UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

A.R., as Parent and Natural Guardian of N.B., a Minor,

Plaintiff,

- against -

NEW YORK CITY DEPARTMENT OF EDUCATION, a/k/a THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK,

Defendant.

----------X

12 Civ. 7144

OPINION

A P P E A R A N C E S:

Attorney for Plaintiff

ARTHUR BLOCK ATTORNEY AT LAW
437 Madison Avenue, 29th Floor
New York, NY 10022
By: Arthur R. Block, Esq.

LAW OFFICE OF ANTON PAPAKHIN
1359 Coney Island Avenue
Brooklyn, NY 11230
By: Anton Papakhin, Esq.

Attorney for Defendant

ZACHARY W. CARTER
CORPORATION COUNSEL OF THE CITY OF NEW YORK
100 Church Street
New York, NY 10007
By: Eric Porter, Esq.

Sweet, D.J.

The plaintiff A.R. ("Plaintiff") has moved pursuant to Rule 7 of the Federal Rules of Civil Procedure and 20 U.S.C. § 1415(i)(3) for attorneys' fees and costs against defendant New York City Department of Education ("DOE" or the "Defendant") in the amount of $313,482.50.

Upon the conclusions set forth below, the motion of the Plaintiff is granted in part and denied in part, resulting in an award of $217,388.25.

Background and Prior Proceedings

The facts and prior proceedings in this action are set forth in this Court's prior decision and order dated September 16, 2013, familiarity with which is assumed. (See Dkt. No. 24.) Previously stated facts relevant to this motion and intervening facts are stated below.

Plaintiff brought this action under the Individuals with Disabilities Education Act ("IDEA") on September 21, 2012, seeking tuition funding in the amount of $129,080.30 for the full cost of her granddaughter N.B.'s tuition for a six month

stay at the Judge Rotenberg Center ("JRC"). JRC is a residential facility located in Massachusetts, at which Plaintiff unilaterally placed N.B. for the latter half of the 2011-12 school year. Plaintiff's complaint constituted an appeal from an administrative decision by the New York State Education Department's Office of State Review.

On January 9, 2014, the parties entered into a stipulation and order of partial settlement (the "Settlement Agreement") whereby all claims brought by Plaintiff, or which could have been brought by Plaintiff in connection with the action, were dismissed with prejudice in exchange for certain consideration, with the exception of Plaintiff's attorneys' fees and costs incurred in connection with the action, which remained the sole issue in dispute. (See Dkt. No. 28.)

Defendant contended that retainer agreements between Plaintiff's counsel and the Plaintiff (the "Retainer Agreements") provided that Plaintiff's counsel had already been paid by JRC for their work on the case and requested materials related to these payments. Defendant subsequently filed a motion to compel the production of such documents.

On March 19, 2014 and March 26, 2014, the Court granted the DOE's motion to compel and directed Plaintiff's counsel to produce records related to their respective agreements and payment relationships with JRC. On March 20, 2014, Plaintiff's counsel produced their respective letter agreements with JRC ("JRC Agreements"). On April 2, 2014, they produced their respective invoices sent to JRC for work done on Plaintiff's case.

The instant motion for attorneys' fees was filed on February 24, 2014 and was marked fully submitted on May 14, 2014. Since the submission of the motion, Plaintiff's counsel has submitted supplemental time logs, to which Defendant has responded, which are addressed by this opinion.

Applicable Standard

A prevailing party[1] who is the parent of a child with a disability in any action brought under the IDEA may be entitled to attorneys' fees and other costs. 20 U.S.C. § 1415(i)(3)(B)(i)(I). District courts are afforded "considerable

[1] Plaintiff qualifies as a prevailing party as per the Settlement Agreement. (See Dkt. No. 28 ¶ 3 ("For the purposes of awarding attorneys' fees in connection with the . . . [a]ction, the parties agree that Plaintiff is a prevailing party.").)

discretion" in determining the amount of fees in any given case. Barfield v. N.Y. City Health & Hosps. Corp., 537 F.3d 132, 151 (2d Cir. 2008). Courts must determine whether fees are "reasonable" and "based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished" and additionally, whether the number of hours expended is reasonable. 20 U.S.C. § 1415(i)(3)(B)-(C); G.M. v. New Britain Bd. of Educ., 173 F.3d 77, 84 (2d Cir. 1999) (noting that district courts should multiply the number of hours reasonably expended by a reasonable hourly rate to derive a fee award).

The Court may also examine equitable considerations relevant to an application for attorneys' fees. See Faraci v. Hickey-Freeman Co., 607 F.2d 1025, 1028 (2d Cir. 1979) ("the express grant of [legislative] authority to award fees presumes continued application of equitable considerations in appropriate cases, both to effectuate the broader legislative purpose and to do justice in the particular case"). Ultimately, "courts apply the lodestar method, whereby an attorney fee award is derived by multiplying the number of hours reasonably expended on the litigation [by] a reasonable hourly rate." A.R. ex rel R.V. v. New York City Dep't of Educ., 407 F.3d 65, 79 (2d Cir. 2005) (internal quotation marks and citations omitted).

