No. 23-

IN THE

Supreme Court of the United States

H.C., INDIVIDUALLY AND ON BEHALF OF J.C.,
A CHILD WITH A DISABILITY, *et al.*,

Petitioners,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,
A LOCAL EDUCATION AGENCY, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Individuals with Disabilities Education Act ("IDEA") provides multiple time-sensitive dispute resolution measures, including due process hearings that are subject to a United States District Court's discretion, under 20 U.S.C. § 1415(i)(3)(B), to award reasonable attorneys' fees as defined under five subsequent subsections, 20 U.S.C. § 1415(i)(3)(C) – (G), which specify "rates prevailing in the community" without "bonus or multiplier," prohibit certain fees unless a prevailing parent was substantially justified in rejecting an offer by the school district, and direct that a court finding of "unreasonabl[eness]" or "excess[]" in fees result in a reduction except "in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section." 20 U.S.C. § 1415(i)(3)(C) – (G).

The questions presented are:

1. How does 20 U.S.C. § 1415(i)(3)(G) affect an award of attorneys' fees under the IDEA?

2. What, if any, limit(s) constrain(s) a federal court's discretion in making an initial determination of; the "rates prevailing in the community" under 20 U.S.C. § 1415(i)(3)(C)?

3. Can a settlement offer's express exclusion of any post-settlement interest ever make a parent substantially justified in rejecting such offer?

PARTIES TO THE PROCEEDINGS

Petitioners, all natural persons, who were plaintiffs-appellants below are:

1. H.C., individually and on behalf of J.C., a child with a disability;

2. M.D., individually and on behalf of L.D., a child with a disability;

3. J.R., individually and on behalf of J.B., a child with a disability;

4. M.H., individually and on behalf of M.T., a child with a disability;

5. A.G., individually and on behalf of R.P., a child with a disability;

6. D.P., individually and on behalf of S.P., a child with a disability;

7. S.H., individually and on behalf of K.H., a child with a disability;

8. V.W., individually and on behalf of A.H., a child with a disability;

9. L.L., individually and on behalf of S.L., a child with a disability;

10. H.W., individually and on behalf of M.W., a child with a disability;

11. H.A., individually and on behalf of M.A., a child with a disability;

12. N.G.B., individually and on behalf of J.B., a child with a disability;

13. A.W., individually and on behalf of E.D., a child with a disability;

14. R.P., individually and on behalf of E.H.P., a child with a disability.

Petitioners, also natural persons, who were defendants-counter-claimants-appellants below are C.S. and S.S., each individually and each on behalf of M.S., a child with a disability.

Respondent, a local education agency, who was a defendant-appellee below is the New York City Department of Education, a local education agency.

Respondent, also a local education agency, who was a plaintiff-counter-defendant-appellee below is the Board of Education of the Yorktown Central School District.

RELATED PROCEEDINGS

The following proceedings are directly related to this petition:

1. *H.C., et al. v. New York City Department of Education*:

a. No. 1:20-cv-00844, United States District Court for the Southern District of New York, judgment entered June 21, 2021;

b. No. 21-1582, United States Court of Appeals for the Second Circuit, judgment entered June 21, 2023 (71 F.4th 120);

2. *M.D., et al. v. New York City Department of Education*:

a. No. 1:20-cv-06060, United States District Court for the Southern District of New York, judgment entered July 19, 2021;

b. No. 21-1961, United States Court of Appeals for the Second Circuit, judgment entered June 21, 2023 (71 F.4th 120);

3. *J.R., et al. v. New York City Department of Education*:

a. No. 1:19-cv-11783, United States District Court for the Southern District of New York, judgment entered August 31, 2021;

b. No. 21-2130, United States Court of Appeals for the Second Circuit, judgment entered June 21, 2023 (71 F.4th 120);

4. *M.H., et al. v. New York City Department of Education*:

a. No. 1:20-cv-01923, United States District Court for the Southern District of New York, judgment entered October 13, 2021, amended judgment entered October 21, 2021;

b. No. 21-2744, United States Court of Appeals for the Second Circuit, judgment entered June 21, 2023 (71 F.4th 120);

5. *A.G., et al. v. New York City Department of Education*:

a. No. 1:20-cv-07577, United States District Court for the Southern District of New York, judgment entered October 19, 2021;

b. No. 21-2848, United States Court of Appeals for the Second Circuit, judgment entered June 21, 2023 (71 F.4th 120);

6. *D.P., et al. v. New York City Department of Education*:

a. No. 1:21-cv-00027, United States District Court for the Southern District of New York, judgment entered January 11, 2022;

b. No. 22-259, United States Court of Appeals for the Second Circuit, judgment entered June 21, 2023 (71 F.4th 120);

7. *S.H., et al. v. New York City Department of Education*:

a. No. 1:21-cv-04967, United States District Court for the Southern District of New York, judgment entered January 26, 2022;

b. No. 22-290, United States Court of Appeals for the Second Circuit, judgment entered June 21, 2023 (71 F.4th 120);

8. *V.W., et al. v. New York City Department of Education*:

a. No. 1:20-cv-02376, United States District Court for the Southern District of New York, judgment entered February 4, 2022;

b. No. 22-315, United States Court of Appeals for the Second Circuit, judgment entered June 21, 2023 (71 F.4th 120);

9. *L.L., et al. v. New York City Department of Education*:

a. No. 1:20-cv-02515, United States District Court for the Southern District of New York, judgment deemed entered, under Federal Rule of Civil Procedure 58(c)(2)(B), July 9, 2022;

b. No. 22-422, United States Court of Appeals for the Second Circuit, judgment entered June 21, 2023 (71 F.4th 120);

10. *H.W., et al. v. New York City Department of Education*:

a. No. 1:20-cv-10591, United States District Court for the Southern District of New York, judgment entered March 9, 2022;

b. No. 22-568, United States Court of Appeals for the Second Circuit, judgment entered June 21, 2023 (71 F.4th 120);

11. *H.A., et al. v. New York City Department of Education*:

a. No. 1:20-cv-10785, United States District Court for the Southern District of New York, judgment entered March 21, 2022;

b. No. 22-586, United States Court of Appeals for the Second Circuit, judgment entered June 21, 2023 (71 F.4th 120);

12. *N.G.B., et al. v. New York City Department of Education*:

a. No. 1:20-cv-06571, United States District Court for the Southern District of New York, judgment entered April 1, 2022;

b. No. 22-772, United States Court of Appeals for the Second Circuit, judgment entered June 21, 2023 (71 F.4th 120);

13. *Board of Education of the Yorktown Central School District v. S.S., et al.*:

a. No. 7:17-cv-06542, United States District Court for the Southern District of New York, judgment entered March 22, 2022;

b. No. 22-775, United States Court of Appeals for the Second Circuit, judgment entered June 21, 2023 (71 F.4th 120);

14. *A.W., et al. v. New York City Department of Education*:

a. No. 1:20-cv-06799, United States District Court for the Southern District of New York, judgment entered April 4, 2022;

b. No. 22-855, United States Court of Appeals for the Second Circuit, judgment entered June 21, 2023 (71 F.4th 120);

15. *R.P., et al. v. New York City Department of Education*:

a. No. 1:21-cv-04054, United States District Court for the Southern District of New York, judgment entered April 27, 2022;

b. No. 22-977, United States Court of Appeals for the Second Circuit, judgment entered June 21, 2023 (71 F.4th 120).

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H.C., M.D., J.R., M.H., A.G., D.P., S.H., V.W., L.L., H.W., H.A., N.G.B., S.S., C.S., A.W., and R.P. (collectively, "the Parents"), individually and on behalf of their respective children, petition this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this set of cases, which were heard in tandem below.

