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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL LEAL,

Plaintiff,

v.

EVERETT PUBLIC SCHOOLS,

Defendant.

C14-1762 TSZ

ORDER

THIS MATTER comes before the Court on plaintiff’s Motion for Attorney Fees, docket no. 46. Having reviewed the materials submitted in support of, and opposition to, this motion, the Court enters the following Order.

BACKGROUND

Plaintiff brought suit in November 2014, under 42 U.S.C. § 1983, alleging that the Everett Public Schools’ policy regarding the distribution of literature by students violated his First Amendment rights. Specifically, plaintiff challenged the requirement that material be written or produced by a student, the prohibition on passing out materials at

1 times and locations other than the entrances and exits of the school building before or
2 after school, and a portion of the policy that gave school administrators discretion to
3 grant exceptions from these limitations.

4 On November 21, 2014, plaintiff filed a motion for a temporary restraining order
5 and preliminary injunction, docket no. 8. By Minute Order dated December 2, 2014,
6 docket no. 15, the Court denied plaintiff's motion for a temporary restraining order and
7 deferred ruling on his motion for preliminary injunction. Following additional briefing
8 and oral argument, by Order dated February 19, 2015, docket no. 19, the Court denied
9 plaintiff's motion for preliminary injunction.

10 In April 2015, the parties filed cross-motions for summary judgment. Docket nos.
11 30 & 35. Plaintiff's motion brought only a facial challenge to the policy. Prior to
12 seeking summary judgment, plaintiff dropped his claim related to the allegation that he
13 had been prevented from open-air preaching and his as-applied challenge. Oral argument
14 on these motions was heard on May 29, 2015. Following this hearing, the Court ruled
15 that the school district's policy was unconstitutional in part. The Court found for plaintiff
16 on his claim regarding the student written or produced requirement, and for defendant on
17 plaintiff's claims regarding the school district's time and location limitations and the
18 administrative exemption procedures. The Court also dismissed the individual
19 defendants, finding that they were entitled to qualified immunity. Plaintiff was awarded
20 one dollar in nominal damages, the Court severed the student written or produced
21 requirement from the policy, and expunged three suspensions from plaintiff's record
22 related to the school district's policy.

1 **DISCUSSION**

2 **1. Legal Standard**

3 The Civil Rights Attorney’s Fees Awards Act of 1976 permits the Court to award
4 attorneys’ fees to a party that has prevailed on a claim under a number of statutes,
5 including 42 U.S.C. § 1983. 42 U.S.C. §1988(b). However, the Court “may not
6 uncritically accept a fee request.” *Sealy, Inc.v. Easy Living, Inc.*, 743 F.2d 1378, 1385
7 (9th Cir. 1984). Rather, the Court must ensure that any award is reasonable. *Id.*

8 **2. Lodestar Calculation**

9 “When determining a reasonable fee award, the court must start by calculating the
10 lodestar amount, which is the ‘number of hours reasonably expended on the litigation
11 multiplied by a reasonable hourly rate.’” *Chaudhry v. City of Los Angeles*, 751 F.3d
12 1096, 1110 (9th Cir.) *cert. denied sub nom. City of Los Angeles, Cal. v. Chaudhry*, 135 S.
13 Ct. 295, 190 L. Ed. 2d 141 (2014) (quoting *Hensley v. Echerhart*, 461 U.S. 424, 433
14 (1983). This resulting figure may then be adjusted either up or down to account for a
15 number of factors, including the complexity of the issues, the skill required, and the
16 results obtained. *See Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975).

17 Plaintiff has provided the following figures for the initial step of the lodestar
18 calculation:

Attorney	Rate	Hours	Lodestar
Kevin Snider	\$440	160.1	\$70,444
	\$110 (Travel)	6	\$1,320
Matthew McReynolds	\$340	132.5	\$45,050
Conrad Reynoldson	\$290	46.2	\$13,398
Law Clerk			
Jennifer Johnson	\$100	24	\$2,400
Ron Suggs	\$100	32.7	\$3,270
Lily Walsh	\$80	11.9	\$952

a. Rates

The Court finds that these rates are reasonable in light of each respective attorney's experience and expertise, and the prevailing rates in the Seattle market.

b. Hours

First, the Court declines to award Mr. Snider for time spent traveling for this matter.