Discussion

1. The JRC Agreements

The relevant terms of the JRC Agreements for each of Plaintiff's counsel, Arthur R. Block ("Block") and Anton Papakhin ("Papakhin"), are briefly summarized below.

Block's agreement notes that Block has been working with JRC for over four years. (Porter Decl. Ex. A. at 1.) The agreement notes, with respect to the representation of parents:

> . . . the attorney-client relationships is between me and each parent. The relationship between me and JRC is a payment agreement, There is a retainer agreement between my firm and each of the parents setting forth, among other facts: a) the parent is my client with respect to the representation; b) the parent has no obligation to pay my fees, but it is obligated to cooperate in my firm's claim for prevailing party attorney's fees against the school district; c) JRC is advancing part of the fee for my professional services; d) JRC's advance of fees does not entitle it to interfere with my independent professional judgment in the parent's case; e) the parent consents to my sharing of confidential information about the case with JRC representatives as needed to prosecute the parent's claims; f) the decision of a parent to place the child at JRC was made prior to my representation of the parent and without my involvement; and g) neither I nor the parent is aware of any conflict of interest between my

> representation of the parent and my attorney-client relationship with JRC in other matters.

(Id. at 2.)

Block's agreement also notes that the hourly rate charged to JRC is less than his market rate and notes that, in 2011, Block's market rate was $450-500. (Id.)

Papakhin's agreement notes, in relevant part, that Papakhin "will do [his] utmost to protect [JRC's] interests." (Porter Decl. Ex. B. at 3.) However, the agreement also states that JRC must remember that it is "not [Papakhin's] client and [he] will not engage in any conduct that conflicts with [his] professional responsibility to parents and their children." (Id.)

Papkhin's agreement further states that the non-refundable fee for every case seeking public funding for residential placement of a new student at JRC will be $5,000 and if the case proceeds to an impartial hearing, another $5,000 will be charged. (Id. at 2.) The agreement notes that the "total flat fee of $10,000 will be based on an hourly rate of $200 per hour for time spent by [Papakhin]" and that the fee is

"inclusive of all legal fees, out-of-pocket costs and disbursements." (Id.)

2. Equitable Considerations Do Not Bar An Award Of Fees In This Case

Defendant contends that the JRC Agreements and invoices indicate that Block has represented both JRC and parents such as plaintiff in a variety of matters since at least 2007, and is paid by JRC for these efforts and that Papakhin has brought claims on behalf of parents seeking tuition funding for JRC since at least 2009, and is also paid by JRC for his efforts. Defendant contends that the "relationship between these attorneys and JRC . . . is wholly unique in the DOE's experience." (Def.'s Opp'n 3; Porter Decl. Exs. A-B.) The JRC Agreements and invoices reflect that JRC has paid fees to Block and Papakhin in the instant action and that Block and Papakhin have no obligation to repay such fees unless they recover fees from the DOE. (Porter Decl. Ex. A. at 2; Ex. B. at 2.)

Defendant raises a number of equitable arguments in opposition to Plaintiff's fee motion, including that: (1) Plaintiff's counsel's agreements with the JRC raise inherent conflicts of interest, (2) JRC's payment of fees was not necessary to provide Plaintiff with representation, and thus

Plaintiff's case does not implicate the purpose of the IDEA's fee-shifting provision, and (3) the fees Plaintiff seeks do not further the purpose of the fee-shifting provision.

a. The JRC Agreements Do Not Raise Inherent Conflicts of Interest

Defendant contends that the JRC Agreements, read together with the Retainer Agreements, implicate several New York Rules of Professional Conduct ("NYCRR"). Defendant points to three conditions that it contends create a conflict of interest: (1) provisions in the Retainer Agreements reflect that Plaintiff's counsel may withdraw from representing any or all of the parents associated with JRC, including Plaintiff, should JRC fail to pay counsel's fees, essentially creating a risk that a parent may lose her counsel midstream because the paying third party no longer considers the parent's claim to be a prudent investment; (2) the long-standing relationship between Plaintiff's counsel and JRC creates the inherent possibility of conflict with the best educational interests of the parents and their child, in that the attorneys may be incentivized to direct a parent to JRC when that residential facility may not, in fact, be the most appropriate placement for a student; and (3) the Retainer Agreements "raise serious questions" regarding whether

Plaintiff has in fact provided informed consent to the third party relationship between Plaintiff's counsel and JRC. (See generally Def.'s Opp'n 4-10.)