OPINIONS BELOW

The Second Circuit's opinion (Appx. A (1a-18a)) is published at 71 F.4th 120, revised pursuant to an errata sheet issued on July 12, 2023, following a petition for rehearing by the New York City Department of Education ("NYCDOE"). On July 24, 2023, the court denied the petition for rehearing as to M.H., A.G., D.P., and R.P.; and on July 25, 2023, denied the petition as to H.C., M.D., J.R., S.H., V.W., L.L., H.W., H.A., N.G.B., A.W. No copy of the petition for rehearing nor ruling thereupon was filed for S.S. and C.S.

The (unpublished) opinion of the United States District Court of the Southern District of New York, denying in part the respective motion for fees for:

(a) H.C. (Appx. Q (414a-447a)) is at 2021 U.S. Dist. LEXIS 113620;

(b) M.D. (Appx. P (394a-413a)) is at 2021 U.S. Dist. LEXIS 132930;

(c) J.R. (Appx. O (377a-393a)) is at 2021 U.S. Dist. LEXIS 146057.

(d) M.H. (Appx. N (286a-376a)) is at 2021 U.S. Dist. LEXIS 190419;

(e) A.G. (Appx. M (256a-285a)) is at 2021 U.S. Dist. LEXIS 201748;

(f) V.W. (Appx. L (237a-255a)) is at 2022 U.S. Dist. LEXIS 1289, with a subsequent related Order (Appx. I 165a-167a) partly denying reply fees, which is also not published but is available at 2022 U.S. Dist. LEXIS 20967;

(g) D.P. (Appx. K (192a-236a)) is at 2022 U.S. Dist. LEXIS 5002;

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(o) R.P. (Appx. B (19a-42a)) is at 2022 U.S. Dist. LEXIS 76873.

JURISDICTION

The court of appeals entered its Opinion and Judgment on June 21, 2023 (Appx. 1a), and the Parents are proceeding on S.S.'s timeline (where no

motion for rehearing was deemed filed), with a September 19, 2023 deadline to file a petition of writ for certiorari. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant statutory provisions are reproduced in the petition appendix. Appx. AF (476a-497a).

STATEMENT

A. Legal Background

These cases involve the IDEA's[1] specific remedial framework, which Congress designed to facilitate expedient resolution of special education disputes and provide parents access to legal representation.

Enacted under the Spending Clause, the IDEA assists State and local education agencies (respectively, "SEA" and "LEA") in educating children with disabilities, with federal funding conditioned upon compliance with extensive goals and procedures. *See, e.g., Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 295-296 (2006).

1. In 1986, Congress added fee-shifting to the IDEA, expressly overturning this Court's determination that attorneys' fees were not available under the statute. *See Arlington*, 548 U.S. at 309 (Souter, J., dissenting), *citing* 100 Stat. 796, *and* 131 Cong. Rec. 1979-1980 (1985); *see also Smith v. Robinson*, 468 U.S. 992 (1984). At least one legal scholar, at the time, noted that the fee-shifting

[1] The original title of the IDEA was the Education of the Handicapped Act. For reference, this petition will refer to the law as the IDEA.

provision addressed "recurring criticisms parents have offered concerning the advantage to the school system of delaying the process," and that the provision also reflected this Court's emphasis, in *Hendrick Hudson District Board of Education v. Rowley* (458 U.S. 176, 102 S.Ct. 3034 [1982]), on the importance of the IDEA's procedural requirements, which "in most cases assure much if not all of what Congress wished in the way of substantive content in an [Individualized Education Program ("IEP")]." Professor Thomas F. Guernsey, L.L.M., *The School Pays the Piper, but How Much? Attorneys' Fees in Special Education Cases after the Handicapped Children's Protection Act of 1986*, 23 Wake Forest L. Rev. 237, 264 (1988).

Since then, the IDEA's comprehensive fee-shifting provisions have enabled parents to seek legal counsel as a last resort, following failure of the IDEA's other mechanisms to achieve the IDEA's core purposes, including of "ensur[ing] that all children with disabilities have available to them a [FAPE] that emphasizes special education and related serves designed to meet their unique needs." 20 U.S.C. §§ 1400(c)(8)-(9), (d)(1)(A)-(B), 1415(i)(3).

a. Initial opportunities to determine a child's special education and related services include IEP team meetings, possible mediation, and State-specific procedural safeguards. 20 U.S.C. §§ 1414(d), 1415(a)-(b), (d)-(e). Full written notice and explanation of the procedural safeguards must be provided. 20 U.S.C. § 1415(d)(1)(A), (2). Attorneys' fees relating to IEP team meetings are not awarded "unless such meeting is

convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e)." 20 U.S.C. § 1415(i)(3)(D)(ii).

b. Next, parents may file a "due process complaint" with the SEA or LEA; and within fifteen days thereof, an LEA must then convene a resolution meeting or agree to mediation. 20 U.S.C. § 1415(b)(6)-(7), (f)(1)(B)(i). Attorneys' fees for the resolution meeting are prohibited. 20 U.S.C. § 1415(i)(3)(D)(iii).

Thirty (30) days after the LEA's receipt of the due process complaint, all due process hearing timelines commence. 20 U.S.C. § 1415(f)(1)(B)(ii). By regulation, the Impartial Hearing Officer's ("IHO") final decision must be reached "not later than 45 days after the expiration of the 30 day period," subject to an IHO's "specific extensions." 34 C.F.R. § 300.515(a), (c). If the LEA makes a timely written settlement offer that is not timely accepted, fees stop at the date of the offer, unless a prevailing parent "was substantially justified in rejecting the settlement offer." 20 U.S.C. § 1415(i)(3)(D)(i), (E).

IHOs' decisions may be followed by an appeal (including, where available, to an SEA) and/or a civil action in State or Federal court. 20 U.S.C. § 1415(i)(2)(A), (*l*). Non-IDEA relief might also be sought in a subsequent civil action. 20 U.S.C. § 1415(*l*); *see, generally, Perez v. Sturgis Pub. Sch.*, 143 S.Ct. 859 (2023).

2. District courts have original jurisdiction over IDEA attorneys' fees, with a threshold question:

whether to award "reasonable attorneys' fees" to certain prevailing parties. 20 U.S.C. § 1415(i)(3)(A)-(B).[2]

Unlike most fee-shifting statutes, the IDEA defines "reasonable attorneys' fees," under a list of determinations, prohibitions, reductions, and exceptions. 20 U.S.C. § 1415(i)(3)(C)-(G); *see Arlington*, 548 U.S. at 298.

Generally, without "bonus or multiplier" in calculating awards, attorneys' fees must be "based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished." 20 U.S.C. § 1415(i)(3)(C). Certain services are excluded from compensation, to encourage early resolution and deter premature legal representation; but exceptions allow compensation when certain services are post-litigation (such as IEP meetings ordered by an IHO) or when the parent has some other substantial justification. 20 U.S.C. § 1415(i)(3)(D)-(E). Except when an SEA or LEA "unreasonably protracted the final resolution of the action or proceeding" or violated § 1415, fees are reduced "accordingly" if a court finds that: (i) parents or their counsel "unreasonably protracted the final resolution of the controversy"; (ii) fees would "unreasonably"

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[2] In 2004, Congress amended § 1415(i)(3)(B), to award prevailing education agencies, where the complaint filed is frivolous or presented for an improper purpose, such as to harass, delay, or increase the cost of litigation. *Compare* Pub. L. 105-17, title I, § 101, 111 Stat. 88 (June 4, 1997), *with* 108 P.L. 446, 118 Stat. 2647 (Dec. 3, 2004).

exceed prevailing rates in the community; (iii) the time or services were "excessive considering the nature of the action or proceeding"; or (iv) the parent's counsel did not provide appropriate information in the due process complaint. 20 U.S.C. § 1415(i)(3)(F)-(G).

