

59 IDELR 78

112 LRP 32413

**M.M., et al. v. SCHOOL DISTRICT OF
PHILADELPHIA, et al.**

**U.S. District Court, Eastern District of
Pennsylvania**

11-4482

March 27, 2012

Related Index Numbers

30.035 Calculation of Award

35.020 Calculation of Award

Judge / Administrative Officer

LEGROME D. DAVIS

Case Summary

A Pennsylvania district won't be receiving 15 percent discount on the money it'll have to hand over to an attorney who successfully represented parents in an IDEA-based case. The district highlighted its distressed financial outlook as the reason it deserved a break on the fees. But, a District Court explained that while courts may take special circumstances into account and reduce an otherwise reasonable attorney's fee award, a losing party's financial situation is not a special circumstance that can be considered. Plus, the court pointed out that it even if it had the authority to reduce the fee award based on the district's finances, it would have still declined to do so. 20 USC 1415(i)(3)(D)(i) provides that if a district makes a settlement offer more than 10 days before an administrative hearing that exceeds the relief the parents obtain at the hearing, the parents won't be able to recover fees. Considering the fact that the district failed to take advantage of this provision, the court held that there was no avenue for it to obtain a reduction of the amount it had to pay.

Full Text

Appearances:

APPEARANCES:

For M.M., A MINOR, BY AND THROUGH
HIS PARENT, CARLA MURPHY, P.V., A MINOR,

BY AND THROUGH HIS PARENTS, PEDRO VALENTIN, AND YOLANDA CRUZ, Plaintiffs: SONJA D. KERR, LEAD ATTORNEY, THE PUBLIC INTEREST LAW CENTER OF PHILA., PHILADELPHIA, PA; BENJAMIN D. GEFFEN, PUBLIC INTEREST LAW CENTER OF PHILA., PHILADELPHIA, PA; MICHAEL C. HIGGINS, MORGAN LEWIS & BOCKIUS LLP, PHILADELPHIA, PA.

For THE SCHOOL DISTRICT OF PHILADELPHIA, Defendant: MILES H. SHORE, SCHOOL DISTRICT OF PHILA., OFFICE OF GENERAL COUNSEL, PHILADELPHIA, PA.

Opinion

AND NOW, this 26th day of March 2012, upon consideration of Plaintiff's Motion for an Award of Attorneys' Fees and Costs (Doc. No. 16), Exhibits in Support of the Motion for an Award of Attorneys' Fees and Costs (Doc. No. 17), Defendant's Response in Opposition to Motion of Plaintiffs for Attorney's Fees and Costs (Doc. No. 18), and Plaintiffs' Reply Brief in Support of Plaintiff's Motion for Attorneys Fees and Costs (Doc. No. 23), it is hereby ORDERED that the motion is GRANTED in part and DENIED in part.

I. Factual and Procedural Background

Plaintiffs bring suit to recover attorneys' fees and costs as "prevailing parties" in administrative proceedings against the School District of Philadelphia. (Doc. No. 1 at ¶ 1). They seek to recover fees under 20 U.S.C. § 1415(i)(3)(B) of the Individuals with Disabilities Education Act ("IDEA"). (Doc. No. 1 at ¶ 3). The School District has conceded that Plaintiffs are "prevailing parties." (Doc. No. 18 at 4). Therefore, the only issues before the Court are whether we should exercise our discretion in awarding fees, whether the fees requested are reasonable, and what costs should properly be taxed.

II. Discussion

The IDEA provides, "In any action or proceeding brought under this section, 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). In determining the reasonableness of a fee request, we begin with the lodestar. The lodestar is "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Rode v. Dellarciprete*, 892 F.2d 1177, 1183 (3d Cir. 1990) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)).

