to obtaining a favorable hearing officer decision and not the action for a preliminary injunction. However, an action in this Court for a stay put injunction pursuant to the IDEA necessarily assumes the existence of a relevant IDEA administrative action. In fact, this action for a stay put injunction was filed based on the allegations in the due process complaint that Defendant had barred Mr. Douglas from his placement as well as Defendant's response to the due process complaint proposing an alternative placement for Mr. Douglas.

III. The *Laffey* Matrix Provides the Reasonable Hourly Rate for a Fee Award in this Case, Even Though Mr. Douglas is Represented by Appointed Counsel.

Defendant argues that, even if Mr. Douglas is a prevailing party entitled to recover a reasonable attorney fee under the IDEA, the applicable hourly rate should be $90 because Mr. Douglas is represented by counsel appointed by the District of Columbia Superior Court pursuant to the Criminal Justice Act ("CJA"). Def.'s Resp. at 12-14. Defendant is wrong.

The Superior Court's appointment order provides that Plaintiff's counsel:

> [S]hall seek payment from [Defendant] prior to seeking compensation from this Court for any services rendered in an action where [Mr. Douglas] obtains prevailing party status. When seeking payment from [Defendant], such fees may be based upon the federal *Laffey* matrix . . . . Payment from this Court shall remain fixed at ninety dollars ($90) an hour in accordance with DC ST § 11-2604(a).
>
> Order at 2 (attached as Exhibit 1).

The appointment order makes clear that Mr. Douglas' counsel will be compensated by the Superior Court at the CJA rate of $90 per hour if and only if Mr. Douglas does not obtain prevailing party status and recover fees from Defendant, and the order clearly contemplates that

prevailing-party attorney fees under the IDEA "may be based upon the federal *Laffey* matrix." *Id.* Thus, Defendant's assertion that Mr. Douglas cannot recover fees based on the *Laffey* matrix because he is represented by counsel appointed under the CJA is contradicted by the appointment order itself.

Defendant mistakenly claims that the D.C. Code "mandates Plaintiff's counsel's hourly rate of $90 per hour." Def.'s Resp. at 13. As explained above, Mr. Douglas's counsel will be paid $90 per hour by the Superior Court if Mr. Douglas is unable to recover a market-based fee from Defendant. To the extent Mr. Douglas is able to recover fees under the IDEA, the CJA rate that would otherwise be available to Mr. Douglas's counsel is irrelevant. Defendant's suggestion that D.C. Code § 11-2606(b) prohibits Mr. Douglas from receiving statutory attorney fees in excess of the CJA rate is similarly misplaced. 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. Here, in contrast, a prevailing party is seeking statutory fees from the losing party pursuant to the fee-shifting provision of the IDEA.

Finally, Defendant argues that $90 per hour is the applicable rate because that is the rate Mr. Douglas's counsel "agreed to accept" from the Superior Court if Mr. Douglas could not recover fees from Defendant under the IDEA. Def.'s Resp. at 13-14. Defendant's argument is foreclosed by binding precedent. In *Blum v. Stenson*, 465 U.S. 886, 894-96 (1984), the Supreme Court held that market rates should be used to calculate attorney fees under fee-shifting statutes even where the prevailing plaintiffs are represented by salaried attorneys at a non-profit legal services organization. In *Save Our Cumberland Mountains, Inc. v. Hodel*, 857 F.2d 1516, 1524 (D.C. Cir. 1988) (en banc) ("*SOCM*"), the D.C. Circuit held that the analysis in *Blum* applies equally to the work of attorneys who practice privately and for profit but at reduced rates

reflecting non-economic goals and their clients' ability to pay. Thus, fee awards must be based on market rates rather than the rates the lawyers agreed to accept. *Covington v. District of Columbia*, 57 F.3d 1101, 1111 (D.C. Cir. 1995) ("[T]he District attempted to argue that plaintiffs are only entitled to the rates they regularly charge . . . . This argument was considered and rejected by this court in *SOCM*."); *see also Blanchard v. Bergeron*, 489 U.S. 87, 93 (1989) ("The presence of a pre-existing fee agreement . . . does not impose an automatic ceiling on an award of attorney's fees.").

CONCLUSION

For the reasons set forth above, Mr. Douglas respectfully requests that this Honorable Court grant his Motion for Attorneys' Fees and Costs.

Date: December 20, 2013

Respectfully submitted,

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