3. For over a decade in the Southern District of New York, the few and far between IDEA fee decisions have assigned senior attorneys the same range of $350 to $475 per hour. *See* ECF, 2d Cir. Index 22-290, Doc. 79 (J. Appx. Vol. 3 of 6) at A-503-A-508.

a. In 2003, the range for nineteen years' experience was $350-365, regardless of IDEA experience. *See, e.g., S.W. v. Bd. of Ed. of City of NY*, 257 F.Supp.2d 600 (S.D.N.Y. 2003); *see also R.E. v. NYC Bd. of Ed.*, 2003 WL 42017 *3 (S.D.N.Y. 2003); *see also* ECF, 2d Cir. Index 22-290, Doc. 79 (J. Appx. Vol. 3 of 6) at A-503-A-508.

b. Between 2011 and 2013, the range was $375-475, for approximately thirty years' experience; essentially what could have been received in 2003 for having ten more years' experience than attorneys receiving $350-365 per hour. *See* ECF, 2d Cir. Index 22-290, Doc. 79 at A-503-A-508.

c. In 2018, pointing back to four cases whose rates were assigned in 2011 and 2012, a Southern District of New York decision stated that the "rates approved for experienced attorneys in IDEA fee-shifting cases have tended to be between $350 and $475 per hour." *C.D. v. Minisink Valley Cent. Sch. Dist.*, 2018 U.S. Dist. LEXIS 134646 *16 (S.D.N.Y. Aug. 9, 2018). This range was stated the same year as being "[m]ore

recently…found" by the *C.D.* court, rather than collected from older cases. *M.D. v. New York City Dept.*, 2018 U.S. Dist. LEXIS 156923 *9 (S.D.N.Y. Sept. 14, 2018).

d. In 2019, citing *C.D.* and *M.D.*, a different Southern District of New York court claimed that "[t]he prevailing market rate for experienced, special-education attorneys in the New York area *circa* 2018 is between $350 and $475 per hour." *R.G. v. New York City Dept. of Educ.*, 2019 U.S. Dist. LEXIS 166370 *4 (S.D.N.Y. Sept. 26, 2019).

e. In March 2021, a district court for a different counsel's client assigned a $400 hourly rate, stating that "the prevailing market rate for experienced special education attorneys…surely has increased since *circa* 2018, the period…in *R.G.*" *A.B. v. New York City Dept. of Educ.*, 2021 U.S. Dist. LEXIS 47573 *7 (S.D.N.Y. Mar. 13, 2021).

B. Factual and Procedural Background

1. The underlying hearings far exceeded the statutory and regulatory timeframe (*i.e.,* 75 days)—the longest hearing taking over two years and a (separate) district appeal taking about four-and-a-half years—with the shortest post-hearing enforcement of a final, unappealed IHO order lasting an additional three months. *See* Appx. 20a-21a, 44a-45a, 63a-65a, 79a, 95a-97a, 152a-153a, 169a-171a, 194a-195a, 238a-239a, 258a-260a, 288a, 292a, 299a, 378a-380a, 395a-396a, 415a-419a; *see also* ECF, 2d Cir. Index 22-290, Doc. 80 (J. Appx. Vol. 4 of 6) at A-746, A-750, A-753, A-798, A-803-A-805. Most of the hearings involved at

least two school years and extended into a school year not at issue. *Id.*

a. The Parents' cases greatly varied between one another in types and degrees of relief at issue, including educationally time-sensitive evaluations, IEP modifications, compensatory academic and related services, transportation, and tuition. *See* Appx. 21a, 45a, 96a-97a, 133a, 135a, 153a, 171a-172a, 195a, 211a, 259a-260a, 291a, 293a-295a, 416a-417a; *see also* ECF, 2d Cir. Index 22-290, Doc. 82 (J. Appx. Vol. 6 of 6) at A-1385-A-1386.

b. For V.W., D.P., H.W., and H.A., the DOE did not hold mandated resolution meetings; and at the federal level, the DOE promised (without making) fee offers to D.P., S.H., or H.A. *See* Appx. 221a; *see also* ECF, 2d Cir. Index 22-290, Doc. 79 (J. Appx. Vol. 3 of 6) at A-623; *see also* ECF, 2d Cir. Index 22-290, Doc. 80 (J. Appx. Vol. 4 of 6) at A-702, A-798-A-799, A-806-A-807; *see also* ECF, 2d Cir. Index 22-290, Doc. 81 (J. Appx. Vol. 5 of 6) at A-953, A-959, A-970. Although D.P. eventually reached an agreement-in-principle at the hearing level, the DOE did not obtain Comptroller approval, necessitating the hearing instead. Appx. 221a.

c. As to H.C., A.G., V.W., D.P., H.A., and A.W., the DOE withheld its position, until (if disclosed at all) the day of hearing or shortly beforehand. *See* Appx. 92a, 96a-97a, 214a, 247a, 279a, 416a, 418a. For H.A., after more than three months without the DOE's response to multiple inquiries, appearance at the prehearing conference, or position on summary judgment, the

DOE informed H.A. that the DOE did not have a case; and then, at hearing, the DOE objected to her relief, prompting the IHO to request a written closing statement. *See* Appx. 96a-97a; *see also* ECF, 2d Cir. Index 22-290, Doc. 81 (J. Appx. Vol. 5 of 6) at A-1010-A-1012, A-1016.

d. The delays transcended hearings and post-hearing enforcement efforts, accumulating into a pileup of fee demands dating back to 2018. *See* Appx. 239a, 260a, 380a-381a, 396a, 419a; *see also* ECF, 2d Cir. Index 22-290, Doc. 81 (J. Appx. Vol. 5 of 6) at A-1135, A-1158. Fee demands were typically sent when enforcement/implementation of an IHO's decision was complete or progressing without issue; and when court intervention seemed necessary (whether for decision enforcement or on fee issues), fee demands were made to opposing counsel in federal actions. *See, e.g.,* ECF, 2d Cir. Index 22-290, Doc. 80 (J. Appx. Vol. 4 of 6) at A-738-A-739, A-813-A-814.

2. In the past two decades, legal service rates in New York City have nearly doubled; and here, the Parents found counsel whose staggered rates align with those of similarly-experience IDEA practitioners. Each separate fee application below accounted for what evidence had been proffered and what decisions had been issued, as well as what further independent and objective types of evidence could be added; and with each fee application, the rates went unrebutted by any evidence of lower rates charged by attorneys and paid by clients. *See, e.g., H.C.* ECF, 2d Cir. Index 21-1582, Doc. 34 (J. Appx. Vol. 1 of 2) at A-6-A-8; *see*

also M.D. ECF, 2d Cir. Index 21-1961, Doc. 36 (J. Appx.) at A-3-A-4; *see also J.R.* ECF, 2d Cir. Index 21-2130, Doc. 25 (J. Appx. Vol. 1 of 3) at A-4-A-6.

a. Aside from their counsels' own declarations and billing, Parents H.C., M.D., and J.R. each proffered separate,[3] independent practitioners' testimonies concerning those attorneys' comparative billing practices, credentials, and detailed IDEA litigation experiences. *See, e.g., H.C.* ECF, 2d Cir. Index 21-1582, Doc. 34 (J. Appx. Vol. 1 of 2) at A-6-A-8, A-172-A-180; *see also M.D.* ECF, 2d Cir. Index 21-1961, Doc. 36 (J. Appx.) at A-3-A-4, A-156-A-163, A-165-A-167; *see also J.R.* ECF, 2d Cir. Index 21-2130, Doc. 25 (J. Appx. Vol. 1 of 3) at A-4-A-6.

b. Next, Parents M.H., A.G., A.W., and V.W. in their separate fee applications, included a table of all IDEA fee awards in the Southern District of New York, from 1998 to April 2021. *A.G.* ECF, 2d Cir. Index 21-2848, Doc. 34 (J. Appx.) at A-87-A-93; *see M.H.* ECF, 2d Cir. Index 21-2744, Doc. 52 (J. Appx. Vol. 1 of 2) at ii, A-157-A-158; *see also* ECF, 2d Cir. Index 22-290, Doc. 82 (J. Appx. Vol. 6 of 6) at xi, xxiii. The table included columns indicating the year of each award and rows indicating the experience of the attorney (or role as non-attorney staff), with a bracketed number to juxtapose the award with the current dollar value based upon the U.S. Bureau of Labor Statistics' Consumer Price Index ("CPI") inflation calculator. *Id.*

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[3] Between H.C.'s three declarants and M.D.'s two declarants, these parents had one declarant in common; and neither of them shared an outside-practitioner declarant with J.R.