Procedurally, "[t]he party seeking attorney's fees has the burden to prove that its request for attorney's fees is reasonable" by submitting evidence of the hours worked and rates requested. *Id.* The opposing party "then has the burden to challenge, by affidavit or brief with sufficient specificity to give fee applicants notice, the reasonableness of the requested fee." *Id.* The Court cannot "decrease a fee award based on factors not raised at all by the adverse party." *Id.* (quoting *Bell v. United Princeton Prop., Inc.*, 884 F.2d 713, 720 (3d Cir. 1989)). However, with respect to objections that have been raised, "the district court has a great deal of discretion to adjust the fee award in light of those objections." *Id.*

Here, the District makes the following objections to the fee petition: (1) The District should not have to reimburse fees for Attorney Sonja Kerr's services because she was not authorized to practice law in the administrative proceedings pursuant to her restricted license; (2) the Public Interest Law Center of Philadelphia ("PILCOP") is not an "organized legal services program" under which Kerr could obtain a restricted license to practice; (3) Kerr's hourly rate is unreasonably high; (4) the Court should reduce the lodestar in light of the School District's status as a distressed school district; and (5) the costs sought are not recoverable under 28 U.S.C. § 1920. We address each of these objections in turn.

A. Evidentiary Hearing

As a threshold matter, we decline to hold a hearing in this matter. We note that there is Third Circuit precedent holding that a district court must

conduct a hearing when the reasonable hourly rate for attorneys' fees is disputed. See *Smith v. Philadelphia Hous. Auth.*, 107 F.3d 223, 225 (3d Cir. 1997); accord *Planned Parenthood of Cent. N.J. v. The Attorney Gen. of the State of N.J.*, 297 F.3d 253, 265 n.5 (3d Cir. 2002); *Lanni v. New Jersey*, 259 F.3d 146, 149 (3d Cir. 2001). However, there is also precedent holding that the "failure to conduct an evidentiary hearing ... is not reversible error," and that "[a] hearing must be held only where the court cannot fairly decide disputed questions of fact without it." *Blum v. Witco Chem. Corp.*, 829 F.2d 367, 377 (3d Cir. 1987). The Third Circuit directly addressed this conflict in *Drelles v. Metro. Life Ins. Co.*, 90 Fed. Appx. 587 (3d Cir. 2004). Noting that "in a conflict between decisions of different panels, the oldest one controls," the Third Circuit concluded, "[T]he District Court's failure to hold a hearing is not automatically reversible error, but rather must be evaluated under *Blum*." *Id.* at 591 (citing *Ryan v. Johnson*, 115 F.3d 193, 198 (3d Cir. 1997)).

Here, both parties have submitted briefs, affidavits, and evidence, all of which speak for themselves. Though the District initially indicated that it intended to engage in additional discovery by filing a motion to compel and request for additional time to complete discovery, it promptly withdrew that request two months ago and has not filed any additional briefing since. (Doc. No. 19 and 20).¹ We requested further briefing by Plaintiffs to address issues raised by Defendant's response, and Plaintiffs have complied. Furthermore, the issues in contention are legal. We are therefore satisfied that we can resolve the motion on the basis of the existing record and need not conduct a hearing. See *Babish v. Sedgwick Claims Mgmt. Servs.*, No. 07-1539, 2009 U.S. Dist. LEXIS 92163 (W.D. Pa. Oct. 2, 2009) (declining to hold a hearing when "[t]he affidavits and briefs speak for themselves, there are no factual disputes, and it is clear how each side reached its proposed hourly rates").

B. Restricted License

The School District argues that Kerr was not

authorized to practice law in the administrative hearings before Hearing Officer Brian Ford due to her restricted license to practice law in Pennsylvania. Kerr was admitted to practice in Pennsylvania on March 24, 2009 under Pennsylvania Bar Admission Rule 311, which pertains to attorney participants in defender or legal services programs. (Doc. No. 17 at 2). The rule provides:

An attorney to which this rule applies shall be admitted to practice before the courts and magisterial district judges of this Commonwealth in all matters in which the attorney is employed by or associated with a public defender's office, an organized defender association, or an organized legal services program which is sponsored, approved or recognized by the local county bar association. Admission to practice under this rule shall be limited to the matters specified in the preceding sentence.

Pa. B.A.R. 311(b). Defendant argues that because the rule admits an attorney to practice "before the courts and magisterial district judges of this Commonwealth" and does not mention administrative proceedings, Kerr was not admitted to practice in the special education due process hearing. (Doc. No. 18 at 7-8).

