

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

L.C.,	:	
Plaintiff	:	
	:	
v.	:	Civil Action No.
	:	3:00 CV 580 (CFD)
WATERBURY BOARD OF	:	
EDUCATION ET AL.,	:	
Defendants	:	

RULING ON MOTIONS FOR SUMMARY JUDGMENT

The plaintiff, L.C., brings this action against the defendants, the Waterbury Board of Education, Roger Damerow, the superintendent of Waterbury Public Schools, the Unified School District II, and its superintendent, Donna Cambria, seeking attorney’s fees and costs pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1415(e)(4)(B). Specifically, the plaintiff requests attorney’s fees arising from a due process hearing conducted to review her daughter’s request for a residential educational program.

The plaintiff has filed a motion for summary judgment [Doc. #18], which all of the defendants oppose. The Unified School District II defendants have also filed a motion for summary judgment [Doc. #21], which the plaintiff and the Waterbury Board of Education defendants oppose.

I. Background

A. The IDEA

Congress enacted the IDEA “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services

designed to meet their unique needs and prepare them for employment and independent living.”

20 U.S.C. § 1400(d)(1)(A). Congress provides federal funding to states that develop certain policies and procedures to provide disabled children with a free appropriate education. 20 U.S.C. § 1412(a)(1)(A). “The particular educational needs of a disabled child and the services required to meet those needs must be set forth at least annually in a written individualized education plan (“IEP”).” M.C. ex rel. Mrs. C. v. Voluntown Bd. of Educ., 226 F.3d 60, 62 (2d Cir. 2000). IEPs are formulated based on the input of the “IEP Team,” which is comprised of several individuals, including the special education teacher, a regular education teacher, the child’s parents, and when appropriate, the child. 20 U.S.C. § 1414(d)(1)(B). In Connecticut, the IEP Team is known as the planning and placement team (“PPT”). Conn. Agencies Regs. § 10-76a-1(p) (1992).

When parents are not satisfied with the IEP proposed for their child, they may file a complaint with the state educational agency; such complaints are resolved through an impartial due process hearing conducted by either the local or state educational agency. 20 U.S.C. § 1415(f); Conn. Gen. Stat. § 10-76a et seq. (setting forth the procedural and substantive obligations of parents and educational agencies in the appeals process under state law). In Connecticut, the state educational agency conducts due process hearings. See Conn. Gen. Stat. § 10-76h(c); M.C. ex rel. Mrs. C. v. Voluntown Board of Educ., 178 F.R.D. 367, 370 (D. Conn. 1998). Any party not satisfied with the decision of the hearing officer may bring a civil action in state or federal district court. 20 U.S.C. § 1415(i)(2)(A).

B. Facts¹

The plaintiff's daughter, A.C., was born on December 14, 1986 and has had emotional and behavioral difficulties from a young age. She has received special education services from the Waterbury public school system since January of 1995, when she was enrolled in the second grade, through the Spring of 1998. In July 1998, she was admitted to Riverview Hospital, a psychiatric hospital operated by the Connecticut Department of Children and Families ("DCF"), for an evaluation ordered by the Connecticut Superior Court for Juvenile Matters. While at Riverview Hospital, she attended Riverview School, which was operated by the Unified School District II ("USD II"), also a part of DCF. On August 5, 1998, at a meeting of the planning and placement team for A.C. at Riverview Hospital, the team determined that A.C. needed a residential placement for her treatment needs, but not for her educational needs. In disagreement with this decision, the plaintiff requested a due process hearing under the IDEA.

A due process hearing was held in November 1998 and January 1999. The hearing officer concluded, in a written decision issued on May 26, 1999, that the Waterbury Board of Education ("the Board") and USD II had failed to comply with the IDEA. The hearing officer ordered that A.C. be placed in a residential education program. She also ordered that a PPT meeting be held within two weeks to implement such a program and ordered the state to enforce the order if no action was taken within fifteen days. A.C. was discharged from Riverview Hospital on September 23, 1999. Despite the hearing officer's ruling, A.C. chose not to enroll in a residential education

¹ The following facts are based on the parties' Local Rule 9(c) Statements and other summary judgment papers and are undisputed unless otherwise indicated.

program, and instead enrolled in the State Street School, a public school in the Waterbury school system.

