IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANGELA PRICE, *et al.*,	)	
Plaintiffs,	)	
v.	)	**Civil Action No. 13-1069 (RJL)**
DISTRICT OF COLUMBIA,	)	
Defendant.	)	

PLAINTIFFS' REPLY IN SUPPORT OF SUMMARY JUDGMENT AND OPPOSITION TO DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT

Plaintiffs are prevailing parties in administrative actions under the Individuals with Disabilities Education Act ("IDEA") who brought this case to recover a reasonable attorney fee pursuant to the fee-shifting provision of the IDEA. Defendant District of Columbia Public Schools ("DCPS") claims that plaintiffs are not entitled to any attorney fees under the IDEA because plaintiffs are indigent and had counsel appointed to represent them pro bono pursuant to the Criminal Justice Act ("CJA"). According to DCPS, the fee-shifting provision of the IDEA does not apply where counsel has been appointed, but DCPS is unable to cite a single case in support of its argument. DCPS also argues that, if the fee-shifting provision of the IDEA applies, the applicable hourly rate should be capped at the CJA rate of $90 per hour, even though DCPS admits that the market rate for the services provided is higher than the CJA rate.

DCPS is wrong. It is well-established that where a fee-shifting statute provides that a prevailing plaintiff is entitled to recover a reasonable attorney fee, the plaintiff can recover a market-based fee regardless of the fee arrangement between plaintiff and counsel. Thus, whether a prevailing plaintiff is represented by pro bono counsel, counsel who agrees to accept a reduced

rate for noneconomic reasons, or appointed counsel is irrelevant for purposes of establishing a reasonable fee.

Once this Court dispenses with DCPS's argument that it has no fee liability at all, or none in excess of the CJA rate, this case should be resolved by applying the hourly rates set forth in the *Laffey* matrix to the number of hours reasonably spent in securing a litigated victory for plaintiffs in the underlying administrative actions. Plaintiffs have already agreed to accept the reduction in hours that DCPS sought previously, and DCPS has failed to show that the remaining hours for which compensation is sought were not reasonably expended.

I. Plaintiffs are Prevailing Parties Entitled to Recover a Reasonable Attorney Fee Under the IDEA.

DCPS argues that even though plaintiffs are the prevailing parties in IDEA cases and the IDEA is a fee-shifting statute, "Plaintiffs are not entitled to reimbursement for attorney's fees at all because they never incurred attorney's fees; the government is not required to reimburse for an obligation Plaintiffs never incurred." DCPS Mem. at 7.[1] DCPS's argument was rejected by the Supreme Court almost thirty years ago in *Blum v. Stenson*, 465 U.S. 886, 895 (1984). *Blum* holds that courts should use prevailing market rates to calculate attorney fees under fee-shifting statutes even where the prevailing plaintiffs are represented by public interest lawyers at no cost to the plaintiffs. *Id.*

A. The appointment orders do not relieve DCPS of liability for fees under the IDEA.

DCPS asserts that "[t]he appointment orders in this case specify that DCPS need not pay Plaintiffs' counsel any fees." DCPS Mem. at 3. DCPS misreads the orders. The appointment orders in the Price/Parker case state that "the District of Columbia Courts will compensate the

[1] DCPS's memorandum in support of its cross-motion for summary judgment and in opposition to plaintiffs' motion for summary judgment is available at ECF Nos. 11 and 12-1.

Educational Attorney pursuant to the Criminal Justice Act *if* he is not compensated by the District of Columbia Public Schools." ECF No. 12-2 at 29, 32 (emphasis added).[2] Such language does not relieve DCPS of liability for fees under the IDEA. Rather, it guarantees that plaintiffs' counsel will receive at least the CJA rate for their work on the matters, win or lose, in the event that plaintiffs are not prevailing parties entitled to recover a reasonable, market-based, attorney fee from DCPS under the IDEA.

DCPS itself recognizes that the CJA and the IDEA provide different methods for calculating the fees owed in an IDEA case, with the CJA providing a fee of $90 per hour for all hours spent on a case "regardless of success," and the IDEA providing "an hourly rate higher than the CJA rate" for hours reasonably expended on successful claims. DCPS Mem. at 7. DCPS never explains why, if the appointment orders relieve it of any fee obligation at all, it would voluntarily agree to pay plaintiffs' counsel the CJA rate that would otherwise be paid by the courts. But that is what DCPS did. *See id.* at 9 ("DCPS paid Plaintiffs' counsel the appropriate hourly rate pursuant to the CJA.").