Second, many of the billing entries submitted by plaintiff are vague and were recorded in "block billing."¹ As a result of the vague nature of many of the entries and plaintiff's use of block billing, in many instances, it is impossible for the Court to determine what aspect of the case the attorney was working on, or precisely what work was being done. For instance, on May 6, 2015, Mr. McReynolds billed 4.5 hour and provided only "more work on Reply/Opp" to account for this time. Pl.'s Mot. Attorney Fees (docket no. 46-4) at 7. Further, plaintiff has sought fees for clerical and other non-

¹ "Block billing" is the practice of "lumping multiple tasks into a single entry of time." *Cadena v. Pacesetter Corp.*, 224 F.3d 1203, 1214 (10th Cir. 2000). The Ninth Circuit has stated that district courts may reduce hours recorded in this manner. *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 948 (9th Cir. 2007).

1 recoverable tasks. *See* Pl.’s Mot. Attorney Fees (docket no. 46-4) at 16 (billing 1.1 for
2 work on “obtaining estimated hours from Jennifer and Ron[.]”). Finally, as defendant
3 points out, it is also apparent that plaintiff’s motion contains a number of miscalculations
4 and inaccuracies in the computation of time. For instance, plaintiff’s motion seeks 11.9
5 hours of work for Ms. Walsh, but her billing records indicate she did only 10.9 hours of
6 work on motions, and Ms. Johnson’s hours have been rounded up from 23.9 to 24
7 without any explanation for this change. *Compare* Pl.’s Mot. Attorney Fees (docket no.
8 46) at 9 *with* Pl.’s Mot. Attorney Fees (docket no. 46-4) at 16–17.

9 In light of these issues, the Court has reduced plaintiff’s attorneys’ hours by 15%.

10 c. Adjustment

11 A court may adjust a fee upward or downward depending on the “results
12 obtained.” *Hensley*, 461 U.S. at 434. Plaintiff has requested that the Court apply a
13 multiplier of 1.4 to increase the award due to the complexity and novelty of the issues
14 involved in this case. Conversely, defendant argues that the award should be decreased
15 in light of the fact that plaintiff proved successful on only one aspect of his suit and that a
16 majority of the portion of the policy challenged by plaintiff were upheld.

17 Where “a plaintiff has achieved only partial or limited success, the product of
18 hours reasonably expended on the litigation as a whole times a reasonable hourly rate
19 may be an excessive amount. This will be true even where the plaintiff’s claims [are]
20 interrelated.” *Id.* at 436. Here, plaintiff succeeded in having only the student written or
21 produced aspect of the policy declared unconstitutional and his three suspensions
22 expunged while the other portions of the policy were upheld. Further, plaintiff’s motions
23

1 for a temporary restraining order and preliminary injunction were denied. However, the
2 Court does find that this case presented challenging and novel issues of constitutional
3 law. Because of these competing considerations, the Court declines to apply any
4 adjustment, up or down.

5 d. Calculation

6 The Court has computed the lodestar sum of \$115,186.90, which is derived from
7 the following:

8 Attorney	Rate	Hours after	Lodestar
9 Kevin Snider	\$440	136.085	\$59,877.40
10 Matthew McReynolds	\$340	112.625	\$38,292.50
11 Conrad Reynoldson	\$290	39.27	\$11,388.30
Law Clerk			
12 Jennifer Johnson	\$100	20.4	\$2,040.00
Ron Suggs	\$100	27.795	\$2,779.50
Lily Walsh	\$80	10.115	\$809.20

13 e. Litigation Costs

14 Plaintiff has asked for \$1,719.36 in costs related to litigation this case. These
15 include airfare, hotels, meals, parking, transportation, and similar costs. The Court finds
16 these costs recoverable awards plaintiff these costs.

17 f. Fees related to Motion for Attorney Fees

18 The Court awards plaintiff \$3,732 for work related to its motion for attorney's
19 fees.

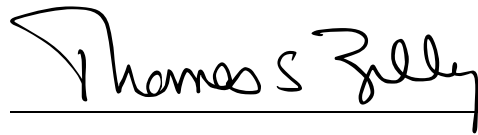
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CONCLUSION

Plaintiff's Motion for Attorney Fees, docket no. 46, is GRANTED in part and DENIED in part. The Court awards a total of \$120,638.26 in costs and fees to plaintiff and against defendant.

IT IS SO ORDERED.

Dated this 6th day of August, 2015.



Thomas S. Zilly
United States District Judge