Endnotes, which were attached to each awarded rate, indicated to whom the rate applied and their year of admission to the bar. *Id.* On reply, M.H. had an independent IDEA practitioner review the DOE's objections to her counsels' billing, with a declaration submitted by that practitioner. *See M.H.* ECF, 2d Cir. Index 21-2744, Doc. 52 at A-432-A-447.

c. Parents L.L., H.W., D.P., and S.H., along with J.R. and M.H., added to their own fee applications a summary of spreadsheets obtained from the DOE by New York Freedom of Information Law request, concerning nearly 7,000 settled cases upon which the DOE paid between January 1, 2016 and May 18, 2020. This summary was accompanied in a declaration (of Benjamin Kopp of the Parents' counsels' firm) by additional summaries of rate affidavits of disinterested local IDEA and civil rights practitioners across the dockets in the Southern District of New York. ECF, 2d Cir. Index 22-290, Doc. 79 (J. Appx. Vol. 3 of 6) at v, vii, xi, xxiii, A-522-A-531.

d. Parent S.H. further provided a fee expert who spoke to a review of the community without being a local IDEA practitioner. ECF, 2d Cir. Index 22-290, Doc. 79 (J. Appx. Vol. 3 of 6) at A-624-A-673.

e. In their initial fee applications, H.A., N.G.B., and R.P. further provided the DOE's outside counsel retainer agreement, which the DOE used solely for IDEA fee litigation; and A.G., L.L., H.W., and A.W. included the same retainer agreement in their reply papers. *See* ECF, 2d Cir. Index 22-290, Doc. 79 (J. Appx. Vol. 3 of 6) at xii, xiv, xvii, xix, xxiv, xxviii-xxix,

A-597-A-610; *see also A.G.* ECF, 2d Cir. Index 21-2848, Doc. 34 (J. Appx.) at ii.

f. H.A. and N.G.B., in their respective fee applications, also provided updated inflation calculations for prior awards; and for comparison, excerpts of the 2016 and 2018 Wolters Kluwer "Real Rate Reports" (including for New York City and Washington, D.C.), the U.S.A.O. Attorneys' Fees *Laffey* Matrix for 2015-2021 in Washington, D.C., billing records and retainer agreements of paying clients within the Southern District of New York, and New York State court fee awards. *See* ECF, 2d Cir. Index 22-290, Doc. 80 (J. Appx. Vol. 4 of 6) at xviii-xix, xxiii-xxiv, A-906-A-913, A-934-A-947.

The billing records and retainer agreements were originally submitted by S.S. in seeking fee reimbursement. *See* ECF, 2d Cir. Index 22-290, Doc. 77 (J. Appx. Vol. 1 of 6) at i-ii, A-40-A-47, A-51-A-170.

3. Only four Parents (H.C., H.W., A.W., and R.P.) both received fee offers and subsequent opposition claiming that the offers were more reasonable than potential court awards. *See* Appx. 36a, 91a, 148a, 441a.

a. Offers to H.C. and R.P. required waiver of "right to any claim for interest on the Settlement Amount"; and none of those offers dealt with the respective family's hearing-level relief. *H.C.* ECF, 2d Cir. Index 21-1582, Doc. 35 (J. Appx. Vol. 2 of 2) at A-189-A-190; ECF, 2d Cir. Index 22-290, Doc. 82 (J. Appx. Vol. 6 of 6) at xxviii, A-1410; *see* Appx. 36a, 91a, 148a, 441a.

b. Offers to H.W. and A.W. did not affect the awarded fees and did not become part of the issues before the Second Circuit.

4. The district courts varied somewhat in interpreting the "unreasonable protraction" exception to IDEA fee reductions.

a. Some courts stated that, because two earlier district courts declined to find that the DOE's unresponsiveness or "significant delays in the administrative proceedings" constituted unreasonable protraction in those cases, the Parents' district courts would not find that the DOE engaged in unreasonable protraction as to H.C.'s, H.A.'s, L.L.'s, and/or R.P.'s matters. Appx. 34a, 128a-129a, 155a-156a, 433a-434a.

Nevertheless, L.L.'s court interpreted the IDEA's fee-shifting provision to mean: "The fees may be reduced under 20 U.S.C. § 1415(i)(3)(F), unless the court concludes that the '[LEA] unreasonably protracted….'" Appx. 154a.

b. M.H.'s court, which listed several examples of the DOE's protractions, was the first to adopt the Sixth and Eleventh Circuits' perspective that § 1415(i)(3)(G), when applicable, cannot remove § 1415(i)(3)(F)'s reductions because § 1415(i)(3)(B)-(C) limit the court's discretion to "reasonable" fees and refer to "the prevailing community rate". Appx. 351a-353a. Several subsequent decisions (A.G., S.H., V.W., D.P., A.W., H.W., H.A.) then operated under an explicit belief that finding unreasonable protraction would do nothing to a final award. Appx. 92a-93a,

128a, 147a, 190a, 221a, 254a, 283a-284a. Immediately after A.G.'s court expressed this belief, the court contradicted itself, stating: "Rather, Defendant's delay makes the time Plaintiff spent in seeking statutorily authorized relief necessary and reasonable that, had Defendant acted more responsibly, might not have been necessary. As Plaintiff notes, 'reasonable diligence in [Defendant's] actions could have avoided the hearing altogether.'" Appx. 284a.

c. Other courts, including R.P.'s, did not express a particular interpretation of 20 U.S.C. § 1415(i)(3)(G).

5. The district courts diverged on the "prevailing market rate" for senior attorneys, oscillating between: (a) the $350-475 range dating back to 2003 and 2012; and (b) the 2021 *A.B.* decision's implied increase to $400. Appx. 27a, 50a, 69a, 82a, 108a, 141a, 157a, 183a, 215a-216a, 244a-245a, 274a, 318a-319a, 384a-385a, 401a, 426a; *see* ECF, 2d Cir. Index 22-290, Doc. 79 (J. Appx. Vol. 3 of 6) at A-503-A-508; *S.W.*, *supra* 257 F.Supp.2d 600; *R.E.*, *supra* 2003 WL 42017 at *3; *C.D.*, *supra* 2018 U.S. Dist. LEXIS 134646 at *16; *M.D.*, *supra* 2018 U.S. Dist. LEXIS 156923 at *9; *R.G.*, *supra* 2019 U.S. Dist. LEXIS 166370 at *4; *A.B.*, 2021 U.S. Dist. LEXIS 47573 at *7. Parents H.C., M.D., J.R., L.L., H.A., and R.P. received the older rate bracket; and the others received the *A.B.* bracket. *See Id.*

a. Each district court scaffolded downward from the senior attorneys, assigning rates near $200-300 for ninth-year attorneys, $200-250 for a fifth-year attorney, and $180-225 for more recent attorneys; and

this left paralegals at a $100-125 range. Appx. 28a-30a, 50a-53a, 70a-71a, 84a-85a, 113a, 117a, 141a, 158a-159a, 166a, 182a, 216a, 248a-249a, 274a-277a, 322a-324a, 386a-387a, 403a-405a, 425a, 428a-430a.

b. The courts forewent post-lodestar adjustments, and indicated their downward adjustments were part of creating the lodestar. *See, generally,* Appx. B-Q. The courts for S.H. and (in a footnote) D.P. each found a single aspect accepted as "complicated" or "challenging". *Id.* Otherwise, the courts diminished the Parents' excellent results and claimed that the other *Johnson* factors all weighed against the Parents. *Id.* Concerning experience, when provided the same background information, the district courts widely varied in which aspects to address. Appx. 27a-30a, 50a-53a, 68a-71a, 82a-85a, 109a-117a, 140a-141a, 156a-159a, 166a, 181a-182a, 208a-209a, 247a, 249a, 271a-277a, 319a-324a, 383a-387a, 399a-405a, 424a-430a.

