

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Ms. C. and Mr. H. on their :
behalf and on the behalf :
of J.H. :
 :
v. : No. 3:03cv1696 (JBA)
 :
Plainfield Board of Education :
and Mary Conway :

Ruling on Plaintiffs' Motion for Summary Judgment [Doc. #25]

On February 27, 2004, plaintiffs filed a Motion for Summary Judgment [Doc. # 25] seeking attorney's fees and costs in the amount of \$29,723.34, on grounds that they were prevailing parties in an administrative hearing brought pursuant to the Individuals with Disabilities Education Act ("IDEA"). This Court referred the motion to Magistrate Judge Joan Glazer Margolis. In an opinion issued on June 28, 2004, familiarity with which is assumed, Magistrate Judge Margolis granted in part plaintiffs' Motion for Summary Judgment in the amount of \$19,475. See Recommended Ruling [Doc. # 45]. Plaintiffs now object to part of the Magistrate Judge's recommended ruling. See Plaintiffs' Objection to Judge Magistrate's Ruling [Doc. # 46]. Upon de novo review pursuant to Fed. R. Civ. P. 72(b), this Court approves and adopts the Recommended Ruling [Doc. # 45] in part, but sustains plaintiffs' objection as to the reduction of fees for limited success. Accordingly, plaintiffs' motion for summary judgment is

GRANTED in part.

I. Background

On October 3, 2003, plaintiffs filed this suit seeking attorney's fees resulting from their pursuit of special education services for their thirteen year old son, J.H., in an administrative IDEA hearing. On July 23, 2003, after a three day hearing, the administrative hearing officer ruled that J.H. was eligible for special education and related services as an emotionally disturbed student and ordered the Plainfield Board of Education to provide him with a free appropriate, public education. The hearing officer also ordered that the Board provide J.H. with a tutoring and counseling interim program until his special education program began and that the Board conduct an independent psychiatric evaluation of J.H. The hearing officer denied plaintiffs' request for an award of compensatory education, finding that this remedy is available only for a gross and egregious IDEA violation, and that the Board's procedural violations did not rise to this level.

Plaintiffs sought a total of \$29,723.34 in attorneys fees as the prevailing party. Magistrate Judge Margolis' Recommended Ruling awarded plaintiffs \$19,475 in attorneys fees, reducing the requested award for excessive hours (requested 107.5 hours reduced to 93.8 hours), for excessive fees for the work of a law clerk (hourly fee reduced to \$75/hour), and for the degree of

success (reducing award 25%). Plaintiffs object only to the reduction based on the degree of their success.

II. Discussion

The July 28, 2004 Recommended Ruling reduced plaintiffs' award 25% after finding that plaintiffs did not prevail on their compensatory education claim before the Hearing Officer, as plaintiffs did not receive their requested 18 months of education to compensate J.H. for the 2001-2002 and 2002-2003 school years in which J.H. had received no special education services. The Magistrate Judge found that "the fee award should be reduced so that it is reasonable and commensurate with the success achieved, but rather than identify the specific hours that should be eliminated, as such identification is not possible based on time records submitted to the Court and that fact that plaintiffs' claims were interrelated, the Court finds that an [sic] reduction of twenty-five percent is reasonable." Recommended Ruling [Doc. # 45] at 10. In their objection, plaintiffs argue that the Recommended Ruling improperly denied compensation for hours expended in the pursuit of claims in which plaintiff was successful, because the only claim on which they did not prevail, the claim for compensatory education, was based upon the identical procedural violations on which they did prevail, namely eligibility for special education, independent evaluation and the receipt of special education and related services.

The standard for calculating attorneys' fees based on the degree of success is well-established. In Hensley v. Eckerhart, 461 U.S. 424 (1983), the Supreme Court held:

[T]he extent of a plaintiff's success is a crucial factor in determining the proper amount of an award of attorney's fees under 42 U.S.C. § 1988. Where the plaintiff has failed to prevail on a claim that is distinct in all respects from his successful claims, the hours spent on the unsuccessful claim should be excluded in considering the amount of a reasonable fee. Where a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney's fee reduced simply because the district court did not adopt each contention raised. But where the plaintiff achieved only limited success, the district court should award only that amount of fees that is reasonable in relation to the results obtained.

Id. at 439; see also id. ("A reduced fee award is appropriate if the relief, however significant, is limited in comparison to the scope of the litigation as a whole.").

