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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

B.M., a minor child by and through R.M.,)	Civil No. 08cv412-L(JMA)
Plaintiff,)	ORDER GRANTING PLAINTIFF'S
v.)	MOTION FOR ATTORNEYS' FEES
ENCINITAS UNION SCHOOL)	[[doc. #85]
DISTRICT,)	
Defendant.)	

Plaintiff moves for attorneys' fees in the amount of \$29,350.80. The motion has been fully briefed and is considered on the papers submitted without oral argument under Civil Local Rule 7.1(d)(1). For the reasons set forth below, the motion will be granted.

I. Background

On March 4, 2008, plaintiff filed this appeal from an Office of Administrative Hearings ("OAH") decision under the Individuals with Disabilities Education act, 20 U.S.C. § 1400, *et seq.* In addition to its answer, defendant filed a counterclaim on March 26, 2008, asserting a claim for relief under the IDEA and seeking declaratory and injunctive relief based on plaintiff's alleged breach of the Settlement Agreement entered between plaintiff and his parents and defendant concerning plaintiff's special education programming.

By Order filed January 5, 2009, the Court dismissed the counterclaim noting that "it appears unlikely that counterclaimant can state a claim under the facts it has presented," (Order

1 at 5) but nevertheless granted defendant leave to file an amended counterclaim. Defendant did
2 not file an amended counterclaim.

3 Ultimately, the Court reviewed the plaintiff's action and found in defendant's favor.
4 Judgment was entered on February 14, 2013. [doc. #82]

5 Plaintiff now moves for attorneys' fees in connection with the for his successful dismissal
6 of the district's counterclaim. As noted above, defendant opposes the award of attorneys' fees.

7 **II. Legal Standard**

8 This inquiry has three steps. First, the Court must determine whether Plaintiffs were the
9 prevailing party. If so, the Court then considers whether to grant attorney's fees. If the Court
10 exercises its discretion to grant fees, then the Court must consider what would constitute
11 reasonable attorney's fees.

12 **A. Prevailing Party**

13 The Court must first determine whether plaintiffs were the prevailing party. The Court
14 can then inquire into whether it should exercise its discretion to grant fees, and, if so, determine
15 what would constitute reasonable fees. *See, e.g., J.M. v. Capistrano Unified School Dist.*, 2011
16 WL 1326905, *2 (C.D. Cal. Mar.31, 2011).

17
18 For the purpose of attorneys' fee awards, a prevailing party is defined as “a party which succeeds
19 on any significant issue in litigation which achieves some of the benefit the parties sought in
20 bringing suit.” *Anaheim Union*, 464 F.3d at 1034. A party is “prevailing” where it can “point to a
21 resolution of the dispute which changes the legal relationship between itself and the defendant.”
22 *Id.* (*citing Tex. State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 792 (1989)). To
23 be considered a “prevailing party” under a fee shifting provision, such as in the IDEA, the party
24 “must meet two criteria: he must achieve a material alteration of the legal relationship of the
25 parties, and that alteration must be judicially sanctioned.” *Jankey v. Poop Deck*, 537 F.3d 1122,
26 1129–30 (9th Cir. 2008). “The success must materially alter the parties' legal relationship, cannot
27 be de minimis and must be causally linked to the litigation brought.” *Van Duyn v. Baker Sch.*
28 *Distr.*, 502 F.3d 811, 825 (9th Cir.2005). “The prevailing party inquiry does not turn on the

1 magnitude of the relief obtained.” *Id.* (citing *Farrar v. Hobby*, 506 U.S. 103 (1992)).

2 B. Whether Attorneys’ Fees Should Be Awarded

3 C. **Reasonable Attorneys’ Fees**

4 If a plaintiff is entitled to an award of attorney's fees, then the district court should be guided by
5 the considerations identified in *Hensley v. Eckerhart*. In *Hensley*, the Court approved the
6 lodestar method for calculating fees in civil rights litigation: multiplying the number of hours
7 reasonably expended on the litigation by the reasonable hourly rate. See 461 U.S. at 433.

8
9 In determining the appropriate number of hours to be included in a lodestar calculation, the
10 district court should exclude hours “that are excessive, redundant, or otherwise unnecessary.”
11 *Hensley*, 461 U.S. at 434. “The party seeking the award should provide documentary evidence to
12 the court concerning the number of hours spent[.]” *McCown v. City of Fontana*, 565 F.3d 1097,
13 1102 (9th Cir.2009).

14
15 In determining the appropriate hourly rate to be included in a lodestar calculation, the district
16 court must look to the rate prevailing in the community for similar work performed by attorneys
17 of comparable skill, experience, and reputation. *Chalmers v. City of Los Angeles*, 796 F.2d
18 1205, 1210 (9th Cir.1986), reh'g denied, amended on other grounds, 808 F.2d 1373 (9th
19 Cir.1987). “The fee applicant has the burden of producing satisfactory evidence, in addition to
20 the affidavits of its counsel, that the requested rates are in line with those prevailing in the
21 community for similar services of lawyers of reasonable comparable skill and reputation.”
22 *Jordan v. Multnomah County*, 815 F.2d 1258, 1262–63 (9th Cir.1987) (citing *Blum v. Stenson*,
23 465 U.S. 886, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984)).