DCPS goes so far as to suggest in a footnote that the fee arrangement in this case might be a "criminal offense," citing D.C. Code § 11-2606(b)'s command that an attorney retained under the CJA may not "seek, ask, demand, receive, or offer to receive, any money, goods, or services in return . . . for any services rendered" under the Act. But no court has ever read § 11-2606(b) to cover a case like this one, and with good reason. Section 11-2606(b) exists to prevent unscrupulous lawyers from extorting cash from indigent clients in return for services the lawyers are already obliged to perform; here, in contrast, prevailing parties are seeking statutory fees to which they are entitled under the IDEA. Indeed, the CJA appointment orders in this case direct

[2] The appointment order in the Weems case is silent regarding compensation for the appointed attorney. *See* ECF No. 12-2 at 80-81.

the appointed attorney to seek compensation from outside the CJA budget by providing that the court will pay the CJA rate if the appointed attorney "is not compensated by the District of Columbia Public Schools." ECF No. 12-2 at 29, 32.

B. The CJA rate is not the prevailing market rate for fee-shifting under the IDEA.

DCPS asserts that, if it is liable for attorney fees at all, the applicable rate is $90 an hour because plaintiffs' counsel "agreed to be paid at that rate." DCPS Mem. at 10. Again, DCPS ignores well-established precedent rejecting its argument. 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 Supreme Court's analysis in *Blum* with respect to fees sought for work performed by salaried attorneys at a non-profit legal services organization 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 actual rates regularly charged by such lawyers. *Id.*; *accord Covington v. District of Columbia*, 57 F.3d 1101, 1107 (D.C. Cir. 1995). By seeking to impose the CJA rate as cap, DCPS embraces the approach explicitly rejected by the D.C. Circuit in *SOCM* and *Covington*. *See also 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.").

That an attorney agrees to undertake the representation of an indigent client for a reduced hourly rate to be paid by a third party (in this case the Superior Court) if statutory fees cannot be recovered in no way diminishes the right of the plaintiffs, as prevailing parties, to an award of a

reasonable attorney fee based on the prevailing market rate for private counsel of comparable experience, skill, and reputation. Contrary to DCPS's claim, plaintiffs have not sought to conceal that their counsel was appointed to represent them under the CJA. Rather, plaintiffs did not address that fact in their opening brief because, as explained above, it is irrelevant to the issue of the amount of attorney fees owed plaintiffs as prevailing parties under the IDEA.

II. The Hourly Rate Requested by Plaintiffs is Reasonable.

As set forth in their opening memorandum, plaintiffs filed administrative due process complaints under the IDEA and obtained significant relief. Thus, plaintiffs are prevailing parties entitled to recover a reasonable attorney fee pursuant to the IDEA's fee-shifting provision, 20 U.S.C. § 1415(i)(3)(B). ECF No. 8 at 2-4, 6-7. As explained in plaintiffs' opening memorandum, this Court has held that the *Laffey* matrix reflects the prevailing market rate in IDEA cases. *See* ECF No. 8 at 9-10 (citing cases awarding full *Laffey* rates in IDEA cases). Under the *Laffey* matrix, the hourly rate for an attorney with more than twenty years of experience, such as plaintiffs' counsel, is $505 an hour.

A. This Court's Determination of a Reasonable Hourly Rate is Not Constrained by the CJA Rate or Counsel's Actual Billing Rate.

DCPS argues that the prevailing market rate for attorneys appointed pursuant to the CJA is the CJA rate. DCPS Mem. at 11-12. As explained above, that argument is foreclosed by *Blum*, *SOCM*, and *Covington*, because an attorney's willingness to provide legal services pro bono or for a reduced rate does not change the market rate used to calculate a reasonable fee under a fee-shifting statute. An attorney who accepts an appointment under the CJA is no more limited to a $90 per hour rate under the IDEA than a pro bono lawyer is limited to a rate of zero. *See Blanchard*, 489 U.S. at 93 ("The presence of a pre-existing fee agreement . . . does not impose an automatic ceiling on an award of attorney's fees.").

DCPS next argues that plaintiffs should recover fees at the $250 an hour rate their counsel originally billed DCPS, and which DCPS refused to pay, because "Plaintiffs' counsel's actual rate . . . is generally $250/hour and not $505/hour as requested in Plaintiffs' Motion." DCPS Mem. at 13. Again, DCPS puts forth an argument foreclosed by binding precedent. *See Covington*, 57 F.3d at 1111 ("[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*.").

