IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JESSICA P., et al., Plaintiffs,	)	
v.	)	No. 05 C 5
	)	Judge Blanche M. Manning
BOARD OF EDUCATION OF THE CITY OF CHICAGO, Defendant.	)	

MEMORANDUM AND ORDER

Plaintiff Jessica P. is a student of the Chicago public schools. She and her mother have sued under the Individuals with Disabilities Education Act ("IDEA"), *see* 20 U.S.C. § 1415(i)(3), to recover attorneys' fees they expended during their efforts to get the Board of Education of the City of Chicago to accommodate Jessica's needs. The Board, on the other hand, contends that the request for fees is excessive and suggests that it owes the plaintiffs nothing. The parties have filed cross-motions for summary judgment under Federal Rule of Civil Procedure 56. For the following reasons, plaintiffs' motion for summary judgment is granted, while the defendant's motion is denied.

I. FACTS

The following facts are derived from the parties' statements of undisputed facts and accompanying documentary evidence. In 2002, Jessica P. applied to and was accepted as a student at the Chicago Military Academy-Bronzeville, a college preparatory school that includes a mandatory JROTC instructional component. Jessica did not adjust well to her new environment, however, and during her first semester was suspended for a total of 13 days, plus

two Saturday detentions, mostly for conflicts with teachers. In addition, she was absent 25 days, tardy 32 times, and flunked all her academic courses.

Jessica's disciplinary and academic difficulties worsened during her second semester. She continued failing most of her classes, and faced two expulsion hearings, one for bringing a steak knife to school and one for punching and kicking a staff member. She was ultimately expelled from the military academy and placed in an alternative high school.

Jessica's mother, Joyce T., did not agree with the school's disciplinary decisions, and requested an impartial due process hearing before an independent hearing officer, as provided by the IDEA. *See* 20 U.S.C. § 1415(b)(2). Prior to the hearing, the Board of Education offered to settle. In its settlement letter dated April 14, 2001, the Board offered to (1) "complete the appeal process to expunge the expulsion from Jessica's record"; (2) place her in a regular high school; (3) conduct a functional behavior assessment; (4) provide Jessica with 30 minutes of additional social work weekly for one year to compensate her for her time at the military academy; and (5) arrange for a tuition waiver for summer school. The plaintiffs rejected the offer.

At the due process hearing, the independent hearing officer agreed that the Board "did not provide [Jessica] with a free appropriate public education." The officer ordered the Board to (1) expunge the expulsion from Jessica's record; (2) place Jessica in her home high school; (3) conduct a functional behavior assessment; (4) conduct an education evaluation; and (5) based upon the results of the education evaluation, revise Jessica's individualized education plan and develop a behavioral plan. The officer also directed the Board to determine what compensatory services Jessica deserved—such as tutoring and extended school year services—and stated that

the Board "should not be limited by the number of hours"of compensatory services requested by the plaintiffs, which was 100.

Following the hearing, the plaintiffs submitted numerous claims to the Board for attorneys' fees and costs due to prevailing parties under 20 U.S.C. § 1415(i)(3)(B). The Board never paid, so the plaintiffs filed this suit seeking$97,101.25 in fees and costs that their attorney charged for representing them at the due process hearing.

The Board does not dispute that the plaintiffs were the prevailing party in the due process hearing, but argues that it is not required th pay the requested fees and costs because (1) most of them were incurred after the Board offered to settle, and the relief that the plaintiffs eventually received was no better than what was offered in the settlement letter; and (2) the number of hours billed was unreasonable.

II. RULING ON A MOTION FOR SUMMARY JUDGMENT

Summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A court should grant summary judgment only when the record shows that a reasonable jury could not find for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Roger Whitmore's Auto. Servs., Inc. v. Lake County*, 424 F.3d 659, 667 (7th Cir. 2005).

In deciding a summary judgment motion, the court views the facts in the light most favorable to the non-moving party. *Anderson*, 477 U.S. at 255; *Roger*, 424 F.3d at 666-67. The moving party must demonstrate that there is no genuine issue of material fact. *Celotex*, 477 U.S.

at 323. It is not sufficient for the non-moving party to merely "show there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Instead, the non-moving party must present "specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e).

III. ATTORNEYS' FEES UNDER THE IDEA

Under the IDEA, "the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party." 20 U.S.C. § 1415(i)(3)(B). However, a prevailing party is not entitled to fees and costs for services performed after a written offer of settlement is made if (1) the offer is made more than ten days before the administrative hearing; (2) the offer is not accepted within ten days; and (3) the relief obtained in the administrative hearing is not more favorable than the offer. 20 U.S.C. § 1415(i)(3)(D).

1. Offer of Settlement

The Board contends that the plaintiffs are not entitled to fees incurred after April 14, 2004, the date of the Board's written offer to settle, because the relief she received during the administrative hearing was no better than what the Board offered. However, according to the hearing officer's decision and order, the hearing officer awarded relief not part of the Board's written offer.

First, the hearing officer ordered that Jessica's expulsion be expunged from her record. The Board's offer fell short of a guarantee, promising only to "complete the appeal process to expunge the expulsion from Jessica's record." The Board argues that it would be "ludicrous" to interpret its promise to "complete the appeal process" to be anything other than a guarantee to

expunge Jessica's expulsion. In support, the Board contends that the plaintiffs' attorney acknowledged in a letter to the Board that "the Board is prepared to expunge [Jessica]'s expulsion." But the attorney's letter predates the Board's written offer, and therefore cannot be referring to the offer to "complete the appeal process," an offer the Board would not make for nearly a week. Furthermore, prior to the Board's written offer, its attorneys advised the plaintiffs that they "do not have the authority to rescind this expulsion." Accordingly, the only reasonable interpretation of the offer is that the Board would allow Jessica to complete her appeal, but that its attorneys lacked the authority to expunge the expulsion themselves.

