

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

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| B.M., a minor, by his next friend T.M. |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 4:21-cv-00495-DGK |
| |) | |
| LIBERTY SCHOOL DISTRICT # 53, |) | |
| |) | |
| Defendant. |) | |

ORDER DETERMINING AWARD OF ATTORNEY’S FEES

On May 7, 2021, Plaintiff B.M., by and through next friend T.M., filed a complaint in the Circuit Court of Clay County, Missouri. Compl., ECF No. 1-2. Plaintiff, a mentally impaired child, alleges that Defendant Liberty School District # 53 has discriminated against, harassed, and retaliated against Plaintiff in violation of the Missouri Human Rights Act (MHRA). *Id.* The Complaint alleges that Defendant’s staff purposefully tried to elicit negative reactions from Plaintiff by placing him in uncomfortable situations and by frequently changing his school schedule. Compl. ¶ 33–39. The Complaint also includes allegations that Defendant failed to accommodate Plaintiff’s disabilities. *Id.* ¶ 24.

Plaintiff served the Complaint on Defendant on June 15, 2021. Defendant removed the case to this Court the same day, arguing that this Court possessed federal question jurisdiction because “the substantive issue in [the Complaint] is whether [Defendant] provided adequate educational services to Plaintiff B.M—a requirement created by the IDEA.” Notice, ECF No. 1. On November 15, 2021, the Court remanded the case, Order, ECF No. 20. Because—among other reasons—Defendant’s arguments for federal subject matter jurisdiction were foreclosed by Eighth Circuit law, the Court also held that Defendants lacked an objectively reasonable basis for removal

and that Plaintiff is therefore entitled to attorney's fees incurred as result thereof. *See id.* at 4–5; Order, ECF No. 24. Plaintiff and Defendant submitted briefing on Plaintiff's appropriate attorney's fee award, ECF Nos. 22, 26, which the Court calculates below.

Both parties agree that a lodestar analysis is appropriate in this case, however they disagree on Plaintiff's appropriate hourly rate and proposed hours. Plaintiff requests an hourly rate of \$425, while Defendant argues that \$400 is more appropriate. Defendant argues Plaintiff's requested rate is too high given Plaintiff's Counsel's experience. Defendant points to the data published in the *Missouri Lawyer's Weekly* on hourly rates, which shows that Missouri attorneys practicing civil rights litigation charged between \$100 and \$575 per hour in 2021. Def. Ex., ECF No. 26-1. But this data only shows that Plaintiff's requested hourly rate is within an appropriate range. Given Plaintiff's Counsel's experience—over nine years of civil-rights practice in which he has briefed and/or argued multiple cases before the Missouri Court of Appeals, the Missouri Supreme Court, the United States District Court for the District of Kansas, and the United States District Court for the Western District of Missouri, Edelman Aff. ¶ 3–7, ECF No. 22-1, the Court concludes that Plaintiff's requested rate is reasonable.

Regarding Plaintiff's proposed hours, Plaintiff's Counsel calculates that he expended 29.9 hours as a result of Defendant's removal. This equates to 4.9 hours briefing Plaintiff's Opposition to Defendant's Motion to Dismiss, ECF No. 6, and Plaintiff's Motion to Remand, ECF Nos. 7, 8, and 25 hours briefing Plaintiff's reply in support of the motion to remand, ECF No. 14. Defendant does not take issue with Plaintiff's 4.9 proposed hours briefing the opposition to the motion to dismiss and the motion to remand, but argues that Plaintiff's should only be compensated for 14 hours briefing the reply in support of the motion to remand. However, Defendant's brief in opposition to the motion to remand, ECF No. 12, made numerous arguments which obfuscated the

applicable law, and Plaintiff was within his right to respond to each argument. The Court finds 25 hours is a reasonable amount of time required to respond to each argument. Plaintiff is entitled to an attorney's fees of \$12,707.50.

IT IS SO ORDERED.

Date: September 16, 2022

/s/ Greg Kays
GREG KAYS, JUDGE
UNITED STATES DISTRICT COURT