As a threshold matter, we note that persuasive authority exists for the proposition that an attorney who is not admitted to practice may not recover fees under the IDEA in connection with their services in the due process hearing. In *Z.A. v. San Bruno Park Sch. Dist.*, the Ninth Circuit addressed the question of "whether a party, represented by an attorney who is admitted to the United States District Court for the Northern District of California but is not admitted to the California State Bar, may be awarded attorneys' fees for a state administrative proceeding under the IDEA." 165 F.3d 1273, 1274 (9th Cir. 1999). The court held that he could not. *Id.* at 1276. Because the plaintiffs' attorney was not licensed to practice in the state of California, he could not lawfully practice in California state court proceedings and accordingly could not charge or receive attorneys' fees in connection with those proceedings. *Id.* at 1276. In

Shapiro v. Paradise Valley Unified Sch. Dist. No. 69, the Ninth Circuit similarly held that an attorney who was not admitted to practice law in the state of Arizona could not collect attorneys' fees under the IDEA for the period preceding his admission to practice pro hac vice in Arizona. 374 F.3d 857, 861-62 (9th Cir. 2004).

The question before this Court is whether Pennsylvania Bar Admission Rule 311 allows an attorney to practice in an administrative proceeding. The parties have not cited, and the Court cannot find, any cases that have addressed this question. The District contends that because the specific text of Rule 311 does not include administrative proceedings, Kerr was not permitted to represent Plaintiffs in the due process proceeding. The District contrasts Kerr's limited license under Rule 311 with her general admission to the Pennsylvania bar on April 28, 2011, which would have allowed her to practice in the due process proceedings. (Doc. No. 18 at 8). Plaintiffs argue that just because the text of Rule 311 does not include administrative proceedings does not mean that an attorney must be admitted generally in order to represent a party at an administrative proceeding. (Doc. No. 23 at 4).

Our careful review of the Pennsylvania Bar Admission Rules leads us to conclude that an attorney admitted under Rule 311 may practice in a due process proceeding. The Pennsylvania Bar Admission Rules do not appear to use the term "courts and magisterial district judges" as a limiting term. Rather, the phrase is used to refer to general practice within the Commonwealth. Specifically, Rule 232 of the Pennsylvania Bar Admission Rules appears under the heading "Admission to the Bar Generally" and sets forth the effect of admission to practice. The rule provides, "Members of the bar of this Commonwealth (see Rule 201 (relating to bar of the Commonwealth of Pennsylvania)) shall be entitled to practice law before every court and district justice of this Commonwealth upon presentation of a current certificate issued by the Court Administrator of Pennsylvania under Enforcement Rule 219 (relating

to period assessment of attorneys)." Pa. B.A.R. 232. The rule clarifies that district justices means "magisterial district judges."

Therefore, an attorney who is admitted to the Pennsylvania bar generally is entitled to practice before every court and magisterial district judge of Pennsylvania. The rule does not specify administrative proceedings. Thus, the scope of a limited license under Rule 311 exactly matches the scope of general admission as set forth in Rule 232 when it comes to the forums in which an attorney may practice. We must now determine the scope of general admission -- i.e., whether, as Defendant implicitly concedes, general admission to the bar is sufficient for an attorney to practice in administrative proceedings.

We conclude that it is. We look to Pennsylvania Bar Admission Rule 201 to inform our conclusion. Rule 201 is referenced by the previously-discussed Rule 232. See Pa. B.A.R. 232 (setting forth the effect of admission to practice for members of the bar of the Commonwealth as specified by Rule 201). Rule 201 states that "[p]ersons admitted to the bar pursuant to these rules" "are members of the bar of the courts of this Commonwealth and may practice law generally within this Commonwealth ...". Thus, both Rules 201 and Rules 232 appear to contemplate a broad, general grant of authority to practice for members of the bar. However, the language of Rule 232 only specifies practice before every court and magisterial district judge of the Commonwealth. We therefore conclude that the rules do not use the phrase "every court and magisterial district judge" in a restrictive sense to exclude practice in administrative proceedings.