6. The district courts appeared to split concerning how to reduce hours after having reduced rates, sometimes using across-the-board hour reductions that, in turn, reduced *de facto* rates.

a. For Parents H.C., M.D., J.R., V.W., L.L., H.W., H.A., N.G.B., C.S., and R.P. the courts chopped broad percentages from entire hearings and/or federal cases, often citing 20%, 25%, or 30% reductions as routine. *See* Appx. 37a-38a, 53a, 72a-73a, 118a-125a, 144a-146a, 160a-163a, 167a, 250a-251a, 389a-391a, 408a-410a, 435a-441a. Although H.C.'s and L.L.'s courts did this to their federal actions, hearing-level reductions

were limited to types of tasks. Appx. 160a-163a, 435a-441a.

b. For Parents M.H., A.G., D.P., S.H., A.W., a few specific hours were cut, without overall percentage reduction, except that A.G.'s and S.H.'s decisions each gave an individual attorney a percentage cut. Appx. 86a-91a, 182a, 223a-229a, 279a-283a, 327a-349a.

c. The broad disparities in hour reductions—especially after rate reductions—created a vast range of awards, approximately 33-72% of the value of legal services. *See, e.g.,* Appx. 20a, 42a, 44a, 95a, 131a, 152a, 164a.

7. J.R.'s court granted prejudgment interest, whereas the courts for M.H., S.H., H.A., N.G.B., and R.P. denied prejudgment interest on bases that it was either unauthorized or, alternatively, the awards were already sufficient. Appx. 40a-41a, 75a-76a, 126a-127a, 190a, 364a-371a, 392a.[4]

8. Of the four courts comparing the DOE's fee offers to the final awards, the court for: (a) H.W. found that she was substantially justified in rejecting a DOE offer that failed to include a then-outstanding tuition issue; (b) A.W. found that the final fees were above the DOE's offer; and (c) H.C. and R.P. found that the final fees were below the DOE's offers. Appx. 36a, 91a, 148a-149a, 442a.

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[4] D.P.'s pre-judgment interest request did not carry over to her Memorandum, which, in her court, was viewed as abandonment. Appx. 234a-235a.

H.C.'s district court did not address substantial justification, whether directly or by citation. *See, generally,* Appx. Q.

R.P.'s court rejected substantial justification, indicating the court's beliefs that: (i) certain recent decisions the DOE used in crafting its offer took "into account the prevailing market rates"; and (ii) even though the DOE's offer required waiving any interest on the settlement amount, R.P. could seek such waived interest in State court, which would be futile and frivolous. Appx. 37a.

9. Two sets of amici provided briefs supporting the Parents before the Circuit, without other amici.

a. First, non-profit legal organizations briefed the nature of requisite legal services and the abuses of discretion in the lower-than-prevailing rates. ECF, 2d Cir. Index 22-290, Doc. 49. Council of Parent Attorneys and Advocates ("COPAA") also filed a similar brief as to S.S., the paying Parent. *S.S.* ECF, 2d Cir. Index 22-775, Doc. 100.

b. Second, several law professors collectively briefed how legal ethical obligations supported the Parents, the need to view legal billing judgment prospectively (*i.e.,* from the standpoint of when time is used), abuses of discretion in creating wide varieties of hourly rates, and a suggested judicial task force similar to setups previously utilized in the Third and D.C. Circuits. ECF, 2d Cir. 22-290, Doc. 53.

10. The Second Circuit affirmed the district courts, identifying only the denial of M.D.'s travel costs as an abuse of discretion. *See, generally,* Appx. A.

a. The Circuit rejected the "unreasonable protraction" issue in the absence of a finding that the LEAs' delays were unreasonable. Appx. 12. The Circuit acknowledged in a footnote that M.H.'s district court did not determine whether the DOE's conduct unreasonably protracted M.H.'s proceedings; and otherwise, condensed H.C.'s position into a few generalizations amounting to "the LEA could have hastened proceedings if it had been better organized," without addressing the more pressing issues (including those raised by other Parents). Appx. 13a. While the Circuit noted that the "need to continue litigating" being completely absent would have "suggest[ed] unreasonable protraction," the Circuit (incorrectly) denied any "definite and firm conviction" of a mistake below. Appx. 13a.

b. As to interpreting 20 U.S.C. § 1415(i)(3)(F)-(G), the Circuit highlighted that fees need to be reasonable under § 1415(i)(3)(B) and based upon prevailing rates under § 1415(i)(3)(C), stating that these precluded courts from "award[ing] an unreasonable fee that a party requests." Appx. 14a. The Circuit did not directly comment on whether "reasonable" in 20 U.S.C. § 1415(i)(3)(B) is defined by the other subparagraphs in the same list; nor did it address what, if any, effect § 1415(i)(3)(G) has in mandating that reductions for a district court's perception of "unreasonable" rates or "excessive" time under 20 U.S.C. § 1415(i)(3)(F) shall not apply. Appx. A.

c. The Circuit affirmed the district courts' practice of citing to recent iterations of outdated rates in

manufacturing a lodestar, and demarcated the legal conclusions on the *Johnson* factors (*e.g.,* "novel or difficult," "undesirable," etc.) as "specific findings." Appx. 10a-11a. The Circuit permitted creating a lodestar with two separate reductions—*i.e.,* rates and across-the-board hours—both decreasing attorneys' rates prior to lodestar adjustments. Appx. 12a.

d. While finding prejudgment interest permissible (contrary to the district courts' view), the Circuit affirmed those denials as discretionary. Appx. 15a-16a.

e. The Circuit determined that, because post-judgment interest is mandatory, silence grants post-judgment interest. Appx. 16a.

f. Apart from affirming all decisions and generally finding "remaining arguments" without merit, the Circuit did not speak to whether H.C.'s and/or R.P.'s district courts should have found them substantially justified in rejecting the DOE's offer.

REASONS TO GRANT THE PETITION

I. THE SECOND CIRCUIT'S DECISION IS WRONG ON MULTIPLE GROUNDS

The Second Circuit's approach (incorrectly) neglects the plain language and purpose of the IDEA's fee-shifting provisions; and returns civil rights parties to a full 12-factor test for fees, which only thereafter has subjective rates and hours multiplied and mislabeled "lodestar." Further, the Circuit does not address the district courts': (i) reuse of historical rates, despite one-sided, growing records showing that the rates no longer prevailed in the community; (ii) reuse of percentage reductions from unrelated cases;

(iii) rate-defining misstatements of counsels' and paralegals' experience; (iv) miscounting of unbilled entries as billed in making reductions; (v) for H.C., failure to address "substantial justification" for rejecting the DOE's offer; and (vi) for R.P., finding that the absence of post-settlement interest was not "substantial justification" for rejecting a settlement offer.

A. Review is Warranted to Address 20 U.S.C. § 1415(i)(3)(G)'s Purpose in Congress' Statutory Framework

The Circuit's interpretation of 20 U.S.C. § 1415(i)(3)(B)-(C) circumvents and contradicts the plain language of § 1415(i)(3)(G)'s exception to § 1415(i)(3)(F)'s fee reductions, preventing statutorily-mandated streamlining of fee cases.

1. The Circuit neglects that the term "may" under § 1415(i)(3)(B) precedes the verb "award," the object "reasonable attorneys' fees" to be awarded, and three alternative prepositional phrases denoting "to" whom (*i.e.*, certain prevailing parties) awards can be made. 20 U.S.C. § 1415(i)(3)(B); *see, generally, Murphy v. Smith*, 138 S.Ct. 784 (2018) (discussing use of grammatical statutory construction).