B. The *Laffey* Matrix Provides the Reasonable Hourly Rate for a Fee Award in this Case.

DCPS next argues that 3/4 of the *Laffey* rate is the prevailing standard for attorney fees in IDEA cases, but DCPS admits that numerous cases have awarded the full *Laffey* rate. DCPS Mem. at 13. Indeed, this Court has awarded the full *Laffey* rate in complex IDEA litigation and awarded 3/4 of the *Laffey* rate in less complex IDEA matters. *Compare Cox v. District of Columbia*, 754 F. Supp. 2d 66, 76 (D.D.C. 2010) (awarding the full *Laffey* rate to plaintiff in an IDEA case, noting the expertise of plaintiff's counsel in special education law and the "complex matters" in the case), *with Sykes v. District of Columbia*, 870 F. Supp. 2d 86, 96 (D.D.C. 2012) (awarding 3/4 of the *Laffey* rate after finding a lack of complexity in the underlying administrative IDEA case). Here, plaintiffs are entitled to the full *Laffey* rate because the underlying administrative actions involved complex issues.

1. IDEA Litigation is Often Complex and Requires the Specialized Knowledge Possessed by Plaintiffs' Counsel.

The IDEA establishes a detailed statutory and regulatory scheme to ensure that children with disabilities have access to a free appropriate public education (FAPE). *See, e.g.*, 20 U.S.C §§ 1400 *et. seq.*; 34 C.F.R. §§ 300 *et seq.* This Court has repeatedly recognized that IDEA cases are complex and the practice of special education law requires specialized knowledge. *See, e.g.*,

Cox, 754 F. Supp. 2d at 75 (noting that to handle special education cases effectively and ensure that students are provided a FAPE, counsel must know all details and nuances of the IDEA, understand the "bureaucratic workings" of the DCPS system, and maintain relationships with individuals inside and outside the system to obtain what is necessary to provide a FAPE, all in addition to maintaining the "traditional legal skills expected of any competent lawyer"); *Young v. District of Columbia*, 893 F. Supp. 2d 125, 131 (D.D.C. 2012) (stating that IDEA administrative litigation requires knowledge of "law, procedure, and trial advocacy" and also "an understanding of the educational needs of students and services necessary to address a range of developmental, emotional, and language-based disorders"); *Irving v. District of Columbia*, 815 F. Supp. 2d 119 (D.D.C. 2011) (acknowledging that IDEA administrative cases are "sufficiently complex to allow application of the *Laffey* Matrix) (quoting *Jackson v. District of Columbia*, 696 F. Supp. 2d 97, 102 (D.D.C. 2010) (affirming that in an IDEA administrative proceeding, the Court may rely on the *Laffey* Matrix to determine the prevailing market rate)); *Thomas v. District of Columbia*, 908 F. Supp. 2d 233, 243 (D.D.C. 2012) (rejecting outright the argument that full *Laffey* rates should not be applied to IDEA litigation and stating that IDEA cases "cannot be dismissed as categorically routine or simple"); *Hayes v. D.C. Public Schools*, 815 F. Supp. 2d 134, 142 (D.D.C. 2011) (reiterating that "IDEA cases are sufficiently complex to allow the application of the *Laffey* Matrix").

Plaintiffs were represented in the underlying administrative cases by Pierre Bergeron, an accomplished attorney with expertise in special education law. Mr. Bergeron specializes in IDEA litigation and has prevailed in fifty-seven out of sixty due process hearings involving DCPS. ECF 8-6 at 1. Because of Mr. Bergeron's expertise, litigation experience, and knowledge of the

special education system within DCPS, the administrative actions underlying this case were handled successfully and efficiently.

2. The Administrative Actions Underlying this Case Involved Complex Issues.

In the underlying administrative case involving Ms. Price and Mr. Parker, the student had attended seven different DCPS schools between pre-kindergarten and eleventh grade. DCPS's failure to properly identify and accommodate his disability resulted in the student making only four months of academic progress between 2005 and 2010. The administrative proceeding required five pre-hearing conferences, seven motions, multiple days of hearing split over four months, a seventeen-page disclosure with 200 pages of exhibits that had to be amended several times, and multiple witnesses called by Mr. Bergeron, including experts in the fields of psychoeducation, child and adolescent psychology, and child and adolescent psychiatry. Mr. Bergeron also had to prepare for highly technical cross-examinations of the DCPS psychologist, social worker, and director of special education. Mr. Bergeron submitted to DCPS with his invoice the four-page letter attached to this memorandum as Exhibit 1, which sets forth a detailed summary of the work required in the Price/Parker case.