In making our determination, we further note that the rules do not include a specific method by which an attorney may be admitted to practice in administrative proceedings. Nor can we imagine why the requirements for practicing in an administrative hearing would be more stringent than for practicing before "the courts and magisterial district judges" of Pennsylvania. In conclusion, because an attorney admitted generally to the bar may practice in an

administrative proceeding and because the scope of a restricted license under Rule 311 matches the effect of admission generally in terms of forums in which an attorney may practice, we conclude that Kerr was admitted to practice in the administrative proceeding. We therefore exercise our discretion in awarding attorneys' fees to Plaintiffs.²

For purposes of completeness, we will address Plaintiffs' argument with respect to this issue. Plaintiffs cite the Pennsylvania Special Education Dispute Resolution Manual, published by the Office of Dispute Resolution, which provides that "[o]nly an attorney who is admitted to practice before the Supreme Court of Pennsylvania may represent a party at a due process hearing." Pennsylvania Special Education Dispute Manual § 605(A). Plaintiffs argue that because Kerr was admitted to practice before Pennsylvania courts, she could practice before the Supreme Court, which is sufficient to allow her to practice in a due process hearing.

Strictly speaking, the precise language of § 605(A) provides that admission to practice before the Supreme Court of Pennsylvania is necessary to represent a party at a due process proceeding -- not that it is sufficient. However, the manual does not specify what conditions are sufficient for an attorney to represent a party at a due process hearing. Indeed, § 605 makes up the entirety of the section labeled "Attorney Qualifications and Out-of-State Attorneys." Moreover, we cannot envision what additional requirements would be required to practice in a due process hearing beyond admission to practice before the Supreme Court of Pennsylvania. Regardless, because the language of § 605 does not address what is sufficient for an attorney to practice in due process proceeding, we do not rest our holding on an interpretation of the manual, but rather on a close, textual analysis of the Pennsylvania Bar Admission Rules.

C. Legal Services Organization

Defendant next argues that PILCOP is not an "organized legal services program" for purposes of

Rule 311. (Doc. No. 18 at 8-9). In support of its contention, Defendant offers an affidavit by Kerr in an unrelated case in which she notes, in a footnote, that the Law Center is not a legal services organization which is prohibited from collecting attorneys' fees under the IDEA. (Doc. No. 18-5 at 5 n.1). We reject this argument. We are not persuaded by an affidavit in which Kerr uses the term "legal services organization" in a wholly different context -- in relation to prohibition of fee collection rather than with respect to Rule 311 of the Pennsylvania Bar Admission Rules.

We find that PILCOP qualifies as an organized legal services program under Rule 311. Plaintiffs submitted an affidavit by Michael Churchill of PILCOP affirming that several Law Center attorneys have been admitted to practice in Pennsylvania under Rule 311 and recovered fees under the IDEA. (Doc. No. 23-1 at 8). Moreover, the Pennsylvania Board of Law Examiners approved Kerr's application to practice pursuant to Rule 311. In doing so, the Board implicitly found that the Law Center qualifies as an organized legal services program under Rule 311. The Pennsylvania Supreme Court has held, "[A]dmission of a person to practice law in this state is and always has been a judicial function, exercised now exclusively by the Supreme Court, with the aid of the State Board of Law Examiners." *Appeal of Murphy*, 482 Pa. 43, 47-48 (1978). We therefore will not disturb the determination of the Board of Bar Examiners.

D. Reasonableness of the Hours Worked and Rates Claimed

Plaintiffs have the burden to establish the reasonableness of the hourly rate and number of hours worked. *Rode v. Dellarciprete*, 892 F.2d 1177, 1183 (3d Cir. 1990). They have submitted detailed timesheets showing the hours expended by Kerr and intern Jeremy Garson. Defendants have not objected to the reasonableness of the hours expended. We have reviewed the records and found no excessive or unnecessary preparation, and we therefore find that the time spent was reasonable.