Second, the hearing officer ordered the Board to conduct an educational evaluation of Jessica and, based upon the results, revise her individualized educational plan and develop a behavioral plan. The Board made no such offer. Nevertheless, the Board contends that the hearing officer's order is not more favorable because the plaintiffs asked for an independent evaluation, but the officer allowed the Board to conduct the evaluation using its own staff. Whether the officer's order is more favorable depends upon how it compares to the Board's offer, not the parent's request. 20 U.S.C. § 1415(i)(3)(D)(i)(III) (fees not reimbursable if "the relief finally obtained by the parents is not more favorable to the parents *than the offer of settlement*.") (emphasis added). The Board did not offer to conduct an educational evaluation or to modify Jessica's individualized educational plan. Therefore, the hearing officer's order requiring it to do so was more favorable that the Board's settlement offer.

Because the plaintiffs received more favorable relief from the due process hearing than the Board proposed in its written offer to settle, the written offer did not terminate the plaintiffs' right to recover fees and costs.

2. Reasonableness Of Fees

The Board contends that the plaintiffs' attorney spent too much time preparing his case, and achieved only minimal success. When determining whether counsel expended a reasonable amount of hours, the court must ensure that counsel exercised proper "billing judgment;" that is, the court may allow only those fees that would normally be billed to a paying client. *Hensley v. Eckerhart*, 461 U.S. 424, 441 (1983). The court will not, however, "eyeball" the fee request and cut it down by an arbitrary percentage, even if the request seems excessive, in the absence of objections stated with particularity and clarity. *People Who Care v. Rockford Bd. of Educ. Sch. Dist. No. 205*, 90 F.3d 1307, 1314 (7th Cir. 1996); *Ohio-Sealy Mattress Mfg. Co. v. Sealy, Inc.*, 776 F.2d 646, 664 (7th Cir. 1985). While the plaintiffs bear the burden of establishing that their fee request was reasonable, *see Spegon v. Catholic Bishop of Chicago*, 175 F.3d 544, 550 (7th Cir. 1999), the defendants nevertheless must present evidence that the fees were unreasonable in order to prevail on their motion for summary judgment and survive the plaintiffs' motion, *see Cody v. Harris*, 409 F.3d 853, 860 (7th Cir. 2005).

The Board identifies two primary objections to the hours billed by the plaintiffs' attorney, Michael O'Connor. First, the Board argues that O'Connor billed an excessive amount of time preparing to examine his own witnesses and to cross-examine the Board's witnesses. For instance, O'Connor billed five hours to prepare five witnesses for the first day of the due process hearing, but during the hearing he examined only one of them. Later, he billed eleven hours to prepare to cross-examine witnesses during the second day of the hearing, but cross-examined only three.

The Board has presented no evidence that O'Connor's preparation for questioning and cross-examining witnesses was excessive. Nor has the court found any such evidence in the record. Although O'Connor himself questioned only one of the five witnesses he prepared for the first day of the hearing, the parties agree that O'Connor questioned or cross-examined numerous other witnesses during subsequent days of the hearing, and that, under his supervision, his legal assistant, Sara Mauk, questioned several more. Additionally, there is no evidence to suggest that it was unreasonable for O'Connor to prepare witnesses even if he did not question all of them at the due process hearing. To the contrary, an attorney would be remiss not to interview all possible witnesses, even if the attorney ultimately decides that some of the witnesses' information is irrelevant or disadvantageous.

In all, according to the parties, the due process hearing involved 17 witnesses, including two expert witnesses. In that light, the amount of time O'Connor prepared witnesses that the Board complains about—five hours on one occasion, and eleven hour on another—does not strike the court as being unreasonable or excessive.

Second, the Board complains that O'Connor and Mauk billed more than 45 hours researching standard issues in IDEA cases even though they both specialize in the IDEA and should already be familiar with standard issues. The court has carefully reviewed the individual entries on the plaintiffs' itemized billing statements. The statements adequately document the legal work performed by O'Connor and Mauk, and reveal that the issues they researched were relevant to the plaintiffs' due process hearing. According to the statements, counsel spent no more than a few hours on each legal issue. Even counsel specializing in a particular area of law could reasonably be expected to spend time familiarizing themselves with recent developments,

or ensuring that no developments had occurred about which they were unfamiliar. Accordingly, the court finds that the few hours O'Connor and Mauk devoted to each of these issues was reasonable and not excessive.

The Board also contends that all of the fees were unreasonable because counsel achieved only minimal success. *See Monticello Sch. Dist. No. 25 v. George L.*, 102 F.3d 895, 907 (7th Cir. 1996) ("when a plaintiff's success is simply technical or *de minimis*, no fees may be awarded"). But as detailed above, the plaintiffs received substantial relief as a result of the due process hearing, including relief the Board failed to propose in its written offer to settle. Accordingly, counsel's success cannot be characterized as "minimal."

Finally, the Board also contends that the three hours O'Connor spent drafting the plaintiffs' request for a due process hearing was excessive, given that the draft was identical to one O'Connor used in another case. However, the Board's assertion is not supported by citation to the parties' statements of undisputed facts or to any other evidence, as required by Local Rule 56.1. Therefore, the court will disregard the argument.

IV. CONCLUSION

Accordingly, having carefully reviewed the request for fees, the itemized billing statements, and the parties' arguments, the court finds that the plaintiffs' requests for fees and costs were reasonable, and awards them to the plaintiffs in the amount of $97,101.25.

ENTER:

DATE: November 30, 2005

Blanche M. Manning
United States District Judge