24 After determining prevailing party status, the Court turns to the extent of plaintiff's victory. See
25 *Aguirre v. Los Angeles Unified School Dist.*, 461 F.3d 1114, 1120–21 (9th Cir.2006) (holding
26 that amount of attorneys' fees under IDEA is contingent upon the degree of success the parent
27 attained on her claims); *Thomas v. City of Tacoma*, 410 F.3d 644, 649 (9th Cir.2005) (“The
28 bulk of discretion retained by the district court lies in the second, significance of relief,

1 inquiry.”). The Supreme Court has stated that “the most critical factor in determining the
2 reasonableness of a fee award is the degree of success obtained.” *Hensley v. Eckerhart*, 461 U.S.
3 424, 436, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) (applied to IDEA claims in *Aguirre*, 461 F.3d at
4 1121); see also *Van Duyn v. Baker School Dist.* 5J, 502 F.3d 811, 826 (9th Cir.2007)
5 (remanding to district court for determination of attorney's fees and noting district court's
6 discretion to consider that plaintiff prevailed on only one issue). Courts in the Ninth Circuit
7 regularly reduce fee awards in IDEA cases based on limited degrees of success. See *J.M. v.*
8 *Capistrano*, 2011 WL 1326905, *4 (C.D.Cal. Mar.31, 2011) (reducing fees by 66.7% where
9 plaintiffs prevailed on two out of twenty-two issues which resulted in \$79,000 in compensation);
10 *S.A. v. Tulare County Office of Educ.*, 2009 WL 4048656, *7 (E.D.Cal. Nov.20, 2009)
11 (reducing fees by 90% where plaintiffs achieved partial success on an issue that was unrelated to
12 the substantial issues litigated).

13 The Court will begin with plaintiffs' fee calculation, using the lodestar figure. “The most useful
14 starting point for determining the amount of a reasonable fee is the number of hours reasonably
15 expended on the litigation multiplied by a reasonable hourly rate.” *Hensley*, 461 U.S. at 424; see
16 also, *Aguirre*, 461 F.3d at 1118 (recognizing that *Hensley* applies to IDEA attorneys' fees
17 statute). “This figure, commonly referred to as the ‘lodestar,’ is presumed to be the reasonable
18 fee.” *Id.* To support the lodestar calculation, the prevailing plaintiff must submit documentary
19 evidence detailing the number of hours spent and how it determined the hourly rate requested.
20 *Id.* After the Court calculates the lodestar, and “in rare and exceptional cases,” the Court may
21 adjust the lodestar “based on factors not subsumed in the initial calculation of the lodestar.” *Van*
22 *Geren v. Guarantee Mutual Life Ins.*, 214 F.3d 1041, 1045 (9th Cir.2000); but see 20 U.S.C. §
23 1415(i)(3)(c) (lodestar fee may not be increased for claims under the IDEA).

24
25 Beginning with the hourly fee, attorneys' fees are to be calculated “based on rates prevailing in
26 the community in which the action or proceeding arose for the kind and quality of services
27 furnished.” 20 U.S.C. § 1415(i)(3)(C). The relevant community is the forum in which the district
28 court sits. *Davis v. Mason County*, 927 F.2d 1473, 1488 (9th Cir.1991). Here, that would be San

1 Francisco, California. “The established standard when determining a reasonable hourly rate is
2 the rate prevailing in the community for similar work performed by attorneys of comparable
3 skill, experience, and reputation.” *Camacho v. Bridgeport Financial, Inc.*, 523 F.3d 973, 979 (9th
4 Cir.2008).

5 **Discussion**

6 Additionally, Plaintiff has met his burden of documenting the time his attorney spent on the
7 District Court matter and proving the attorney's hourly rate of \$400 for federal district court
8 matters is reasonable. Plaintiff submitted declarations by attorneys with comparable skill and
9 experience, who charge similar hourly rates. Like Plaintiff's counsel, these attorneys are
10 admitted to practice law before this Court and specialize in special education law. These
11 declarations affirmed the prevailing hourly rate in the Los Angeles community was \$350 to \$525
12 for special education cases heard at the District Court at the time of filing. Plaintiff's counsel has
13 been representing special education students in due process hearings since 1996 and at the time
14 she was working on the Action, her rate was \$400 per hour for federal district court matters.
15 Therefore, by providing declarations of attorneys with similar experience and hourly rates,
16 Plaintiff has sufficiently met his burden of producing satisfactory evidence that the requested
17 rate of \$400 is in line with those prevailing in the community for similar services.

18
19 Plaintiff, however, has requested that his counsel's current rate of \$475 be awarded for services
20 performed on the District Court matter during 2009. The Court finds that Plaintiff has not
21 provided any reason to justify a retroactive increase in fees and thus awards fees at the hourly
22 rate charged at the time the services were performed.


23
24 *4 Furthermore, the Court finds that, with a minor exception, Plaintiff properly submitted
25 documentary evidence detailing the number of hours spent on the District Court matter.
26 Although there were three federal matters taking place, Plaintiff's counsel provided a detailed
27 billing statement specifically for Case Number 08–1047 in the Amended Notice of Motion in
28 October, 2009, Ex. 5. The only exception to this was the settlement-related work billed for;

1 Plaintiff's counsel billed 4.25 hours for settlement-related work without specifying which case
2 number it was related to. Therefore, the 4.25 hours should be reduced by two-thirds (2.83) in
3 order to compensate for the possibility that it was related to all three cases. Accordingly,
4 Plaintiff should only be reimbursed for 1.42 hours of the 4.25 total. Otherwise, Plaintiff's counsel
5 met her burden by providing the dates she worked on the District Court matter, described the
6 work she did, and tallied the number of hours she spent. In total, Plaintiff calculated the total
7 time spent on the matter to be 61.30 hours.

8 The claim plaintiffs prevailed on
9

10 **IT IS SO ORDERED.**

11 DATED: May 11, 2013

12 
13 M. James Lorenz
United States District Court Judge

14 COPY TO:

15 HON. JAN M. ADLER
16 UNITED STATES MAGISTRATE JUDGE

17 ALL PARTIES COUNSEL
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