The plaintiff subsequently filed this action for \$21,700 in attorney's fees.² The plaintiff has moved for summary judgment, claiming that there are no genuine issues of material fact that she is entitled to the fees requested. The USD II defendants have also filed a motion for summary judgment, claiming that there are no genuine issues of material fact that the plaintiff is not entitled to receive attorney's fees from USD II. The Board, in its oppositions to the plaintiff's and USD II's motions for summary judgment, asserts that there are genuine issues of material fact as to whether the plaintiff is entitled to receive attorney's fees and from whom. In the alternative, each defendant also challenges the amount of attorney's fees requested.

II. Attorney's Fees

A. Prevailing Party Status

The IDEA provides in part that a district court may, in its discretion, award reasonable attorney's fees "[i]n any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorney's fees as part of the costs to the parents of a child with a disability who is the prevailing party." 20 U.S.C. § 1415(i)(3)(B). The United States Supreme Court in Buckhannon v. West Virginia Dep't of Health, 532 U.S. 598 (2001), recently clarified the prevailing party standard in civil rights lawsuits. The Court, considering a claim for attorney's fees under the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601 et seq. and the

² The plaintiff also filed a supplemental motion for \$2697.30 in fees associated with pursuing the instant action. The Court denied that motion without prejudice to renewal after the motions for summary judgment are ruled upon.

Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., concluded that a prevailing party is “one who has been awarded some relief by the court.” Id. at 603. The Second Circuit has held that Buckhannon applies to attorney’s fees cases under the IDEA. See J.C. v. Regional School Dist. 10, Bd. of Educ., 278 F.3d 119 (2d Cir. 2002) .

The Court must first decide whether the relief obtained in this case, which was obtained through the final decision of the due process hearing officer, can be considered an award of relief consistent with Buckhannon. The IDEA indicates that attorney’s fees may be awarded “[i]n any action or proceeding brought under this section,” and in § 1415, the term “proceeding” often is used to refer to due process or administrative hearings. See, e.g., § 1415(d)(2)(F) and (k)(7)(C)(I) (“due process proceeding”); § 1415(i)(2)(B)(I) and (i)(3)(D)(ii) (“administrative proceeding”). Several courts writing before the Buckhannon decision concluded that the term “proceeding” refers to due process hearings and therefore that plaintiffs could recover attorney’s fees if they prevailed at that level, even if no subsequent action was ever filed in state or federal district court. See, e.g., Brown v. Griggsville Cmty. Unit School Dist. No. 4, 12 F.3d 681, 683-84 (7th Cir. 1993); Barlow-Gresham Union High School Dist. No. 2 v. Mitchell, 940 F.2d 1280, 1284-85 (9th Cir.1991); Angela L. v. Pasadena Independent School Dist., 918 F.2d 1188, 1192 n. 1 (5th Cir.1990); Upper Valley Ass’n for Handicapped Citizens v. Blue Mountain School Dist. No. 21, 973 F. Supp. 429, 434 (D. Vt. 1997). In Brown, the Seventh Circuit explained why a hearing officer’s decision is similar to that of a state or federal judge:

In effect, the hearing officer appointed by the school board, and the reviewing agency, are adjuncts of the court, like a magistrate, in the administration of the federal statute

Brown, 12 F.3d at 684 (referring to Illinois’ two-tiered administrative IDEA scheme, which involves review by a hearing officer and then by the state educational agency before the dispute may reach state or federal court). That view appears to be consistent with Buckhannon’s rejection of the “catalyst theory” of awarding attorney’s fees. An adjudication by a hearing officer is a sufficient determination of “legal merit” of the prevailing party’s claims. See Buckhannon, 532 U.S. at 604-05. Moreover, failure to award attorney’s fees under these circumstances would result in the prevailing parent only recovering fees if the opposing local education agency appealed the decision of the hearing officer, a circumstance obviously not suggested by the language of the IDEA. Finally, dicta in J.C. indicating that due process hearings, or “administrative proceedings,” are similar to judicial actions for purposes of determining attorney’s fees under § 1415, suggests that the Second Circuit would adhere to this view after Buckhannon. Based on the this authority, Court concludes that the due process hearing in the instant case was a “proceeding” for the purposes of the IDEA provision authorizing the award of attorney’s fees to a prevailing party.³