2. This Court has acknowledged that 20 U.S.C. § 1415(i)(3)(C)-(G) "contains detailed provisions that are designed to ensure that such awards are indeed reasonable." *Arlington*, 548 U.S. at 298; *see Beecham v. U.S.*, 511 U.S. 368, 371 (1994) ("That several items in a list share an attribute counsels in favor of interpreting the other items as possessing that attribute as well"); *see also Purdue v. Kenny A.*, 559 U.S. 542, 550 (2010) (noting that, under 42 U.S.C. § 1988, Congress had not defined "reasonable fees").

a. For instance, § 1415(i)(3)(G) provides specific, narrow circumstances when a court is mandated by "shall," to "not apply" any of the (otherwise mandatory) provisions of § 1415(i)(3)(F). 20 U.S.C. § 1415(i)(3)(F)-(G). This language connotes a nondiscretionary duty that is part of a court's inquiry into a "reasonable fee." *See Murphy*, 138 S.Ct. at 787. Contrarily, the Circuit's interpretation urges courts to reduce fees to what they feel is reasonable, regardless of the circumstances and the fact that the courts do not preside over IDEA hearings.

b. Under the IDEA's clear terms, § 1415(i)(3)(C) & (F) are complementary: § 1415(i)(3)(C) mandates fees "based on" prevailing rates, and § 1415(i)(3)(F)(ii) acts as a ceiling to prevent rates from "unreasonably" exceeding prevailing rates, unless § 1415(i)(3)(G) applies. 20 U.S.C. § 1415(i)(3)(C), (F)-(G). When § 1415(i)(3)(G) applies, it expressly streamlines the fee-shifting process by, *inter alia*, mandating the § 1415(i)(3)(F)(ii) rate ceiling "shall not apply," leaving the court to review specific evidence that the requested rates are "based on" those prevailing in the community. *Id.*; *see Sebelius v. Cloer*, 569 U.S. 369, 133 S.Ct. 1886 (2013) ("Our inquiry ceases in a statutory construction case if the statutory language is unambiguous and the statutory scheme is coherent and consistent") (internal marks omitted).

c. Had Congress aimed to exclude § 1415(i)(3)(G) from its definition of "reasonable attorneys' fees," it could have drafted any restricting language or omitted the provision entirely, but it did neither. 20 U.S.C. § 1415(i)(3); *Murphy*, 138 S.Ct. at 787 ("If Congress had wished to afford the judge more discretion in this area, it could have easily substituted

'may' for 'shall'"); *see also Arlington*, 548 U.S. at 296 ("courts must presume that a legislature says in a statute what it means and means in a statute what it says there") (internal quotes omitted). Hence, while Congress "presumably knows and adopts the cluster of ideas that were attached to each borrowed word" from terms of art (*Buckhannon Bd. & Care Home v. W. Va. Dept. of Health & Hum. Res.*, 532 U.S. 598, 615-616 (2001) (internal marks omitted)), Congress' diverging "plain and unambiguous statutory language" is what must be enforced. *Hardt v. Railroad*, 560 U.S. 242, 251 (2010).

"Respect for Congress's prerogatives as policymaker" must prevent replacement of the IDEA's words with the court's own words. *Murphy*, 138 S.Ct. at 788; *see Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 522-525 (1994); *see also Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 730-371 (1989) ("…addition of the phrase 'and laws' to the text of what is now § 1983, although not without its ambiguities as to intended scope, was *at least* intended to make clear that [certain] guarantees…were to be enforced…") (emphasis in original).

3. The Circuit's decision conflicts with Congress' intents (*i.e.*, generally and as to fees-shifting) behind the IDEA.

a. The IDEA prioritizes expedient dispute resolution to ensure children with disabilities a free appropriate public education; yet the Circuit's decision endorses an exhausting and burdensome course of fee litigation where government-funded LEAs "unreasonably protract the final resolution" or violate statutory procedural due process safeguards. *Compare, generally,* 20 U.S.C. §§ 1400, 1415, *and*

Appx. A. This Court traditionally, as it should here, rejects such interpretations of fee-shifting statutes that "would have 'spawned a second litigation of significant dimension.'" *Buckhannon*, 532 U.S. at 609; *Tex. State Teachers Ass'n v. Garland ISD*, 489 U.S. 782, 791 (1989).

b. The Circuit misses Congress' aim in reversing this Court's decision in *Robinson* (468 U.S. 992, 104 S.Ct. 3457 (1984)), which was to clarify in detail that "[a]ttorneys' fees should be provided to those individuals who are being denied access to the educational system," in addition to 42 U.S.C. § 1988 protections. *Arlington*, *supra* 548 U.S. 291 (Ginsburg, J., concurring), *citing* 132 Cong. Rec. 16823, 17609 (remarks of Rep. Biaggi).

The IDEA's legislative history highlights numerous ways that Congress considered keeping fees fair, including by avoiding a "bonus or multiplier" via § 1415(i)(3)(C) and ensuring that because "the timing of payment—whether compensation is delayed or it is made on an ongoing, current basis—can affect the prevailing market rate," taking delay into account "should not be treated as a bonus or multiplier." Conf. Rep. on S.415, 132 Cong. Rec. H4841-01, 1986 WL 791369 (Jul. 24, 1986); Sen. Rep. No. 99-112, 1985 WL 25946 *17 (Jul. 25, 1985); PL 99-372 (Aug. 5, 1986). The § 1415(i)(3)(G) exception is Congress' answer to accounting for delay caused by bad public actors, by removing some reductions that courts would otherwise spend time considering. *See* 20 U.S.C. § 1415(i)(3)(F)-(G).

4. The Circuit borrowed the Sixth and Eleventh Circuits' interpretation of § 1415(i)(3)(G), which

diverges from widespread reading of the IDEA's fee-shifting provision.

A year before the Eleventh Circuit's divergence, it utilized the widespread reading of § 1415(i)(3)(G), holding that reduction under § 1415(i)(3)(F) was an abuse of discretion after "the district court made findings that both parties had 'needlessly extended' and 'over-litigated the case.'" *Cobb Cnty. Sch. Dist. v. D.B.*, 670 F.Appx. 684 (11th Cir. 2016). Abandoning *Cobb*'s interpretation, the Eleventh Circuit disclaimed any actual effect of § 1415(i)(3)(G), stating that district courts err only if they (subjectively) act like they must reduce the award. *Williams v. Fulton Cty. Sch. Dist.*, 717 F.Appx. 913, 917 (11th Cir. 2017).

a. Albeit without applying § 1415(i)(3)(G), the D.C. Circuit has noted that "§ 1415(i)(3)(F), (G) reduces awards of attorneys' fees if a parent unreasonably protracts final resolution of the disputed claim for placement, but eliminates such reductions if the school district unreasonably protracts final resolution." *Alegria v. Dist. of Columbia*, 391 F.3d 262, 268 (D.C. Cir. 2004). That appeal ultimately hinged upon § 1415(i)(3)(D). *Id.* at 266-269.

b. District judges within the Second, Seventh, Ninth, and D.C. Circuits traditionally read § 1415(i)(3)(G) to prohibit reductions, consistent with *Alegria*'s (*supra* 391 F.3d at 268) summary. Appx. 154a (Parent L.L.'s decision); *A.R. v. Conn. State Bd. of Educ.*, 2023 U.S. Dist. LEXIS 148960 *5-6 (D. Conn. Aug. 24, 2023); *J.S. v. Crown Point Cent. Sch. Dist.*, 2007 WL 475418 *4-5 (N.D.N.Y. Feb. 9, 2007); *A.T. v. Gary Community Sch. Corp.*, 2011 WL 5386643 *3 (N.D. Ind. Nov. 7, 2011); *T.D. v. La Grange Sch. Dist.*, 2005 WL 483415 *fn. 2 (N.D. Ill. Feb. 28, 2005); *J.B.*

v. Bonita Unif. Sch. Dist., 2023 U.S. Dist. LEXIS *5 (C.D. Cal. Apr. 1, 2023); *T.B. v. San Diego Unif. Sch. Dist.*, 293 F.Supp.3d 1177, 1199 (S.D. Cal. Feb. 23, 2018), *appeal dismissed*, 2019 WL 4599820 (9th Cir. 2019); *Y.Z. v. Clark Cnty. Sch. Dist.*, 54 F.Supp.3d 1171, 1178 (D. Nev. Oct. 20, 2014); *Hawkins v. Berkeley Unif. Sch. Dist.*, 2008 WL 11515278 *8 (N.D. Cal. Nov. 20, 2008); *Dist. of Columbia v. Kirksey-Harrington*, 125 F.Supp.3d 4, 11 (D.D.C. Aug. 18, 2015). There does not appear to be a clear interpretation in either direction (or from a different perspective) in case law for the First, Third, Fourth, Fifth, Eighth, or Tenth Circuits or their subject district courts.

A few district-level splits have emerged. Judges who, below, adopted the Sixth and Eleventh Circuits' approach have subsequently maintained that reading, with some others in the district borrowing that approach during the Parents' circuit appeals. *See, e.g., M.M. v. New York City Dept. of Educ.*, 2022 WL 3043218, 2022 U.S. Dist. LEXIS 137319 *11-12 (S.D.N.Y. Aug. 2, 2022); *but see, e.g., T.A. v. New York City Dept. of Educ.*, 2022 WL 3577885, 2022 U.S. Dist. LEXIS 149319 *21-22 (S.D.N.Y. Aug. 19, 2022) (reading § 1415(i)(3)(G) to prohibit reduction, and declining to find unreasonable protraction).

In the Northern District of Indiana, a separate judge than in *A.T.* (*supra* 2011 WL 5386643 *3) opined in a footnote that § 1415(i)(3)(G) might only remove the "requirement" to make § 1415(i)(3)(F) reductions, citing to the *Williams* (*supra* 717 F.Appx. 913) decision; and did not address why, if that were the intent, Congress chose the plural "provisions" (which naturally means that none of the reductions apply) for

§ 1415(i)(3)(G)'s reference back to § 1415(i)(3)(F), instead of the singular "provision" (which would have expressed a single duty being removed). *D.D.M. v. Sch. Hammond*, 2020 WL 6826490, 2020 U.S. Dist. LEXIS 217339 *fn. 16 (N.D. Ind. Nov. 19, 2020). However, in *D.D.M.,* the sole reduction (less than three percent) was for partial success, which is not one of § 1415(i)(3)(F)'s expressed reductions. *Supra* 2020 U.S. Dist. LEXIS 217339 at *39.

Similarly, two D.C. district judges have split from the traditional § 1415(i)(3)(G) interpretation, with one calling the view "curious" argument and another adopting the *Williams* (*supra* 717 F.Appx. 913) interpretation. *Harris v. Friendship Pub. Charter Sch.*, 2019 WL 954814 (D.D.C. Feb. 27, 2019); *Platt v. Dist. of Columbia*, 168 F.Supp.3d 253, 263, fn. 8 (D.D.C. 2016).

5. The Second Circuit's authorization of LEAs' delays most impacts the children with disabilities, the IDEA's intended beneficiaries, by engrossing their counsels in twelve-factor debates over prior years' fees. That course exacerbates this Court's prior acknowledgment that fee litigation is "often protracted, complicated, and exhausting" and, as reflected in the IDEA, "should be simplified to the maximum extent possible." *Pa. v. Del. Valley Citizens' Council for Clean Air (usu. cited as "Del. Valley II")*, 483 U.S. 711, 722 (1987); 20 U.S.C. § 1415(i)(3)(C)-(G).

a. The Circuit's indifference toward § 1415(i)(3)(G) contradicts this Court's consistent stance that statutory claimants should be encouraged to litigate meritorious claims and, upon excellent results, their counsels should receive fully compensatory fees. *Perdue v. Kenny A.*, 559 U.S. 542, 559 (2010); *Fogerty*,

510 U.S. at 527-528; *see Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983); *see also Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 401-402 (1968).

b. The Circuit encourages the LEAs' below emphasis on relitigating prior awards, which district courts both warned were not precedential and nevertheless relied upon, forcing the Parents to either: (i) relitigate all prior awards' twelve *Johnson* factors; or (ii) accept whatever low amount their losing opponent was willing to pay. *See, generally,* Appx. A (1a-18a); *compare, e.g.,* Appx. 25a-27a, 110a-111a, 181a-183a, 188a, 269a-271a, 317a-318a.

M.H.'s district court noted that the DOE sought new "hours for virtually every entry in CLF's timesheets," subsequently noting that the purpose of ensuring reasonable fees is defeated "if a recalcitrant defendant could reduce the real value of counsel's fees by protracting negotiations over fees and thereby delaying payment." Appx. 328a, 370a. The court then acknowledged that "Defendant prolonged the proceedings by refusing to indicate to Plaintiff the line entries that it believed were overbilled, claiming it had a practice not to go line-by-line on the entries that it believed were overbilled in advance of motion practice.'" Appx. 370a.

Similarly, the other LEA at issue below confronted S.S. with a sixty-one-page opposing counsel affirmation, arguing nearly every billing entry. *See* ECF, 2d Cir. Index 22-290, Doc. 77 (J. Appx. Vol. 1 of 6) at A-211-A-272.

B. Review is Warranted to Address the Circuit's Overreliance on a Subjective Twelve-Factor Test to Find the "Rates Prevailing in the Community" under 20 U.S.C. § 1415(i)(3)(C)

1. The Circuit's approach neglects the IDEA's mandate of prevailing market rates, and neglects that this Court's lodestar replaced the *Johnson*-assigned rates using subjective factor analysis. *Perdue*, 559 U.S. at 551-552; 20 U.S.C. § 1415(i)(3)(C). The resulting *Johnson*-becomes-lodestar approach amounts to no lodestar at all, as highlighted by the absence of post-lodestar adjustment analysis.

Incidentally, instead of preventing "windfalls," the approach simply allows courts (impermissibly) to choose which attorneys or firms receive windfalls. *See Perdue*, 559 U.S. at 552, 558-559.

The Parents need this Court to reassert that its rejection of the subjective factor test was "because it gave very little actual guidance to the district courts, . . . placed unlimited discretion in trial judges, and produced disparate results." *Murphy*, 138 S.Ct. at 790 (internal marks omitted), *citing Pa. v. Del. Valley Citizens' Council (usu. cited as "Del. Valley I")*, 478 U.S. 546, 563, 106 S. Ct. 3088 (1986). Unfettered discretion would go beyond the "clear and convincing" standard from Justice Burger's *Hensley* concurrence (461 U.S. at 440-441), by making evidence entirely futile.

a. The lodestar's importance is its objectivity, which is readily administrable, "cabins the discretion of trial judges, permits meaningful judicial review, and produces reasonably predictable results." *Perdue*, 559 U.S. at 552. Litigants are often deprived of "the basic principle of justice that like cases should be

decided alike" when different judges claim different individual factors are determinative. *Kirtsaeng v. John Wiley & Sons*, 579 U.S. 197, 203-204 (2016).

b. While this Court has noted certain *Johnson* factors are subsumed in the lodestar (and are not a basis for enhancement), the Circuit's approach twists this observation into permission for district courts to resume choosing pre-*Hensley, Johnson* rates (and, separately, hours billed). *Compare* Appx. 8a-12a, *with Perdue*, 559 U.S. at 546, 557.

c. In allowing "complexity" to reduce rates both directly and (via across-the-board hour reduction) indirectly, the Circuit showcased how subjectivity pulls rates below those that the district court overtly agrees to award. Below, the district courts that claimed complexity justified borrowing across-the-board percentage reductions from other cases (impermissibly) gave no reasonably specific reason why those percentages were chosen, resulting in significantly lower overall rates even though the billing was clear and specific and counsel used billing judgment to reduce their own hours before submission to the courts. *See, e.g.,* Appx. 33a-38a, 72a-73a, 250a-251a, 388a-391a, 407a-410a; *see also Perdue*, 559 U.S. at 557 ("Why, for example, did the court grant a 75% enhancement instead of the 100% increase that respondents sought? And why 75% rather than 50% or 25% or 10%?").

d. The Circuit's decision is shocking because the Circuit had never before abandoned its rule that "[t]he fees that would be charged for similar work by attorneys of like skill in the area is the starting point for determination of a reasonable fee award". *See, e.g., Arbor Hill Concerned Citizens v. Cnty. of Albany*, 522

F.3d 182, fn. 2 (2d Cir. 2007) (original internal marks omitted), *citing, inter alia, Cohen v. W. Haven Bd. of Police Comm'n*, 638 F.2d 496, 506 (2d Cir. 1980).

