

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO
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4

ANGELES HERNANDEZ-MELENDZ,
et al.,

Plaintiffs,

v.

COMMONWEALTH OF PUERTO RICO,
et al.,

Defendants.

Civil No. 3:14-cv-01493 (JAF)

5
6 **OPINION AND ORDER**

7 This matter is before the court on Plaintiffs' request for attorney's fees as the
8 prevailing party in the litigation of an administrative proceeding under the Individuals
9 with Disabilities Education Act ("IDEA"), 20 U.S.C. §1400-85. (Docket No. 1).
10 Defendants object to the reasonableness of the requested fees. (Docket No. 8). At the
11 request of the court, Plaintiffs updated their fee request to include all fees and costs
12 incurred to date. (Docket No. 13.)

13 In the verified complaint, Plaintiffs request an award of the attorney's fees and
14 costs incurred in administrative proceeding number 2013-069-046, plus additional fees
15 and costs incurred in the present litigation. (Docket No. 1 at 5.) Plaintiffs seek fees
16 computed at an hourly rate of \$135 per hour for 27 hours (\$3,645) through June 16, 2014,
17 plus an additional \$850.50 incurred since the filing of the verified complaint (Docket
18 No. 13-1), plus \$522.05 in costs, for a total request of \$5,017.55

19 Defendants object to the request arguing that Plaintiffs are entitled to only
20 \$2,968.25 of their initial fee request. Plaintiffs filed the bill of costs and updated fee

1 request on August 13, 2014. (Docket Nos. 11 and 13.) As of the date of this Order,
2 Defendants did not reply. The court notes that the difference between the initial
3 requested amount and the amount Defendants deem reasonable is less than \$700.

4 20 U.S.C. § 1415(i)(3)(B) provides that “[i]n any action or proceeding brought
5 under [section 1415 of the IDEA], the court, in its discretion, may award reasonable
6 attorneys’ fees as part of the costs . . . to a prevailing party who is the parent of a child
7 with a disability.” “Under the IDEA, . . . the aggrieved child’s parents . . . may seek
8 attorneys’ fees as prevailing parties” through its fee-shifting provision. *Smith v.*
9 *Fitchburg Pub. Sch.*, 401 F.3d 16, 18 n.1 (1st Cir. 2005). The fees awarded “shall be
10 based on rates prevailing in the community in which the action or proceeding arose for
11 the kind and quality of services furnished. No bonus or multiplier may be used in
12 calculating the fees awarded under this subsection.” 20 U.S.C. § 1415(i)(3)(C). The First
13 Circuit has explained that the IDEA’s fee-shifting provision should be interpreted in a
14 manner consistent with the fee-shifting statute of the Civil Rights Act, 42 U.S.C.
15 § 1988(b), and other similar fee-shifting statutes. *Doe v. Boston 2 Pub. Sch.*, 358 F.3d 20,
16 26 (1st Cir. 2004).

17 Defendants do not dispute that Plaintiffs are the parents of a child with a disability
18 who was the prevailing party in the underlying administrative proceeding. There is no
19 dispute that Plaintiffs are entitled to reasonable attorney’s fees and costs. “Fees are
20 presumptively reasonable where the requesting party has multiplied a reasonable hourly
21 rate by the number of hours reasonably spent on litigation.” *See Gay Officers Action*
22 *League v. Puerto Rico*, 247 F.3d 288, 293 (1st Cir. 2001) (citing *Hensley*, 461 U.S. at

1 433). The First Circuit has adopted the “lodestar approach,” in which “the trial judge
2 must determine ‘the number of hours reasonably expended on the litigation multiplied by
3 a reasonable hourly rate.’” *Id.* (citing *Hensley*, 461 U.S. at 433). In the lodestar method,
4 “the judge calculates the time counsel spent on the case, subtracts duplicative,
5 unproductive, or excessive hours, and then applies prevailing rates in the community
6 (taking into account the qualifications, experience, and specialized competence of the
7 attorneys involved).” *Id.* (citing *Lipsett v. Blanco*, 975 F.2d 934, 937 (1st Cir. 1992)).

8 The logged hours are reasonably spent on litigation unless “duplicative,
9 unproductive, or excessive.” *Id.* In addition, after calculation of the initial “amount of the
10 award, attorney’s fees may be reduced because of (1) the overstaffing of a case, (2) the
11 excessiveness of the hours expended on the legal research or the discovery proceedings,
12 (3) the redundancy of the work exercised, or (4) the time spent on needless or unessential
13 matters.” *Serrano v. Ritz-Carlton San Juan Hotel Spa & Casino*, 808 F. Supp. 2d 393,
14 398 (D.P.R. 2011) (quoting *Ramos v. Davis & Geck, Inc.*, 968 F. Supp. 765, 775 (D.P.R.
15 1997)) (internal quotation marks omitted).