Accordingly, the Court will proceed to consider whether the hearing officer’s decision confers prevailing party status on the plaintiff in this case. “Plaintiffs may be considered prevailing parties for attorney’s fee purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit.” Christopher P. v. Marcus, 915 F.2d 794, 804 (2d Cir. 1990) (internal quotations omitted) (quoting Texas State Teachers Ass’n v. Garland Indep. School Dist., 489 U.S. 782 (1989)). At a minimum, the plaintiff most

³ The parties do not contest this issue in their summary judgment papers.

show a material alteration in his legal relationship with the defendant, id., and the alteration is not merely technical or de minimis in nature. D.H. v. Ashford Bd. of Educ., 1 F. Supp. 2d 154, 159 (D. Conn. 1998). The standard is a generous one. Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). In making this determination, courts in IDEA cases examine “whether plaintiffs achieved relief and whether there is a causal connection between the litigation and the relief from the defendant.” G.M. v. New Britain Bd. of Educ., 173 F.3d 77, 81 (2d Cir. 1999) (quoting Wheeler v. Towanda Area Sch. Dist., 950 F.2d 128, 131 (3d Cir. 1991)).

The plaintiff argues that she was a “prevailing party” on the following bases. First, she obtained relief on a significant claim—that A.C. was entitled under the IDEA to a residential education program. Second, the relief effected a material alteration in the legal relationship between her and the defendants—she obtained an enforceable order that enabled her daughter to receive particular educational services that had previously been unavailable to her. Finally, the plaintiff argues, the relief was not “technical” or “de minimis” in nature.

USD II contends that the plaintiff was not a prevailing party against USD II because (1) there was no relief ordered as to USD II; (2) there was no material alteration of the legal relationship between the plaintiff and USD II as a result of the hearing officer’s decision; (3) there was no modification of the USD II defendants’ behavior in a way which benefitted A.C.; and (4) any procedural violation by USD II was a technical, de minimis violation and should not result in the award of attorney’s fees. In support of its arguments, USD II first directs the Court to the hearing officer’s written decision. Of the seventy-one “findings of fact” made by the hearing officer, notes USD II, forty involve the years before A.C. was admitted to Riverview Hospital and

do not concern USD II in any way. As well, USD maintains, the findings that USD II violated the IDEA only concern USD II's failure to timely obtain A.C.'s IEP and educational records, and in any event, the hearing officer did not recite a finding that an earlier receipt of her IEP or educational records would have resulted in any significant difference in A.C.'s education. USD II also points out that the hearing officer recited several favorable findings as to USD II, specifically, improvements in A.C.'s behavior and academic performance at Riverview ascribed to medication, small classroom size, and an environment which contributed to A.C.'s feelings of safety and security. In contrast, USD II declares, the hearing officer's conclusions are markedly negative with regard to the years A.C. attended public school in Waterbury.

The Board contends that the plaintiff was a "prevailing party" against USD II, rather than the Board, because "A.C.'s educational programming was the jurisdictional responsibility of the Unified School District from July 10, 1998 through September 23, 1999." The Board also contends that the relief obtained by the plaintiff in the due process hearing did not materially effect the legal relationship between the plaintiff and the Board because A.C. chose to enroll in public school in Waterbury upon her discharge from Riverview Hospital, rather than take advantage of the hearing officer's decision regarding her eligibility for a residential educational placement.

The Court concludes that the plaintiff was a "prevailing party" under the IDEA with regard to the defendant Board only. The hearing officer's decision set forth two questions which the due process hearing was designed to resolve:

1. Did the Board offer an appropriate program for the student for the 1998-1999 school year?
2. If so, does the student require a residential placement?

The hearing officer noted that, while USD II had jurisdiction over A.C. prior to, and during, the pendency of the due process hearing and was responsible for her educational programming while she was at the DCF facility, the Board was A.C.'s "local educational agency" during the 1998-99 school year for purposes of the IDEA.⁴ The hearing officer concluded that the Board failed to offer an appropriate free public education to A.C. and violated the IDEA in "evaluating the scope and nature of the student's special education needs, in ensuring that placement decisions were based on comprehensive evaluations, in providing the student's education records to other facilities and in developing the student's individualized education programs." According to the hearing officer, A.C. "spiraled downward in the Board's program behaviorally, emotionally and socially and made only trivial progress academically."