Defendant cites to several provisions of the NYCRR in support of its arguments, including Rule 1.7, Rule 1.16(c)(5), and Rule 1.8(f). As discussed below, none of these provisions is implicated in this action or timely invoked by Defendant.

Defendant contends that Plaintiff's attorneys' agreements with JRC authorize them to withdraw "midstream" from representing Plaintiff if JRC chooses to not pay the attorneys' fees in contravention of Rules 1.7 and 1.16. (Def.'s Opp'n 5-7.)

Pursuant to Rule 1.7 of the NYCRR, an attorney may not represent a client if a "reasonable lawyer would conclude that either: (1) the representation will involve the lawyer in representing differing interest; or (2) there is a significant risk that the lawyer's professional judgment on behalf of a client will be adversely affected by the lawyer's own financial, business, property or other personal interests." 22 NYCRR § 1200.0 Rule 1.7(a). Rule 1.16(c)(5) states a lawyer may withdraw from representing a client when "the client

deliberately disregards an agreement or obligation to the lawyer as to expenses or fees."

Defendant's contentions are speculation about what might have happened had JRC chosen to cease payment. JRC did not fail to pay advances it had agreed to make throughout the duration of the litigation. Defendant does not allege that Plaintiff's counsel withdrew "midstream."[2]

Defendant's contentions that Block and Papakhin's relationships with JRC create the inherent possibility of conflict with the best educational interests of the parent and her child have not been established in this action. Defendant states that the "lucrative and long-standing relationship" between Block, Papakhin and JRC may incentivize the attorneys to direct a parent to JRC when that residential facility may not, in fact, be the most appropriate placement for a student.

---

[2] In any case, in neither of the Retainer Agreements does it say that nonpayment by JRC is a ground for withdrawal of representation of A.R. The language emphasized by Defendant in the JRC Agreements as problematic can be read to indicate that if JRC stops making payments that are due under the agreement, then JRC alone does not have the right to stop the attorney from seeking to withdraw from representing one or more of the parents. Such a provision does not speak to whether the attorney would in fact withdraw his representation of any of the parents if JRC stopped advancing part of his fee, or whether he would be entitled to withdraw from representation. Indeed, both Retainer Agreements, as described further below, state that the relationship with JRC will not interfere with the attorneys' representation of A.R. (See Block Decl. Ex. E; Papakhin Decl. Ex. D.)

However, the facts in this case appear indicate otherwise. A.R. was referred to JRC by the psychiatrist who treated N.B. at Kings County Hospital. A.R. did not meet Papakhin until three months after JRC gave A.R. an offer of admission. (See Papakhin Reply Decl. ¶ 13; Block Reply Decl. ¶¶ 15-19.) The fact that Papakhin's agreement with JRC fails to include the phrase "the decision of the parent to place the child at JRC was made prior to my representation of the parent and without my involvement," as it does in Block's agreement with JRC, does not establish a conflict. Defendant's assertion that "Papakhin's billing records reflect that he contacted JRC to inquire about the availability of space there for N.B. shortly after meeting plaintiff for the first time" does not establish a conflict of interest arising out of the JRC placement. (See Def.'s Opp'n 7-8.)

Defendant further asserts that the Retainer Agreements implicate informed consent rules and contends that the Retainer Agreements "(1) fail to explain the availability of alternative counsel, (2) provide only minimal detail regarding the nature of their relationship with JRC, (3) do not appear to disclose the possibility that either attorney may withdraw if JRC stops or delays paying fees, and (4) do not appear to disclose the actual amount JRC pays them," which, Defendant contends, implicates

Rule 1.8(f), in addition to Rules 1.7 and 1.16 cited above. (Def.'s Opp'n 8.)

Rule 1.8(f) provides that a lawyer "may not accept compensation for representing a client, or anything of value related to the lawyer's representation of the client, from one other than the client unless: (1) the client gives informed consent; (2) there is no interference with the lawyer's independent professional judgment or with the client-lawyer relationship; and (3) the client's confidential information is protected as required by Rule 1.6."

The Defendant has failed to establish a lack of informed consent, as its claim is directly contradicted by the Retainer Agreements that A.R. signed. (See Block Decl. ¶¶ 86-87, Ex. E; Block Reply Decl. ¶¶ 63-63.) The Retainer Agreements inform A.R. about the attorneys' relationship with JRC, each describing it as a separate relationship from the one each attorney has with A.R. Each Retainer Agreement affirms that A.R. and N.B. are the clients and states that certain confidential information that should be shared for purposes of litigating the claim. (Block Decl. Ex. E; Papakhin Decl. Ex. D.) Neither Retainer Agreement lists non-payment by JRC as a

basis for withdrawal in the "Ending of Attorney-Client Relationship" section.[3]