Defendant contests the reasonableness of Kerr's hourly rate.³ The District argues that a reasonable rate for Kerr's services is \$370.00 per hour rather than the requested rate of \$450.00 per hour. "[A] reasonable hourly rate is to be calculated according to the prevailing market rates in the relevant community." *Rode v. Dellarciprete*, 892 F.2d 1177, 1183 (3d Cir. 1990). A court should "assess the experience and skill of the prevailing party's attorneys and compare their rates to the rates prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." *Id.* We must utilize the current market rate, which means "the rate at the time of the fee petition, not the rate at the time the services were performed." *Lanni v. N.J.*, 259 F.3d 146, 149 (3d Cir. 2001).

In support of her fee request, Kerr relies on the affidavit of Dennis McAndrews, an attorney in the region with 32 years of experience and twenty-eight years of experience in the field of disability law. (Doc. No. 16-1). We find that the example of Dennis McAndrews does not support Kerr's fee request of \$450.00 an hour because McAndrews, despite having eight more years of experience than Kerr, only charged a rate of \$395.00 per hour as recently as July 12, 2011. (Doc. No. 18-1 at 28). Moreover, McAndrews has been routinely awarded fees at an hourly rate of \$375.00 by this Court. *See Neena S. v. Sch. Dist.*, No. 05-5404, 2009 U.S. Dist. LEXIS 65185 (E.D. Pa. July 27, 2009); *Mary Courtney T. v. Sch. Dist.*, No. 06-2278, 2009 U.S. Dist. LEXIS 5180 n.5 (E.D. Pa. Jan. 22, 2009); *Damian J. v. Sch. Dist. of Phila.*, No. 06-3866, 2008 U.S. Dist. LEXIS 32778 (E.D. Pa. Apr. 22, 2008). We find McAndrew's fee instructive and conclude that an hourly rate of \$370.00 is reasonable for an attorney of Kerr's experience and ability.

Our determination is supported by the affidavit of Gabrielle Sereni submitted by the District. Sereni is a special education attorney with eleven years of experience in special education law. (Doc. No. 18-1 at ¶ 1). Sereni states in her affidavit, "I am not aware of any reported special education cases in Pennsylvania

awarding an hourly rate of \$450 to any parents' attorney." (*Id.* at ¶ 6). Sereni opines that a fee award of \$350-\$370 an hour would be reasonable for an attorney with Kerr's experience. (*Id.* at ¶ 8). We find Sereni's affidavit credible and agree with her assessment. An hourly rate of \$450.00 exceeds the range of fees typically awarded in IDEA cases to attorneys in this geographical area with similar experience. See *Neena S. v. Sch. Dist.*, No. 05-5404, 2009 U.S. Dist. LEXIS 65185 (E.D. Pa. July 27, 2009) (awarding an hourly rate of \$375.00 to experienced attorney specializing in special education law); *Melissa G. v. Sch. Dist. of Phila.*, No. 06-5527, 2008 U.S. Dist. LEXIS 2871 (E.D. Pa. Jan. 14, 2008) (awarding fees of \$280.00 per hour for an attorney with fourteen years of experience)⁴; *P.N. v. Clementon Bd. of Educ.*, No. 02-1351, 2007 U.S. Dist. LEXIS 29289 (D.N.J. Apr. 19, 2007) (awarding fees of \$300.00 per hour to a Philadelphia-based attorney "generally considered to be a national expert in education law" with at least thirty-one years of experience in special education law); cf. *Laura P. v. Haverford Sch. Dist.*, No. 07-5395, 2009 U.S. Dist. LEXIS 49390 (E.D. Pa. June 12, 2009) (finding that a rate of \$285.00/hour is appropriate for an attorney with sixteen years of legal experience who practices special education law almost exclusively).