The Magistrate Judge's ruling concludes that compensatory education amounting to two full school years was a substantial form of relief sought by plaintiffs, and that plaintiffs' failure to obtain this relief reduced the degree of their success. While the Magistrate Judge applied the Hensley standard, insofar as she examined what was "reasonable in relation to the results obtained," id., the Court finds that her 25% reduction overstates the significance of compensatory education relief sought and undervalues the degree of success plaintiffs achieved here. Plaintiffs' success was substantial because J.H. had not been receiving any special education services prior to their efforts

to identify him as eligible for special education and to secure him special services, including an interim eight week tutoring and counseling program until his special education program began. The Hearing Officer found that the "Board failed to appropriately evaluate and identify the Student despite warning signs of the Student's emotional problems;" "failed to conduct a comprehensive evaluation of the Student;" and engaged in only a "cursory review of court-ordered evaluations" which "failed to appropriately interpret the evaluative data." See Final Decision and Order of Hearing Officer, July 23, 2003 [Doc. # 26, Ex. B] at ¶¶ 10-14. Thus, all of the substantive issues related to J.H.'s disability, and all of the claimed procedural violations, were resolved in plaintiffs' favor.

In this context, plaintiffs' failure to achieve the remedy of compensatory education is insignificant. Compensatory education has been recognized as an appropriate equitable remedy under the IDEA to compensate for past deficiencies in educational services. Although compensatory education most often has been awarded in cases of a gross and egregious IDEA violation where the claimant is over age 21, or where the Board of Education is unable to provide a free appropriate public education within the public school system, compensatory education awards in the form of extra hours of educational services has also been found appropriate. See Garro v. State of Connecticut, 23 F.3d 734 (2d

Cir. 1994) (finding compensatory education for claimant over age 21 available only for "gross" procedural violations); School Committee of Town of Burlington, Mass. v. Dept. of Educ. of Mass., 471 U.S. 359 (1985) ("The [Education of the Handicapped Act (IDEA's predecessor)] contemplates that such [special] education will be provided where possible in regular public schools, but the Act also provides for placement in private schools at public expense where this is not possible."); Reid v. District of Columbia, 310 F.Supp.2d 137, 149-152 (D.D.C. 2004) (affirming hearing officer's award of 810 hours of compensatory education (1 hour per day for the 4.5 years in which claimant was denied a free, appropriate public education)).

As plaintiffs correctly note, the eight week counseling and tutoring program to which the Hearing Officer assigned J.H., is itself a form of compensatory education, amounting to 136 hours of counseling and instruction. More importantly, the appropriateness of compensatory education as an equitable remedy depends not only on the egregiousness of the school system's violations but also on the ability of the compensatory education to serve the child's needs. See, e.g. M.C. ex rel. Mrs. C. v. Voluntown Bd. of Educ., 226 F.3d 60, 66 (2d Cir. 2000). Because the Plainfield Board of Education had not identified J.H. as disabled and had not been providing him with any special services prior to the Hearing Officer's determination, the hearing focused

on determining J.H.'s eligibility. The Hearing Officer emphatically found in plaintiffs' favor, stating "[i]t is elemental that when a child with a disability is not determined eligible for special education and related services, although he

should have been so identified, the Board failed to provide a free appropriate public education." See Final Decision and Order of Hearing Officer, July 23, 2003 [Doc. # 26, Ex. B] at ¶ 24.

While the Hearing Officer ordered general remedial steps, including evaluating J.H. and formulating an individualized education program (IEP), the nature and specific shape of those remedies were not the subject of the hearing. To some degree the IEP itself could compensate for the prior denial of the free appropriate public education. See Reid, 310 F.Supp.2d at 152. Against this backdrop, plaintiffs' request for compensatory education is more appropriately viewed as a secondary concern, and given the findings in plaintiffs' favor on all substantive claims, the denial of compensatory education does not detract from the degree of plaintiffs' success.

This Court concludes that plaintiffs' failure to achieve the remedy of compensatory education is insignificant when compared with the success achieved, and thus declines to reduce plaintiffs' attorneys fee award for limited success. The

remaining portions of the Magistrate Judge's Recommended Ruling are approved and adopted in full.

Accordingly, plaintiffs are entitled to attorney's fees in the amount of \$25,325.00, as follows:

Item	Number of Hours	Hourly Fee	Subtotal
Attorney's Non-Travel Time	93.80	\$250	\$23,450
Attorney's Travel Time	6.0	\$125	\$750
Intern Time	15.0	\$75	\$1,125
TOTALS	114.80		\$25,325

III. Conclusion

For the foregoing reasons, the Recommended Ruling on Plaintiffs' Motion for Summary Judgment [Doc. #45] is APPROVED and ADOPTED, with the above modification, and Plaintiffs' Motion for Summary Judgment [Doc. #25] is accordingly GRANTED, in part, in the amount of \$25,325.00.

The Clerk is directed to close this case.

IT IS SO ORDERED.

/s/

Janet Bond Arterton, U.S.D.J.

Dated at New Haven, Connecticut: September 30, 2004