In the action involving Ms. Weems, D.W., who was a minor child at the time of the proceeding, suffers from multiple disabilities and, even though Ms. Weems had repeatedly requested assistance, D.W. was not identified and evaluated for disabilities for many years. DCPS was aware of D.W.'s poor academic performance and behavioral issues, but failed to ensure that D.W. was provided a FAPE. The administrative proceeding required that Mr. Bergeron prepare multiple legal memoranda and motions, a 13-page disclosure with 106 page appendix, and prepare the direct examination of seven witnesses, including three experts. Mr.

Bergeron submitted to DCPS with his invoice the letter attached to this memorandum as Exhibit 2, which sets forth a detailed summary of the work required in the Weems case.

In both of the underlying administrative actions, plaintiffs prevailed and obtained substantial relief. Ms. Price and Mr. Parker obtained funding and transportation for a special education, non-public day school, wrap-around services, including over 1000 hours of compensatory education, and an order for DCPS to revise Mr. Parker's individualized education program ("IEP"). Ms. Weems obtained placement for D.W. in a segregated specialized instruction day school, and an order for DCPS to revise D.W.'s IEP to include wrap-around services.

IV. The Number of Hours Expended on The Underlying Cases is Reasonable.

Plaintiffs originally sought fees for 219.5 hours in the Price/Parker case and 61.5 hours in the Weems case. DCPS reviewed the detailed time records submitted with the invoices and approved payment (at the CJA rate) for 205.7 hours and 55.4 hours, respectively. Plaintiffs accepted those reductions; thus, plaintiffs seek a reasonable attorney fee for 261.1 hours expended on the underlying matters even though that figure is less than all of the hours actually worked.

DCPS now asserts that the hours should be further reduced. With regard to the Price/Parker case, DCPS argues Mr. Bergeron "billed an excessive amount of hours for preparing the closing argument," and references 14.1 hours spent on that task over three days in February 2011. DCPS Mem. at 19. DCPS does not suggest the number of hours that it believes would have been reasonable. In fact, the invoice suggests that the hours spent were necessary because they involved reviewing school records, assessments, the testimony of multiple expert witnesses, and review of other parts of the hearing transcripts. ECF No. 8-4 at 17-18. Moreover,

the Hearing Officer required a written closing argument to summarize the evidence in a complex case that was tried over an extended period of time. Thus, preparation of the closing argument was akin to preparation of a post-trial brief.

DCPS also argues for the elimination of 4.9 hours in the Weems case and 17.3 hours in the Price/Parker case for what it characterizes as "clerical tasks." DCPS Mem. at 18-22. However, it is undisputed that plaintiffs' counsel is a sole practitioner with no office staff. ECF No. 8-6 at 3. This Court has held that plaintiffs in IDEA cases who retain sole practitioners are entitled to fees for tasks such as reviewing records, scanning, filing, faxing, and copying.[3] *See Bailey v. District of Columbia*, 839 F. Supp. 888, 891 (D.D.C. 1993) (finding that denying plaintiffs compensation for tasks that involve simpler tasks related to litigation such as opening computer files and drafting letters when plaintiffs' counsel operated as a solo practitioner or in a small firm "would unfairly punish plaintiffs and their counsel for not staffing this case as if they had the manpower of a major law firm"); *Bucher v. District of Columbia*, 777 F. Supp. 2d 69, 75-76 (D.D.C. 2011) (recognizing clerical and paralegal tasks as compensable where plaintiffs' counsel did not have office staff and therefore had to perform those tasks herself). Because plaintiffs should not be penalized for having retained a sole practitioner, plaintiffs are entitled to an award of fees for all requested hours, including the hours for tasks that Defendant considers "clerical."

CONCLUSION

Plaintiffs are prevailing parties entitled to recover a reasonable attorney fee pursuant to the IDEA's fee-shifting provision. For the reasons explained above and in the memorandum in

[3] Activities such as scanning, opening files, paginating indexes, and filing are tasks that can take significant amounts of time, particularly when the files are of the large size and include the amount of pages and documents that are at issue here. There are only four entries in Mr. Bergeron's invoices that involve an hour or more of time exerted in completing these tasks.

support of plaintiffs' motion for summary judgment, the Court should grant plaintiffs' motion for summary judgment, deny DCPS's cross-motion for summary judgment, and order DCPS to pay an attorney fee based on 261.1 hours at a rate of $505 per hour, less any amounts already paid, and authorize a supplemental fee petition related to this litigation.

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Respectfully submitted,

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