Moreover, \$370.00 an hour is squarely within the range of hourly rates set forth by Community Legal Services of Philadelphia ("CLS") in their fee schedule for attorneys with 21-25 years of experience.⁵ (Doc. No. 18-1 at 30). The CLS Fee Schedule has been cited with approval by various cases, and we find it to be instructive here. See *Maldonado v. Houstoun*, 256 F.3d 181, 187-88 (3d Cir. 2001) (approving use of the CLS fee schedule in determining reasonable rates); *Bjorklund v. Phila. Hous. Auth.*, 118 Fed. Appx. 624, 627 (3d Cir. 2004) (affirming award of fees in part because sample fee schedules, including the Community Legal Services fee schedule, supported the hourly rates awarded); *Szafran v. Temple Univ. of the Commonwealth Sys. of Higher Educ.*, No. 01-5451, 2003 U.S. Dist. LEXIS

7770 (E.D. Pa. Apr. 16, 2003) (approving hourly rates that fell below the median rates set forth in the CLS fee schedule); *Rainey v. Philadelphia Hous. Auth.*, 832 F. Supp. 127, 129 (E.D. Pa. 1993) ("The CLS schedule has been approvingly cited by the Third Circuit as being well developed and has been found by this Court to be a 'fair reflection of the prevailing market rates in Philadelphia.'" (*quoting Swaayze v. Philadelphia Housing Auth.*, No. 91-2982, 1992 WL 81598 (E.D. Pa. Apr. 16, 1992))).⁶ We therefore award Kerr fees at an hourly rate of \$370.00.

The lodestar is calculated as follows:

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Employee	Hourly Rate	Number of Hours	Total
Sonya Kerr	\$370.00	42.10	\$15,577.00
Jeremy Garson	\$100.00	20.70	\$2,070.00
			Total Fees: \$17,647.00

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Employee	Hourly Rate	Number of Hours	Total
Sonya Kerr	\$370.00	57.00	\$21,090.00
Jeremy Garson	\$100.00	1.30	\$130.00
			Total Fees: \$21,220.00

E. Reduction for Distressed School District

The District asks us to reduce the lodestar by 15% to account for its distressed financial condition. We will not do so. In *Inmates of Allegheny County Jail v. Pierce*, the Third Circuit ruled that while "special circumstances may be taken into account to reduce an otherwise reasonable attorney's fee award under § 1988, ... the losing party's financial ability to pay is not a special circumstance, whether that party is a public or a private agency." 716 F.2d 177, 180 (3d Cir. 1983) (internal quotation marks and citations omitted). See also *Child Evangelism Fellowship of N.J., Inc. v. Stafford Twp. Sch. Dist.*, No. 02-4549, 2006 U.S. Dist. LEXIS 62966 (D.N.J. Sept. 5, 2006) (declining to reduce a fee award to account for a school district's financial status because "[a] losing party's financial ability to pay is not a 'special circumstance' or 'relevant consideration' in determining an award of fees"). Even though *Inmates* analyzed fees under 42 U.S.C. § 1988 rather than the IDEA, it is nonetheless instructive. See *Goodman v.*

Pa. Turnpike Comm'n, 293 F.3d 655, 677 (3d Cir. 2002) (ruling that case law on reasonable fees is relevant to all fee-shifting statutes). Moreover, we have found only two cases that addressed this question in the context of awarding fees under the IDEA. In *P.N. v. Clementon Bd. of Educ.*, the District of New Jersey noted that a school district's financial condition and the "drastic effect" a fee award would have on the school was not an appropriate factor to consider in awarding fees. No. 02-1351, 2007 U.S. Dist. LEXIS 29289 n.8 (D.N.J. Apr. 19, 2007). Likewise, in *P.D. v. School District of Philadelphia*, this Court determined that ability to pay is not a "special circumstance" and declined to reduce fees due to the School District of Philadelphia's distressed financial condition. No. 07-713 (E.D. Pa. June 28, 2007) (order granting attorneys' fees).

Defendant cites the cases *Alizadeh v. Safeway Stores*, 910 F.2d 234 (5th Cir. 1990) and *Hughes v. Repko*, 578 F.2d 483 (3d Cir. 1978) in support of the proposition that, "[t]he financial condition of the non-prevailing party in 1988 cases is a factor that courts may consider when determining the amount of an award for attorney's fees." (Doc. No. 18 at 17). Neither of the cases directly support Defendant's proposition. In *Alizadeh*, the Fifth Circuit held that "the financial condition of a nonprevailing plaintiff charged with attorneys' fees under section 1988 is a factor that ... a court should consider when fixing the amount of such an award." *Alizadeh*, 910 F.2d at 239. The Court further clarified, "Nor do we now address whether or under what circumstances a nonprevailing defendant's financial condition may be weighed in charging that party with attorneys' fees under section 1988." *Id.* at 239 n.8. Because the instant matter deals with a nonprevailing defendant, we do not find *Alizadeh* persuasive. Similarly, in *Huges v. Repko*, the Third Circuit stated, "[W]e express no opinion on whether, or in what manner, a court may take into account ability to pay in exercising its discretion to award a reasonable attorney's fee under the Act," and declined to address the issue. *Hughes*, 578 F.2d at 488. Because the District's financial distress is not an