16 Defendants do not challenge the reasonableness of counsel for Plaintiffs’ hourly
17 rate of \$135. Based on Attorney Francisco J. Vizcarrondo-Torres’ expertise and
18 experience, the rate of \$135.00 per hour is found to be appropriate, if not at the lower end
19 for attorneys in the Puerto Rico community. *See Zayas v. Puerto Rico*, 451 F. Supp. 2d
20 310, 316 (D.P.R. 2006) (Noting, eight years earlier, that the range for Puerto Rico
21 attorneys practicing in this type of litigation was from \$200 to \$110 per hour).

1 Defendants ask this court to subtract time they have deemed clerical, excessive or
2 duplicative, unproductive, or “otherwise unnecessary.” (Docket No. 8.) With respect to
3 specific time entries, Defendants take issue with Plaintiffs’ counsel using 3.4 hours
4 preparing for the administrative hearing, 1.8 hours meeting with the client in preparation
5 for the administrative hearing, and 9.1 hours reviewing the evidence and drafting the
6 administrative complaint and other documents. Defendants ask the court to apply a 40%
7 reduction in the amount of time spent on the case, arguing that the time spent reviewing
8 and drafting documents and planning and preparing for the administrative hearing was
9 excessive. The court disagrees. It is noted that the most common reason for reducing the
10 number of hours in a fee request is to account for limited success in the underlying
11 matter. That reduction is not applicable in this case. The court finds that counsel for
12 Plaintiffs’ time entries for reviewing and drafting documents and preparing for the
13 administrative hearing are not excessive.

14 Defendants also ask the court to reduce the attorneys’ fees award for various
15 communications between counsel and Plaintiffs claiming the communications are
16 unnecessary, redundant, unproductive, excessive, and vague. (Docket No. 8 at 4). The
17 court disagrees. Over the course of nine months, the communications totaled around 6
18 hours. In a case such as this, where the parents bring the litigation on a child’s behalf, one
19 expects the parents to have questions, require clarification, and provide information
20 piecemeal. The total communications amount to an average of just 40 minutes per month.
21 The court does not find this excessive.

1 Upon review of the specific entries, the court further finds that they are not vague,
2 redundant, unnecessary, or unproductive. Each of counsel for Plaintiffs' time entries
3 provides a brief description of the purpose of the communication while not disclosing the
4 specifics of the attorney-client communication, *e.g.*, "clarifying client's multiple case
5 related inquiries" and "clarifying multiple client inquiries concerning document contents
6 and ongoing meeting with DOE's personnel." Although "response to client's e-mail"
7 may at first seem vague, when read in connection with the preceding entry from the same
8 day "review e-mail communication ... enclosing comments to final resolution," the
9 purpose of the e-mail response becomes clear. Accordingly, Defendants' objection to
10 counsel for Plaintiffs' time entries as unnecessary, redundant, unproductive, excessive,
11 and vague is not well-taken.

12 Finally, the court agrees with Defendants that Plaintiffs have included time entries
13 for clerical tasks. It is well established that "clerical or secretarial tasks ought not to be
14 billed at lawyers' rates, even if a lawyer performs them." *Lipsett v. Blanco*, 975 F.2d
15 934, 940 (1st Cir. 1992). Certain entries request attorneys' fees for drafting e-mail
16 communications for the purpose of acknowledging receipt of documents sent by
17 Plaintiffs to counsel. For example, on October 29, 2013, counsel's entry describes the
18 task of "draft[ing] e-mail communication to Mrs. Angeles Hernandez re: acknowledging
19 receipt of supplemental documents." Other entries document counsel's tasks of emailing
20 digital copies of documents to Plaintiffs. In addition to the October 29, 2013, entry
21 referenced above, Defendants identify five instances where Plaintiffs' counsel billed for
22 tasks that are clerical in nature. The court agrees with Defendants that Plaintiffs

1 improperly seek fees for these time entries. Accordingly, the court deducts \$121.50 for
2 these clerical tasks.

3 Having reviewed the briefs and accompanying documentation, the court finds
4 Plaintiffs' fee request is reasonable and, hereby, GRANTS Plaintiffs' request for
5 attorneys' fees as the prevailing party in the underlying administrative proceeding on
6 behalf of their minor child. Plaintiffs are awarded \$4,374.00 in attorneys' fees and
7 \$522.05 in costs, totaling \$4,896.05, plus interest. Defendants are jointly and severally
8 liable to Plaintiffs in the amount of \$4,896.05, plus any interest accrued.

9 Judgment shall be entered accordingly.

10 **IT IS SO ORDERED.**

11 San Juan, Puerto Rico, this 29th day of August, 2014.

12 S/José Antonio Fusté
13 JOSE ANTONIO FUSTE
14 U. S. DISTRICT JUDGE