In light of the hearing officer's decision, it is apparent that the plaintiff obtained significant relief on her claim against the Board—the hearing officer found that the Board failed to provide appropriate educational services to A.C. and ordered the Board to provide A.C. a residential educational placement. As well, the Board's legal relationship with the plaintiff changed, as the Board became responsible for paying for A.C.'s education at the new residential placement. See Christopher P., 915 F.2d at 804, and there was a causal connection between the plaintiff's request for a due process hearing and this result. See G.M., 173 F.3d at 81.

⁴ Pursuant to Connecticut's state plan for compliance with the IDEA, DCF may become a child's local educational agency ("LEA") when the child enrolls in one of DCF's "Unified School Districts." It does not appear DCF ever became A.C.'s LEA in the instant case. A.C. was sent to Riverview Hospital for an evaluation ordered by the Connecticut Superior Court for Juvenile Matters, and the record contains no suggestion that Riverview was contemplated to be other than a short term educational placement while the evaluation occurred.

In contrast, while the hearing officer also noted that USD II made some errors in its provision of education to A.C., namely, a failure to timely obtain A.C.’s educational records, the hearing officer’s decision does not reflect an opinion that USD II’s violations were a significant factor in the order of the plaintiff’s requested relief. Rather, the evidence indicates that any relief ordered by the hearing officer against USD II was “de minimis” or “technical” in nature, in light of the fact that USD II supervised A.C.’s education for only a short period of time and, for the most part, provided A.C. with appropriate educational programming while she was under its care.

It is also significant that the plaintiff would have been required to utilize the services of an attorney regardless of USD II’s position on A.C.’s residential placement. As the Board disputed A.C.’s residential placement, and ultimately was responsible for payment of the placement, even if USD II supported the plaintiff’s position that A.C. needed a residential educational placement, the plaintiff would still have been required to request and hold a due process hearing, thereby accruing the attorney’s fees that are the subject of this action.

Accordingly, the plaintiff has satisfied her burden on summary judgment to show that she is a “prevailing party” with regard to the Board, but not with regard to USD II. The plaintiff’s motion for summary judgment is therefore GRANTED IN PART and DENIED IN PART, and USD II’s motion for summary judgment is GRANTED.

2. Reasonable Fees

As the Court has found that the plaintiff is a “prevailing party” with regard to the Board, the Court must then determine a reasonable fee. See Hensley v. Eckerhart, 461 U.S. 424, 433 (1983).

Although “the degree of the plaintiff’s success is not determinative of eligibility for attorney’s fees, it is relevant to the size of the award. Other than that guidepost, however, the district court has broad discretion in setting a reasonable fee.” Chagnon v. Town of Shrewsbury, 901 F. Supp. 32, 35 (D. Ma. 1995). If a plaintiff achieves only partial or limited success, “the district court may attempt to identify specific hours that should be eliminated or it may simply reduce the award to account for the limited success. The court necessarily has discretion in making this equitable judgment.” Hensley, 461 U.S. at 437.

G.R. v. Regional School Dist. 15, No. 3:95CV2173(AHN), 1996 WL 762324, at *5 (D. Conn.

Dec. 26, 1996). Generally, courts apply the “lodestar” method to determine a reasonable fee.

Under this method, courts first estimate the number of hours worked, excluding hours which are excessive, duplicative or unnecessary; second, the court must determine the prevailing hourly rate for attorneys of similar experience within the geographic region; and finally, the court multiplies the hourly rate by the number of hours allowed. See Blum v. Stenson, 465 U.S. 886, 897 (1984).

The plaintiff’s counsel claims that she is entitled to \$21,700 in attorney’s fees. The Board contends that: (1) matters involving representation of A.C. before the Juvenile Court and at PPT meetings held before the due process hearing should be excluded from recovery; (2) the time sheets submitted by plaintiff’s counsel are “impermissibly vague and non-specific”; and (3) the retroactive application of the plaintiff’s counsel’s 1999 rate increase from \$180 to \$200 per hour is impermissible. In response, plaintiff’s counsel denies that her hourly rate of \$200 is unreasonable or that her time sheets are insufficient to support the attorney’s fees request. She also contends that her representation of A.C. before the Juvenile Court was directly related to the IDEA proceedings because the Juvenile Court initially committed A.C. to Riverview Hospital out of concern for her treatment and education programs.