appropriate basis on which to reduce the fee award, we will not apply the 15% reduction requested by the District.

Moreover, even if we had the authority to reduce a fee award in light of the District's financial condition, we would exercise our discretion in declining to do so. As Plaintiffs correctly note, the IDEA provides a statutory means by which a school district may avoid paying attorneys' fees. 20 U.S.C. § 1415(i)(3)(D)(i) provides that if a school district makes a Rule 68 settlement offer more than ten days before the administrative hearing and the offer exceeds the relief obtained by the parents from the hearing, plaintiffs may not recover attorneys' fees. The District failed to take advantage of this provision. In light of this fact, we exercise our discretion in declining to reduce the fee award on the basis of the District's financial circumstances.

F. Costs

Defendant first object to the requested costs on the grounds that Plaintiffs have not provided bills or receipts. We will not disallow costs on this basis. There is no requirement that a party seeking taxation of costs provide receipts -- the only requirement is that the attorney or agent verify the costs by affidavit. 28 U.S.C. § 1924; *McInnis v. Town of Weston*, 458 F. Supp. 2d 7, 22 (D. Conn. 2006) (rejecting contention that receipts must be submitted with a bill of costs). Here, Kerr included an itemized breakdown for the costs incurred and also included the total amount sought in a notarized, sworn affidavit. (Doc. No. 17 at 8, Doc. No. 17-4 at 1; Doc. No. 17-5 at 1). While we acknowledge that Kerr could have included more detail about the costs in her affidavit, we are satisfied that the costs are sufficiently verified. See *Schauffler v. United Ass'n of Journeymen & Apprentices of Plumbing*, 246 F.2d 867, 870 (3d Cir. 1957) (allowing recovery for costs when the costs were verified to the satisfaction of the district court even though "the precise procedure of Section 1924 was not followed").

We next address the individual costs sought.

Because the IDEA does not set forth the specific costs that may be recovered, we must look to the 28 U.S.C. § 1920, the general statute governing the costs that may be recovered in federal court. *Neena S. v. Sch. Dist.*, No. 05-5404, 2009 U.S. Dist. LEXIS 65185 (E.D. Pa. July 27, 2009). 28 U.S.C. § 1920 permits recovery for the following:

- (1) Fees of the clerk and marshal;
- (2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case;
- (5) Docket fees under section 1923 of this title;
- (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

We will permit Plaintiffs to recover costs in the total amount of \$94.85 for printing as allowed by 20 U.S.C. § 1920(3). Plaintiffs may not recover costs for travel. *See D.I. v. Phillipsburg Bd. of Educ.*, No. 10-2602, 2011 U.S. Dist. LEXIS 53884 (D.N.J. May 18, 2011) ("Parking and travel expenses, however, are not recoverable"); *L.T. v. Mansfield Twp. Sch. Dist.*, No. 04-1381, 2009 U.S. Dist. LEXIS 70133 (D.N.J. Aug. 11, 2009) ("Costs for a party's parking, train or air fare, mileage, and travel expenses are not authorized by § 1920."). Nor may they recover costs for postage. *See In re Penn Cent. Transp. Co.*, 630 F.2d 183, 191 (3d Cir. 1980) ("This court disallows costs for the following non-inclusive list of items: postage and courier fees, overtime, unreasonable author's alterations, motions, and 'non-filed' documents."); *Laura P. v. Haverford Sch. Dist.*, No. 07-5395, 2009 U.S. Dist. LEXIS 49390 (E.D. Pa. June 12, 2009) ("Postage and courier fees have been expressly rejected by the Third Circuit, so these costs, totaling \$80.68, will be deducted."). Telephone costs are likewise omitted from the list of recoverable costs