Defendant has not established a conflict of interest nor an equitable basis to deny a fee award to Plaintiff's counsel.[4]

b. The IDEA's Fee-Shifting Provision Does Not Bar JRC's Payment Of Fees

Defendant contends that JRC's payment of fees to Plaintiff's counsel was not necessary to provide Plaintiff with representation and, thus, the representation does not implicate the purpose of the fee-shifting provision. Specifically, Defendant contends that it is unlikely that Plaintiff would have been deterred from bringing her action had JRC not paid her fees and asserts that the IDEA's fee shifting provision has created a

---

[3] In the case of Block's Retainer Agreement with A.R., the language regarding conflict of interest is particularly explicit. Block's Retainer Agreement with A.R. states that JRC is aware that it may not interfere with Block's exercise of independent professional judgment while representing A.R., states a belief that there is no present conflict of interest, asks the client to contact Block if she is aware of a conflict, and provides her signature on the retainer letter will "indicate [her] consent to [Block's] concurrent relationship with JRC and to the advancement of part of the legal fees by JRC." (Block Decl. Ex. E.)

[4] Additionally, it is worth noting that Block contends that Defendant's arguments regarding conflict of interest are not timely because Defendant has known of Block and Papakhin's relationship with JRC since prior to the commencement of the instant litigation. (See Block Reply Decl. ¶¶ 55-58, Ex. F.)

market of non-conflicted attorneys at her disposal. Defendant, in effect, seeks to bar JRC from providing interim financing for the fees of Plaintiff's counsel.

The purpose of the IDEA's attorneys' fees award provision - like other civil rights fee-shifting provisions - is to attract effective legal representation and thereby encourage private enforcement of civil rights statutes. See Hensley v. Eckerhart, 461 U.S. 424, 445 (1983). Civil rights attorneys' fee awards are intended to attract qualified counsel even in cases where the anticipated monetary recovery may otherwise be too small to create an incentive for representation. See Kassim v. City of Schenectady, 415 F.3d 246, 252 (2d Cir. 2005); see also Milwe v. Cavuoto, 653 F.2d 80, 84 (2d Cir. 1981) ("The award of counsel fees is not intended to punish the defendant in any way. Rather it is to permit and encourage plaintiffs to enforce their civil rights. To declare those rights while simultaneously denying the award of fees would seriously undermine the declared congressional policy.") (citations omitted). "Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee." Hensley, 461 U.S. at 435.

Defendant cites to a recent decision by the Honorable Kevin Castel to support its contention there is a rich market of firms and attorneys specializing in special education litigation. The precedent cited by Defendant does not in fact preclude fees on the basis of a rich market; rather, Judge Castel considered the existing market as one factor on which to make a determination of a reasonable hourly rate. See K.F. v. New York City Dep't of Educ., No. 10 Civ. 5465, 2011 WL 3586142, *3-6 (S.D.N.Y. Aug. 10, 2011). Defendant's assertion that it is likely that Plaintiff would not have been deterred from bringing her action had JRC not paid her counsels' fees, because she could have sought other options from within that rich market, fails to establish a basis for a denial of fees. Defendant has not cited any applicable authority to support its contention that the arrangement with JRC, under which attorneys' fees were advanced by JRC, should bar Plaintiff's counsel from recovering fees because Plaintiff could have chosen another attorney who did not benefit from that arrangement.

Defendant separately contends that the IDEA limits the types of parties who can recover fees only to parents and, in certain situations, state and local agencies and that, as a result, JRC should be treated as an impermissible stand-in litigant. To support its contentions, Defendant analogizes to

case law regarding the Equal Access to Justice Act ("EAJA"), asserting that JRC is an ineligible third party in effect seeking a fee award through an eligible surrogate, and the Court should employ a "deterrence" analysis, where it would "focus on whether the plaintiff would have been deterred from bringing the action had the fee-shifting provision not been available," as in EAJA cases. If the Plaintiff would not have been deterred, Defendant contends, the Court should decline to award fees because the purpose of the fee-shifting provision - to remove from a plaintiff's shoulders the deterrent effect of the cost of litigation - is not implicated here.

Neither party has been able to point to case law in our circuit that deals squarely with this issue. Other courts, however, have held that third party advancement of legal fees to a civil rights attorney is not relevant to the calculation of a prevailing party attorney's fee award. See Yankton School Dist. v. Schramm, 93 F.3d 1369, 1377 (8th Cir. 1996) (holding that the fact that plaintiffs received free legal representation by a publicly funded group did not affect their right to fees under the IDEA); see also Brewster v. Dukakis, 786 F.2d 16 (1st Cir. 1986); see also Continental Bldg. Co., Inc. v. Town of North Salem, 150 Misc.2d 145, 567 N.Y.S.2d 328 (1991), aff'd as modified 211 A.D.2d 88 (3d Dep't 1995).