As to the fees associated with the representation of A.C. in Juvenile Court, the Court

concludes that such fees should be excluded from recovery. While there appears to be a split of authority in this district on this issue, see e.g., D.F. v. Enfield Bd. of Educ., No. 3:96cv537(DJS), slip op. at 14 (D. Conn. Mar. 17, 1997) (court rejected plaintiff's claim that the fees expended for services related to juvenile court proceedings should be awarded); cf. J.H. v. Department of Children and Families, No. 3:95cv2159(CFD), slip op. at 10 n.6 (D. Conn. March 15, 1999) (court awarded fees incurred in connection with juvenile court proceedings where the events giving rise to the proceedings occurred as a result of the child's behavioral problems at school), the Court declines to award such fees in the instant case. Even following J.H., the plaintiff has not adduced sufficient evidence to create a genuine issue of material fact that the fees related to the Juvenile Court proceedings were sufficiently connected to the due process hearing.⁵ See J.H., slip op. at 10 n.6.

As to the PPT-related fees, the IDEA provides that “attorney’s fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action.” 20 U.S.C. § 1415(I)(3)(D)(ii). Because the fees specified in plaintiff’s counsel’s records do not relate to PPT meetings convened as a result of an administrative proceeding or judicial action, those fees shall also be excluded from recovery.

As to the argument that the time sheets submitted by plaintiff’s counsel are “impermissibly vague and non-specific,” the Court finds that some reduction of the fee award is warranted. The

⁵ However, the fees which relate to subpoenaing the Juvenile Court probation officer to the due process hearing are compensable as they are directly related to the due process hearing.

plaintiff's counsel bears the burden of proving that an appropriate amount of time was billed and expended at a reasonable hourly rate. "Where a party fails to keep adequate records, courts do not award the full amount requested." Mr. J. v. Board of Education, 98 F. Supp. 2d 226, 242 (D. Conn. 2000). "Vague entries such as 'review of file,' 'review of correspondence,' 'research,' 'conference with client,' and 'preparation of brief' do not provide a court with an adequate basis upon which to evaluate the reasonableness of a fee application." Id. (quoting Mr. and Mrs. B. v. Weston Bd. of Ed., No. 3:97CV452, 5 Conn. Ops. 182 (February 15, 1999) and citing Connecticut Hospital Ass'n v. O'Neill, 891 F. Supp. 687, 691 (D. Conn. 1994); Ragin v. Harry Macklowe Real Estate Co., 870 F. Supp. 510 (S.D.N.Y. 1994); Orshan v. Macchiarola, 629 F. Supp. 1014 (E.D.N.Y. 1986)). When time entries are lacking in this regard, courts typically apply "an across-the-board reduction." Id. The plaintiff's counsel's records contain a number of vague entries: "review Riverview file," "[a]dditional exhibit it," "worked on brief." Cf. id. Despite the vagueness of several entries, however, the Court finds that the contemporaneous time records as well as the administrative records indicate that the time billed is proportional to the work done. Accordingly, only an overall reduction of five percent is warranted for the lack of sufficient specificity.

As to plaintiff's attorney's hourly rate, the Court concludes that, based on plaintiff's attorney's education and experience, an hourly rate of \$180 is reasonable for the fees incurred prior to January 1, 1999, the date on which the plaintiff's counsel's rates were raised, and \$200 is reasonable for the fees incurred after January 1, 1999. See E.S. v. Ashford Bd. of Educ., 134 F. Supp. 2d 462, 469 (D. Conn. 2001) (accepting that \$200 hourly rate for plaintiff's attorney is

reasonable, though over no objection); J.C. v. Regional School Dist. 10, Bd. of Educ., 115 F. Supp. 2d 297, 302 (D. Conn. 2000) (concluding that \$200 hourly rate for plaintiff's attorney was reasonable), rev'd on other grounds, 278 F.3d 119 (2d Cir. 2002).

III. Conclusion and Fee Award

The plaintiff's motion for summary judgment [Doc. #18] is GRANTED IN PART and DENIED IN PART. The Unified School District II defendants' motion for summary judgment [Doc. #21] is GRANTED.

The Court finds that the plaintiff's counsel is entitled to \$7020 in attorney's fees for 39 hours of work prior to January 1, 1999 at an hourly rate of \$180, and \$8500 for 42.5 hours of work after January 1, 1999 at an hourly rate of \$200. This total of \$15,520 is further reduced by five percent, for insufficient specificity in billing records. Accordingly, the plaintiff's counsel is awarded \$14,744 in attorney's fees.

SO ORDERED this ____ day of March 2002, at Hartford, Connecticut.

CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE