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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAY T. and ANNE M.-T., individually,
and as guardians ad litem for M.M.-T.,

Plaintiffs,

v.

SACRAMENTO CITY UNIFIED
SCHOOL DISTRICT,

Defendant.

No. 2:16-cv-00136-MCE-AC

MEMORANDUM AND ORDER

Through the present motion, Plaintiffs Jay T. and Anne M.T. (“Plaintiffs”) seek attorneys’ fees and costs they incurred in litigating whether Defendant Sacramento City Unified School District (“the District”) provided a free and appropriate public education to their minor daughter, M.M.-T., in accordance with the provisions of the Individualized Disability Education Act (“IDEA”). Plaintiffs ultimately prevailed in part following a ten-day hearing conducted by the Office of Administrative Hearings (“OAH”). They now claim entitlement to fees and costs incurred both in those proceedings and in the present lawsuit, and the District disputes the extent to which it is obligated to reimburse the

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1 relevant expenses. As set forth below, Plaintiffs' Motion for Attorneys' Fees is
2 GRANTED, in part.¹

4 **BACKGROUND**

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6 According to the Complaint, Plaintiffs' daughter, M.M-T., who is now 13 years old,
7 is eligible for special education services under the category of autistic-like behaviors.
8 For the fifth grade, she was enrolled at the District's Theodore Judah School in a
9 mainstream class with an aide and various additional services provided pursuant to IEPs
10 developed in February of 2012 and January 2013.

11 Ultimately, Plaintiffs became dissatisfied with M.M-T's academic progress and
12 decided to enroll her in a home school charter program for the 2013-14 year, with
13 instruction provided primarily by M.M-T's mother. Beginning in the fall of 2013, the child
14 began to demonstrate pronounced mental/emotional issues, including delusional and
15 paranoid thinking as well as aggressive and sometimes violent outbursts. As a result,
16 Plaintiffs decided to move her back to Theodore Judah and put school officials at the
17 school on notice of the child's changed mental condition. In May 2014, M.M-T had to be
18 hospitalized after she attacked her parents at home. Plaintiffs allege, and the OAH
19 hearing officer ultimately determined, that despite this mental regression, school officials
20 failed to take proper steps to assure that M.M-T was reexamined or to prepare an
21 adequate new IEP that addressed her mental illness. Ultimately, Plaintiffs decided to
22 enroll M.M-T at Springstone, a special school for autistic children in Lafayette, California.
23 M.M-T began attending Springstone in August 2014 and repeated the sixth grade there.

24 Initially both the District and Plaintiffs requested a due process hearing as to their
25 respective placement obligations. A settlement was reached between the two sides in
26 February of 2015 for the sum of \$55,000, but the District's Board ultimately rejected that

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28 ¹ Having determined that oral argument would not be of material assistance, the Court ordered this matter submitted on the briefing in accordance with E.D. Local Rule 230(g).

1 parties' agreement. Plaintiffs' due process request went to hearing in April 2015 after
2 the District dismissed its own due process request shortly before the hearing was to
3 start.

4 Prior to the hearing, Plaintiffs dropped their request for prospective
5 reimbursement from the District for ongoing educational costs. This was because in
6 2015 they moved from Sacramento to Lafayette, thereby excusing the District from any
7 further FAPE obligation. Plaintiffs nonetheless continued to request tuition
8 reimbursement for the 2014-15 year at Springstone, as well as reimbursement for the
9 cost of an independent mental examination and for rent and associated costs incurred in
10 temporarily securing rental housing in Lafayette before they decided to move to the Bay
11 Area permanently. Plaintiffs also challenged the IEP in place during the 2012-13 school
12 year on numerous grounds.

13 Following a ten-day administrative hearing, the OAH hearing officer ultimately split
14 the issues she decided between Issue One (2012-13) and Issue Two (2013-14 and
15 2014-15). She decided that the IEPs in place for the 2012-13 school year were
16 adequate and found in favor of the District on that issue. Well over half of the hearing
17 officer's 57-page decision is devoted to an analysis of the 2012-13 school year, and
18 according to defense counsel, about half of the time spent in hearing related to that year
19 as well. The hearing officer also found, however, that the District nonetheless failed to
20 appreciate the severity of the student's mental issues in 2014 and thus failed to offer a
21 FAPE that addressed those issues. Because placement at a private school was
22 ultimately deemed beneficial, she determined that Plaintiffs should be entitled to
23 reimbursement of some \$24,000.00 for an initial year's tuition at Springstone. About
24 \$6,000.00 in rent and other costs were also awarded as well as reimbursement for a
25 mental health exam costing upwards of \$5,000.00.² Plaintiffs were deemed the
26 prevailing party as to Issue Two.

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28 ² Inasmuch as neither party appealed the OAH decision, it would appear these amounts have
been paid. See Compl., ¶ 21.

1 On January 21, 2016, Plaintiffs filed the present action seeking recovery of
2 attorneys' fees incurred in the due process hearing after Plaintiffs' attempt to settle their
3 fee claim failed. On June 3, 2016, nearly six months after this action was instituted, the
4 District made, pursuant to Federal Rule of Civil Procedure 68 ("Rule 68"), an Offer of
5 Judgment in the amount of \$85,000.00 to settle Plaintiffs' fee claim. That Offer was not
6 accepted and, on August 31, 2016, Plaintiffs filed the Motion for Attorneys' Fees
7 presently before the Court. Plaintiffs ask that they be reimbursed \$148,575.00 for fees
8 incurred in the administrative hearing, as well as \$21,567.50 for attorneys' fees incurred
9 to date in the instant litigation and \$464.35 in costs for a total of \$170,606.85.

11 STANDARD

13 The IDEA authorizes an award of reasonable attorneys' fee, in the court's
14 discretion, as part of the costs to a prevailing party who is the parent of a child with a
15 disability. 20 U.S.C. § 1415(i)(3)(B)(i). The appropriate amount of the fee award is
16 based on the "degree of success" obtained. Hensley v. Eckerhart, 461 U.S. 424 (1983);
17 Aguirre v. L.A. Unified Sch. Dist., 461 F.3d 1114, 1121 (9th Cir. 2006). Consideration of
18 just what was achieved through litigation is "particularly crucial" where a prevailing party
19 success on only some of his or her claims for relief. Hensley, 461 U.S. at 434. In such
20 an instance, the court must make the following inquiry: "First, did the plaintiff fail to
21 prevail on claims that were unrelated to the claims on which he succeeded? Second,
22 did the plaintiff achieve a level of success that makes the hours reasonably expended a
23 satisfactory basis for making a fee award?" Id.

25 ANALYSIS

27 The OAH decision identified a very clear deterioration in M.M-T's condition such
28 that her entitlement to special education services in 2012-13 before that deterioration

1 was completely different than her needs thereafter. Consequently, the Court cannot
2 agree that issues pertaining to the 2012-13 school year IEP, on which the District
3 prevailed, had to be fully developed by Plaintiffs for them to prevail on issues presented
4 thereafter for 2013-14 and 2014-15 (for which Plaintiffs were the prevailing parties).³
5 Therefore, it would appear that some reduction of the attorneys' fees sought by Plaintiffs
6 is in order, despite the fact that Plaintiffs prevailed on what appears to have been the
7 most significant issue presented by the hearing; namely, their entitlement for special
8 education funding for their daughter's placement at a non-public school (Springstone) for
9 the 2014-15 school year, and reimbursement for related living and transportation
10 expenses.⁴

11 The District argues that Plaintiffs' fees should be reduced by at least 50 percent,
12 and possibly up to 60 or 70 percent. Given the fact that some background information
13 had to be introduced as to M.M-T's circumstances prior to the 2013-14 school year,
14 however, the Court finds that request to be overstated. In prevailing on issues pertaining
15 to the 2013-14 and 2014-15 school years, the District's failure to provide a free and
16 appropriate public education during those time parameters is double the period of time,
17 in 2012-13, when they did so. Moreover, aside from the District's claim that the issues
18 on which it prevailed were distinct from those where Plaintiffs prevailed, it is significant to
19 note that the fundamental underpinnings of Plaintiffs' fee request are largely
20 unchallenged. The District does not take issue with the time Plaintiffs' counsel spent;
21 indeed, they paid their own counsel \$147,871 to defend the claims which makes it hard
22 to argue that Plaintiffs' counsel overlitigated the case in incurring 148,575.00 in fees.
23 Nor does the District argue that Plaintiffs' lead counsel hourly rate of \$425.00 was

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25 ³ Plaintiffs argue that a full fee award may be warranted even with respect to non-prevailing areas
26 when both sets of claims involve a "common core of facts" or are "based on related legal theories, on
27 grounds that much of counsel's time must necessarily "be devoted generally to the litigation as a whole".
28 See Aguirre, 461 F.3d at 1122-23 (Pregerson, J. concurring).

⁴ By the time the due process hearing started in April of 2015, it appears that Plaintiffs no longer
sought prospective placement at Springstone.

1 excessive or dispute that counsel, F. Richard Ruderman, incurred the lion's share of
2 billable hours.⁵ The only argument the District does make is that two associates with five
3 and six years of experience in special education issues should not have been billed at
4 the \$250.00-300.00 range. Those hours were relatively minimal, however, and in the
5 Court's view that reduced hourly rate takes into account their junior status.

6 Given Plaintiffs' failure to prevail on Issue One (those issues pertaining to the
7 2012-13 school year), and having reviewed the record in its entirety, in the exercise of its
8 discretion the Court believes that a reduction of 33 percent in the total attorneys' fees
9 and costs sought by Plaintiffs' counsel is proper. That reduction takes into account the
10 fact that Plaintiffs prevailed on their key objective in suing the District (their entitlement to
11 reimbursement for the cost of M.M-T's placement at Springstone in 2014-15) as well as
12 the fact that they prevailed on issues pertaining to both the 2013-14 and 2014-15 school
13 years. The Court is unpersuaded by the District's attempt either to numerically quantify
14 the number of issues presented, or to suggest that Plaintiffs' entitlement to fees should
15 somehow be based on the pages in the hearing officer's decision related to Issue One
16 as opposed to Issue Two. Most telling in the Court's view is the fact that the time spent
17 in hearing was roughly evenly divided between Issues One and Two. After taking into
18 account the fact that some background information had to be obtained in developing
19 Plaintiffs' circumstances prior to 2013-14, the Court finds a 33 percent reduction to be
20 equitable. That reduces the \$148,575.00 claimed by Plaintiffs' counsel by \$49,029.75 to
21 a total net recovery of \$99,545.25 for fees incurred in the administrative proceeding.

22 With respect to the \$21,567.50 sought in attorneys' fees incurred in bringing the
23 present lawsuit in this Court, the District contends that any amount recovered must be
24 reduced by those fees incurred after June 3, 2016, when the District filed its Rule 68

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27 ⁵ The Court notes that the District has made various objections to Mr. Ruderman's declaration. To
28 the extent the Court has relied on that Declaration in reaching its decision herein, those objections are
overruled. Plaintiffs' objections to the Declaration of Sarah Garcia are overruled on the same basis.

1 Offer of Judgment in the amount of \$85,000.00.⁶ The District's argument in that regard,
2 however, necessarily depends on Plaintiffs having obtained less in continuing to litigate
3 this case that they would have received had they accepted the \$85,000.00 offer.
4 Because the fees being awarded by this Motion alone exceed \$85,000.00,⁷ no fees
5 reduction under Rule 68 is appropriate as to the additional \$21,567.50 sought as
6 attorneys' fees incurred in the present matter.

7 As a final matter, the Court notes that the papers submitted in support of and in
8 opposition to this motion contain considerable argument with regard to the District's
9 alleged failure to respond to a public records request for its document pertaining to this
10 matter before the present action was instituted. Plaintiffs claim, and the District
11 concedes, that the District initially failed to respond to Mr. Ruderman's initial request,
12 made on October 22, 2015. The District did comply, however, on February 29, 2016,
13 after Plaintiffs filed the present suit and at a point even prior to the District's answer
14 being due. There is no evidence before the Court that Plaintiffs followed up or inquired
15 as to the status of their request in the relatively short intervening period. Under those
16 circumstances, the Court declines to make any judicial determination that the District
17 violated California's Public Records Act pursuant to Government Code § 6529.

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22 ⁶ Aside from this contention, the only other argument posited by the District for a reduction of the
23 fees incurred in litigating the present fees action is that the hourly fees of two associates who worked on
the case should be downward adjusted. See Decl. of Gabriela Flowers, ¶ 10, Ex. C. As discussed above,
however, that argument has already been rejected.

24 ⁷ It is unclear whether the District had paid those amounts ordered by the hearing officer at the
25 time it served its Offer of Judgment, although as indicated above it appears that issue is now resolved.
26 The Offer to Compromise itself refers, in addition to attorneys' fees, "damages and remedies for all alleged
27 injuries of any nature now accrued or otherwise recoverable arising from the facts alleged in this action."
See Offer of Judgment, Ex. D to the Flowers Decl., 2:2-3. On its face, this language would appear to
28 include the relief ordered by the hearing officer. If the roughly \$35,000.00 in reimbursement for M.M-T's
placement at Springstone and related expenses is added to the administrative hearing attorneys' fees
awarded by this motion, the discrepancy between Plaintiffs' ultimate recovery and the amount of the Offer
of Judgment obviously becomes even more marked.

1 **CONCLUSION**

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3 Based on all of the foregoing, Plaintiffs' Motion for Attorneys' Fees (ECF No. 21)
4 is hereby GRANTED in part as follows:

- 5 1. Attorneys' fees are awarded to Plaintiffs in the amount of \$99,545.25 for
6 attorneys' fees incurred in the underlying administrative due process
7 proceeding.
- 8 2. Attorneys' fees are awarded in the sum of \$21,567.50 for fees incurred in
9 litigating the present action.
- 10 3. Costs expended in this action are awarded in the amount of \$464.35.
- 11 4. Total attorneys' fees and costs are therefore awarded to Plaintiffs in the sum
12 of \$121,577.10.

13 IT IS SO ORDERED.

14 Dated: July 20, 2017

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16 MORRISON C. ENGLAND, JR.
17 UNITED STATES DISTRICT JUDGE
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