In Brewster, an association of service providers made payments to a public interest law firm to provide free representation for the plaintiff class of individuals with disabilities with regard to the ongoing implementation of an institutional reform consent decree. The defendants moved for discovery of the details of the third party payments and arrangements. The district court denied the discovery motion and awarded attorneys' fees. The First Circuit, while noting that it would have been preferable for the district court to have allowed some limited discovery only to verify that the bills accurately reflected work on behalf of the plaintiff class, affirmed the decision.

Defendant contends that analogy to the situation in Brewster is misplaced. In particular, Defendant asserts that a Court Monitor in Brewster recommended that the retainer agreement with the fee-paying third party be terminated because of possible conflicts of interest underscores its arguments regarding conflict of interest in this case. (Def.'s Opp'n 9-10.) However, the Brewster court did, in fact, ultimately award attorneys' fees to plaintiffs' counsel for work they performed on behalf of the class that had been paid by the third party.

Brewster has also been followed by at least one New York State Court. In Continental, both the trial court and the appellate court rejected the local government's assertion that it did not have to pay attorney's fees to a prevailing civil rights plaintiff pursuant to 42 U.S.C. § 1988 because a third party had funded a portion of the plaintiff's legal representation. Relying on Brewster, the state courts found that the principle that civil rights attorney's fees cannot be reduced because funding of legal services was provided by public interest law firms, also extended to and included situations where such funding was provided by other kinds of third parties. The trial court stated:

> Finally, this Court cannot agree with defendants' allegations that the third party funds contributed to pay a portion of plaintiff's expenses, including compensation to plaintiff's attorney bar such an award. The federal courts have determined that the contribution of fees by a public service organization to help defray a prevailing party's litigation expenses does not serve as a basis to deny an award of attorneys fees. This determination has not been construed, limited or restricted so as to apply only to those narrowly circumscribed situations where such contributions have been made by a public service organization. Nor will this Court do so here.

Continental, 150 Misc.2d at 150 (citations omitted).

To further support its argument for denying a fee award, Defendant cites to Children's Center for Developmental

Enrichment v. Machle, 612 F.3d 518, 522 (6th Cir. 2010) for the proposition that the IDEA "authorizes attorney's fees for parents and, in certain situations, state and local educational agencies . . . [and] does not authorize attorney's fees for private schools." (Def.'s Opp'n 13.) Children's Center, however, is inapplicable to the instant case.

In Children's Center, the school district placed a child with special needs in a private school. The private school expelled the student and the parent sued the school district and private school under, inter alia, the IDEA. Both a court and an administrative officer ruled that there was no IDEA claim that could be stated against the private school. Subsequently, the private school sued the parent for prevailing attorney's fees under, inter alia, the IDEA. The court found that the private school was not entitled to attorneys' fees under the statute. Here, JRC did not expel N.B. against the parent's wishes; it enrolled her as a unilateral placement at the parent's request and assisted in engaging legal representation. A.R. did not sue JRC; A.R. sued Defendant, the DOE. JRC is not, in fact, a litigant in this action.

3. Calculation Of Attorneys' Fees

Courts in this circuit interpret the IDEA fee provision "in consonance with those of other civil rights fee-shifting statutes." I.B. v. New York City Dept. of Educ., 336 F.3d 79, 80 (2d Cir. 2003). Thus, courts must ask whether "the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." Blum v. Stenson, 465 U.S. 886, 895 n. 11 (1984); see also 20 U.S.C. § 1415(i)(3)(B)-(C) ("Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished."). In so doing, courts must employ the "lodestar approach whereby an attorney fee award is derived by multiplying the number of hours reasonably expended on the litigation [by] a reasonable hourly rate" and then may adjust by other factors.[5]

[5] Blanchard v. Bergeron, 489 U.S. 87 (1989) suggests that the factors enumerated in Johnson may be relevant in adjusting a fee award. Johnson sets forth twelve factors: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the level of skill required to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the attorney's customary hourly rate; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the client or the circumstances; (8) the amount involved in the case and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. See Johnson, 488 F.2d at 717-19. These factors are taken under consideration, as appropriate.

Arbor Hill Concerned Citizens Ass'n v. County of Albany, 522 F.3d 182, 189 (2d Cir. 2007); see also Mr. B. v. East Granby Bd. of Educ., 201 Fed. App'x 834, 837 (2d Cir. 2006). However, "'[t]he essential goal in shifting fees (to either party) is to do rough justice, not to achieve auditing perfection.' . . . Trial courts evaluating fee requests 'need not, and indeed should not, become green-eyeshade accountants.'" Torres v. Gristede's Operating Corp., 519 Fed. App'x 1, 3-4 (2d Cir. 2013) (quoting Fox v. Vice, 131 S. Ct. 2205, 2216 (2011)).

The party seeking fees bears the burden of establishing the reasonableness of the rate sought by establishing that the requested rate is "in line with those prevailing in the community . . . ." Blum, 465 U.S. at 896 n. 11. The reasonable hourly rate "is the rate a paying client would be willing pay." Arbor Hill, 522 F.3d at 190.

i. Block's Hourly Rate

Block seeks a rate of $550 per hour, based on (1) over 35 years of experience successfully representing clients in special education matters, (b) federal litigation experience, including cases raising important legal-policy issues, (c) scholarship in the field, and (d) law school teaching about

education policy litigation. (Pl.'s Mem. 11-13; Pl.'s Reply 6; see also Block Decl. ¶¶ 44-75.)

Defendant objects to Block's proposed rate as "unprecedented" and cites to various district court decisions to support its contention that Block should be compensated at a rate of $375 per hour for work done in 2012, $395 per hour for work done in 2013, and $415 per hour for work done in 2014 or, in the alternative, should be compensated at a maximum of $415 per hour for all work done on the instant case. (See Def.'s Opp'n 15-17.) Additionally, Defendant contends that the Court should look to the fees paid by JRC as a touchstone for what Block should be paid for the instant action.

Courts have awarded a range of fees in special education cases for seasoned attorneys. See, e.g., M.C. ex rel. E.C. v. Dep't of Educ., 12 Civ. 9281, 2013 U.S. Dist. LEXIS 78605, *17-19 (S.D.N.Y. June 28, 2013) (awarding $375 per hour); J.S. & S.S. ex rel. Z.S. v. Carmel Central Sch. Dist., 10 Civ. 8021 (Dkt. No. 46) (awarding $415 per hour); E.F. ex rel. N.R. v. New York City Dep't of Educ., 11 Civ. 5243, 2012 WL 5462602, *5 (S.D.N.Y. Nov. 8, 2012) (awarding $475 per hour); T.K. v. N.Y. City Dep't of Educ., 11 Civ. 3964, 2012 U.S. Dist. LEXIS 47311, *16 (S.D.N.Y. Mar. 30, 2012) (awarding $415 per hour).

Given Block's more than 35 years of experience, as well as work on this case, a fee rate of $500 for all work performed is reasonable and commensurate with fee awards granted to attorneys with similar professional experience.[6]

ii. Papakhin's Hourly Rate

Papakhin has amended his claim, seeking an hourly rate of $300, instead of $350, for this case only. Papakhin has approximately eight years of experience working in the field of special education law. (Papakhin Decl. ¶ 13.)

Defendant objects to Papakhin's rate as unreasonable and "far in excess" of a rate for an attorney of his experience. (Def.'s Opp'n 17.) Defendant asserts that a reasonable hourly rate for Papakhin is $165 per hour for his work at the administrative proceeding and $275 per hour for his work on the federal action or, in the alternative, Papakhin's hourly rate should not exceed $275 per hour for any work done on the case. (Def.'s Opp'n 17-18.)

---

[6] Defendant has contended that the Court consider the payments made by JRC to Block in determining the fee award. However, Block's retainer with JRC indicates that the rates in the retainer are set at a discounted rate. (See Block Reply Decl. Ex. A.) An initial discounted rate for a civil rights plaintiff does not create a ceiling for a later award. See Blanchard, 489 U.S. at 93.

Courts have also awarded a range of fees for attorneys with Papakhin's level of experience. See, e.g., G.B. v. Tuxedo Union Free Sch. Dist., 894 F. Supp. 2d 415, 432-33 (S.D.N.Y. 2012) ($300 per hour for an attorney with over fifteen years of experience); Underdog Trucking, L.L.C. v. Verizon Servs. Corp., 276 F.R.D. 105, 109-10 (S.D.N.Y. 2011) ($221 per hour for an attorney with six years of experience); DeCurtis v. Upward Bound Int'l, Inc., 09 Civ. 5378, 2011 U.S. Dist. LEXIS 114001, *22-25 (S.D.N.Y. Sept. 27, 2011) ($275 per hour for associate with approximately five years of experience). In light of precedent in this district, and Papakhin's level of experience, $275 per hour for all work performed during the course of the litigation is a reasonable hourly rate.

b. Number Of Hours Reasonably Expended

In order to determine reasonable fees, federal courts must determine the number of hours reasonable expended on a case. Reiter v. MTA New York City Transit Authority, 457 F.3d 224, 232 (2d Cir. 2006). In reviewing time expenditure, courts consider whether the time spent would have been reasonable under the standards of the private bar for work performed under full fee hourly billing engagements. See Grant v. Martinez, 973 F.2d

96, 99 (2d Cir. 1992) ("The relevant issue, however, is not whether hindsight vindicates an attorney's time expenditures, but whether, at the time the work was performed, a reasonable attorney would have engaged in similar time expenditures."); see also DiFillipo v. Morizio, 759 F.2d 231, 235-56 (2d Cir. 1985). Attorneys who apply for compensation must provide contemporaneous time records specifying for each attorney, "the date, the hours expended, and the nature of the work done." Yea Kim v. 167 Nail Plaza, Inc., 05 Civ. 8560, 2008 U.S. Dist. LEXIS 111900, *4 (S.D.N.Y. Nov. 24, 2008). Courts have the discretion to adjust fee awards upon review of documentation, but must take care not to get bogged down in attempting to achieve auditing perfection. See Fox, 131 S. Ct. at 2216.