under § 1920 and will not be awarded.⁷ *See In re Jacoby Airplane Crash Litig.*, No. 99-6073, 2008 U.S. Dist. LEXIS 118037 (D.N.J. Oct. 7, 2008) (rejecting request for reimbursement of telephone costs). Finally, we reject Plaintiffs' request for \$295.00 in copying costs because these costs are listed as "copies" without further explanation. We cannot determine if these copies were "necessarily obtained for use in the case" and accordingly will not tax these costs. 28 U.S.C. § 1920. *See Yudenko v. Guarinni*, No. 06-4161, 2010 U.S. Dist. LEXIS 59494 (E.D. Pa. June 14, 2010) ("Where the prevailing party does not provide an itemized description of the copying, courts have disallowed or reduced the photocopying costs because they were unable to determine whether the costs were necessary."); *Laura P. v. Haverford Sch. Dist.*, No. 07-5395, 2009 U.S. Dist. LEXIS 49390 (E.D. Pa. June 12, 2009) ("The remainder of the copying costs, totaling \$142.52, are listed as 'copies' or 'copying' without explanation and must be rejected.").

III. Conclusion

For these reasons, it is hereby ORDERED that the motion is GRANTED in part and DENIED in part. It is further ORDERED that:

1. Defendant's request for a hearing and/or oral argument is DENIED.

2. Plaintiffs shall be awarded fees in the amount of \$17,647.00 and costs in the amount of \$38.70 for *M.M. v. School District of Philadelphia*. Plaintiffs shall be awarded fees in the amount of \$21,220.00 and costs in the amount of \$56.15 for *P.V. v. School District of Philadelphia*.

AND NOW, this 26th day of March 2012, it is hereby ORDERED that to the extent that Plaintiffs seek to recover additional attorneys' fees beyond those outlined in Plaintiffs' Motion for an Award of Attorneys' Fees and Costs (Doc. No. 16), they shall file an appropriate fee petition with accompanying documentation by April 5, 2012. Defendant shall respond by April 16, 2012.

¹Moreover, discovery is not warranted. The

District requested discovery in two specific areas -- "the fee arrangements with the clients and Ms. Kerr's restricted license to practice law." (Doc. No. 18 at 2). With respect to fee arrangements, the District has not briefed or even mentioned any factual predicate warranting discovery on fee arrangements at this late juncture. With respect to Kerr's restricted license to practice law, the record establishes that Kerr was admitted pursuant to Pennsylvania Bar Admission Rule 311. (Doc. No. 23 at 4). Because the question of the scope of Kerr's license pursuant to this rule is a legal one, we fail to see how additional discovery would be helpful. Therefore, the matter is ripe for a decision based on the existing record.

²We further note that the District did not object to Kerr's limited license in the underlying proceedings. We do not, however, rely on this fact for our holding.

³Defendant does not contest the reasonableness of Garson's hourly rate. We find that Garson's hourly rate of \$100.00 is reasonable based on his experience and skill.

⁴We note that the attorney in this case had limited special education experience despite his extensive experience in other fields, in contrast to Kerr. However, we believe that our award of \$370.00 per hour rather than the \$280.00 per hour granted in *Melissa G.* accounts for this difference.

⁵In fact, \$370.00 is the high end of the range.

⁶Although these cases dealt with fees under 42 U.S.C. § 1988 and 42 U.S.C. § 12205 rather than the IDEA, they are nonetheless relevant to the present inquiry. *See Goodman v. Pa. Turnpike Comm'n*, 293 F.3d 655, 677 (3d Cir. 2002) ("Case law construing what is a reasonable fee applies uniformly to all fee shifting statutes.") (*quoting City of Burlington v. Dague*, 505 U.S. 557, 562 (1992) (alteration in original, internal quotation marks omitted))).

⁷We are surprised that Defendant objected to telephone costs totaling fifty-five cents.

Statutes Cited

20 USC 1415(i)(3)(B)

20 USC 1415(i)(3)(D)(i)

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