Defendant contends that the number of hours that Plaintiff claims are excessive and should be substantially reduced because: (1) Plaintiff's counsel unreasonably protracted the resolution of the controversy, (2) Plaintiff improperly block billed, (3) the amount sought for the litigation of the fees motion is excessive, and (4) Block spent an unnecessary amount of time crafting an improper declaration. Defendant also asserts that Plaintiff's counsel improperly charged for removing billing entries, attendance at oral argument, and reviewing a hearing transcript.

i. Protraction Of Controversy

The IDEA's fee-shifting provision provides that "the court shall reduce" attorneys' fees awarded whenever it finds that "the parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy. 20 U.S.C. § 1415(i)(3)(F)(i) & (iv). Defendant contends that Plaintiff unreasonably protracted the action by (a) opposing the DOE's discovery request for materials related to the payment relationship with JRC and the existence of any obligation to repay JRC in the event Plaintiff recovered fees from DOE and (b) moving to strike portions of the DOE's motion for judgment on the pleadings, separate from and in advance of Plaintiff's substantive opposition on that motion. (Def.'s Opp'n 18-20.)

While Plaintiff's motion to strike was not unreasonable and was dealt with at a later time at the Court's direction, Plaintiff's opposition to Defendant's motion to compel merits a reduction in fees as Plaintiff's opposition to providing responsive documents to the DOE's discovery requests, despite the broad scope of discovery under the Federal Rules of Civil Procedure, was unwarranted. Accordingly, the 62.1 hours

billed by Block, and the 10.7 hours billed by Papakhin (see Def.'s Opp'n 20), in opposing Defendant's motion to compel will be deducted from Plaintiff's fee award.

ii. Block Billing And Billing For Clerical Tasks

Block billing is the practice of "aggregating multiple tasks into one billing entry" which makes it "exceedingly difficult for courts to assess the reasonableness of the hours billed." Wise v. Kelly, 620 F. Supp. 2d 435, 450 (S.D.N.Y. 2008). When block billing is identified, "courts have found it appropriate to cut hours across the board by some percentage." L.V. v. Dep't of Educ., 700 F. Supp. 2d 510, 525 (S.D.N.Y. 2010). Defendant contends that "Block's fee records present repeated uses of 'block billing'" and seeks a 25% across the board reduction of fees. (Def.'s Opp'n 23.) Additionally, Defendant contends that Plaintiff's counsel have billed at their regular rate for a significant number of hours dedicated to performing clerical tasks, such as copying and filing work, which should be billed at a rate of $100 per hour. Defendant asserts that the Court should reduce at least 18.8 hours to a rate of $100 or, in the alternative, apply an across the board percentage reduction. (Def.'s Opp'n 22.)

The billing examples to which Defendant points, for the most part, contain descriptions of compensable work, grouped in one entry because the tasks were presumably (and apparently) related. Though such grouping is not preferred, a 25% reduction is not appropriate. Additionally, there are examples of clerical tasks interspersed within billing entries and, ideally, these types of tasks would be separated out.[7] Because these clerical entries are relatively minor, the Court finds that a reduction of 10% for block billing and clerical entries is adequate and reasonable.[8]

iii. Fees Motion

Defendant contends that the number of hours spent on litigating the fees claim are excessive. While it is within the Court's discretion to reduce hours spent litigating fee applications, such a reduction is not warranted here. Rather than simply drafting a standard fee application, which outlines

---

[7] For example, in entries highlighted by Defendant, Block bills 2.9 hours for work associated with motion to dismiss and discovery issues, including "After fax will not get through, discuss with Deputy Clerk alternative means for submitting to Court. Prepare scan and send to Deputy Clerk with cover e-mails." Block bills 2.75 hours on March 7, 2013 for work associated with a communication from Defendant, including "Communications with Chambers because of trouble faxing. Scan and e-mail fax to Court and counsel."

[8] Defendant has asserted that hours spent by Block redacting his JRC invoices are clerical activities. (Def.'s Opp'n 22.) However, the decision as to what information should be redacted from documents at issue during litigation is properly within the domain of the attorney.

applicable legal standards and provides information and documentation regarding hourly rates and hours billed, Plaintiff here was also required to address Defendant's several defenses in support of the contention that Plaintiff should not be awarded any fees at all. It is reasonable that such legal research and analysis was conducted by Plaintiff and does not warrant a reduction in fees claimed.

iv. Block Reply Declaration

Defendant asserts, in response to Plaintiff's supplemental billing records, that Block spent an excessive amount of time drafting his reply declaration, and contends that the reply declaration was improper due to inclusion of legal arguments and assertions not based on his personal knowledge. (Def.'s Opp'n to Supplemental Decl. 2.) Defendant asserts that items such as billing for legal research in support of the reply declaration should not be credited and seeks a 50% reduction of 39.85 hours between April 18-30, 2014.

A reduction of 50% of 37.65 of the 39.85 hours identified by Defendant is reasonable in this case.[9] The purpose

[9] 2.2 hours identified by Defendant (entries for 0.7 hours and 1.5 hours on April 18, 2014) appear to represent preliminary discussions and research

of a declaration is to set forth information known personally by the attorneys submitting them, not to make legal arguments properly left to motion papers. See, e.g., Bosch v. Lamattina, 901 F. Supp. 2d 394, 403 (E.D.N.Y. 2012) ("Pursuant to Local Civil Rule 7.1, legal argument is to be set forth in a memorandum of law, while factual affirmations are to be set forth in affidavits.")

v. Removal Of Billing Entries, Oral Argument, And Hearing Transcript

Defendant asserts that 0.3 hours billed by Block for time spent on April 11, 2014 reviewing prior billing entries ("Block Billing Revisions"), 2.5 hours billed by Papakhin on April 28, 2014 revising time entries ("Papakhin Billing Revisions"), 5.3 hours billed by Papakhin between May 12-14, 2014 for time spent preparing for and attending oral argument, and 0.4 hours billed by Block on May 21, 2014 reviewing the fees hearing transcript should all be deducted from the fee award. The Block Billing Revisions will be deducted as well as 50% of 2 of the 2.5 Papakhin Billing Revisions hours. [10] The 5.3 hours

---

which are reasonable and are properly compensable at the full billing rate. (See Block Suppl. Decl. Ex. C.)

[10] At least 30 minutes of the time identified by Defendant (see Block Suppl. Decl. Ex. B) are reasonable and therefore compensable at the full billing rate. Apart from correcting billing entries, Papakhin unilaterally revised

spent preparing for and attending oral argument and the 0.4 hours billed reading the hearing transcript, however, are reasonable and constitute valid components of the fee award.

vi. The Fee Award

Taking into account the above, the fee award is calculated in the following manner:

ATTORNEY	BILLING ACTIVITY	RATE	HOURS	AMOUNT ($)
Papakhin	IH 2011-12	275	19.90	5,472.50
Papakhin	IH 2011-12 (Travel)	137.50	1.00	137.50
Papakhin	SRO Appeal	275	35.50	9,762.50
Papakhin	Federal (as of 2/20/14) & IH on Remand 2013-14	275	73.60	20,240.00
Papakhin	Federal (as of 2/20/14) & IH on Remand 2013-14 (Travel)	137.50	3.00	412.50
Papakhin	Federal 2014 (2/21/14-3/31/14)	275	14.50	3987.50
Papakhin	Federal 2014 (2/21/14-3/31/14) (Travel)	137.50	2.00	275.00
Papakhin	Federal 2014 (4/1/14-5/22/14)	275	23.90	6,572.50
Papakhin	Federal 2014 (4/1/14-5/22/14) (Travel)	137.50	1.00	137.50
Block	SRO Appeal 2012	500	9.25	4,625.00
Block	Federal 2012	500	23.25	11,625.00
Block	Federal 2013	500	209.50	104,750.00
Block	Federal 2014 (as of 2/20/14)	500	42.00	21,000.00

billing at a lower rate, presumably in an effort to facilitate resolution of the fees motion. Such a gesture will not be penalized.

Block	Federal 2014 (2/21/14-3/31/14)	500	99.30	49,650.00
Block	Federal 2014 (4/1/14-5/22/14)	500	93.45	46,725.00
				285,372.50
REDUCTIONS				
			Motion to Compel (Block)	-31,050.00
			Motion to Compel (Papakhin)	-2,942.50
			Preparation of reply declaration (Block)	-9,412.50
			Block Billing Revisions	-150.00
			Papakhin Billing Revisions	-275.00
			Block billing and clerical tasks (10%)	-24,154.25
			TOTAL	**217,388.25**

Conclusion

Based on the conclusions set forth above, the application of A.R. in the amount of $217,388.25 is granted.

It is so ordered.

New York, NY
October 28, 2014

Sweet

ROBERT W. SWEET
U.S.D.J.