2. The *Johnson*-becomes-lodestar approach reopens the split with the Third Circuit; and today, the Fifth Circuit, which pioneered the *Johnson* factors, sits with the Third Circuit, requiring objective evidence and (if rates are disputed) a hearing, all before determining whether and to what extent a lodestar based on prevailing community rates needs any adjustment. *Souryavong v. Lackawanna Cty.*, 872 F.3d 122, 128-129 (3d Cir. 2017); *Monroe v. Hous. Indep. Sch. Dist.*, 2023 U.S. App. LEXIS 2562 (5th Cir. 2023).

a. Besides the Fifth Circuit, the First, Fourth, Sixth, Seventh, Eighth, Ninth, and Federal Circuits appear to follow the Third Circuit's approach. *Hutchinson v. Patrick*, 636 F.3d 1, 13-17 (1st Cir. 2011); *Eastern Assoc'd Coal Corp. v. Dir., OWCP*, 724 F.3d 561 (4th Cir. 2013); *Gibson v. Forest Hills Loc. Sch. Dist. Bd. of Educ.*, 655 F.Appx. 423, 441-443 (6th Cir. 2016); *Jeffboat, LLC v. Dir., OWCP*, 553 F.3d 487 (7th Cir. 2009); *Childress v. Fox Assocs., LLC*, 932 F.3d 1165, 1172-1173 (8th Cir. 2019); *Pelayo v. Platinum Limousine Servs., Inc.*, 2020 U.S. App. LEXIS 42707 (9th Cir. 2020); *Bywaters v. United States*, 670 F.3d 1221 (Fed. Cir. 2012).

b. Stances for the Tenth, Eleventh, and/or D.C. Circuits remain unclear. For instance, although the Tenth Circuit's bankruptcy jurisprudence applies the Second Circuit's approach to fee litigation, the Tenth Circuit distinguished bankruptcy matters from "the civil rights context or other fee-shifting statutes," concluding that *Perdue* did not apply to calculating

bankruptcy fees. *Mkt. Ctr. East Retail Prop. v. Lurie*, 730 F.3d 1239, 1247-1248 (10th Cir. 2013).

3. While fee-shifting statutes are not intended to precisely replicate private fee arrangements, the Second Circuit's approach entirely untethers fees from what the Parents and their counsel should have expected, and thereby contradicts the general legislative fee-shifting goal of inducing capable counsel into the field. *See Del. Valley I*, 478 U.S., at 565-566.

a. The Circuit did not provide any reason for abandoning the strong presumption that the lodestar method yields a fee "sufficient to achieve" attraction of competent counsel. *See Perdue*, 559 U.S. at 552.

b. Given that diversion from the lodestar value is intended to be "rare" and "exceptional" instead of the ordinary course, there is no reason why the Circuit permitted district courts to treat basic *Johnson* factors as means of immediate, pre-lodestar reduction. *See Perdue*, 559 U.S. at 552.

c. This Court has explained, in the 42 U.S.C. §1983 context, that a trial judge's fee discretion, in the first place, is based upon "superior understanding of the litigation" (*Hensley*, 461 U.S. at 437), but IDEA matters are often first litigated, as here, before an IHO (and possibly an SRO), depriving district judges of such understanding and (in turn) unwieldly broad discretion.

d. This Court has embraced—and the Circuit incorrectly rejected—a single-use consideration of factors, such as how "novelty and complexity" are subsumed only in the hours billed and the "quality of an attorney's performance" is subsumed only in the reasonable hourly rate. *Perdue*, 559 U.S. at 553.

d. The Circuit's expansion of discretion transforms the burden of proving reasonable rates into a futile endeavor, evident below from the district courts' indifference toward the Parents' specific evidence, which was generally not rebutted (by either school district) by evidence of prevailing rates in the community but instead *Johnson*-based prior awards that ultimately used much earlier-awarded rates.

e. Eliminating the second step in this Court's lodestar process—*i.e.*, consideration of lodestar adjustments—removes the transparency of having district courts show their work in a "reasonably specific" manner. *Perdue*, 559 U.S. at 558. District courts cannot simply call a percentage the "minimum…necessary"; and enabling district courts to make similar across-the-board reductions, as here, contributes to the same obscurity from appropriate appellate review. *Id.* at 557. As this Court has found, an award made on an "impressionistic basis" undermines the lodestar method's intended "objective and reviewable basis for fees." *Id.* at 557-558.

C. Review is Warranted to Address Whether Exclusion of Post-Settlement Interest Can Constitute Substantial Justification under 20 U.S.C. § 1415(i)(3)(E) to Reject a § 1415(i)(3)(D) Offer

1. The Second Circuit neglected H.C. and R.P.'s substantial justification for rejecting the DOE's settlement offers, affirming the district courts' message that, when presented the chance, parties should waive post-settlement interest and then seek such interest (frivolously) in a different forum. R.P.'s district court directly suggested this route, and

incorrectly pointed to two cases where clients who had not waived interest sought it thereafter. Appx. 37a.

2. None of the three courts addressed or applied this Court's standard of whether H.C. and/or R.P. had been "justified in substance or in the main." *Pierce v. Underwood*, 487 U.S. 552, 565-566, 108 S.Ct. 2541 (1987).

II. THESE CASES ARE AN EXCELLENT VEHICLE FOR RESOLVING THE QUESTIONS PRESENTED

The petition presents an ideal set of cases for this Court's review on all three questions presented. Each question was squarely preserved and, even cursorily, decided below. Reversal on these questions would, at the very least, bring clarity to the Parents and school districts as ongoing (and future) claims become resolved; and would bring finality to Congress' intent to have IDEA disputes expediently resolved, as well as to this Court's repeated emphasis on fully compensatory, objective fees when excellent results are obtained.

In contrast, leaving the Second Circuit's decision in place penalizes the Parents for having meritorious claims later in date than prior awards, and exacerbates the likelihood that delays for IDEA hearings, implementation of unappealed IHO decisions, and subsequent fee litigation will continue to extend throughout their children's educational careers. This is exactly the result Congress intended and sought to avoid. The Parents need this Court to

bring the Second Circuit into compliance with the IDEA and its purposes. Certiorari is warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, FILED JUNE 21, 2023

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term 2022

No. 21-1582

H.C., INDIVIDUALLY, AND ON BEHALF OF J.C., A CHILD WITH A DISABILITY,

Plaintiff-Appellant,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant-Appellee.

No. 21-1961

M.D., INDIVIDUALLY, AND ON BEHALF OF L.D., A CHILD WITH A DISABILITY,

Plaintiff-Appellant,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant-Appellee.

No. 21-2130

J.R., INDIVIDUALLY, AND ON BEHALF OF J.B., A CHILD WITH A DISABILITY,

Plaintiff-Appellant,

Appendix A

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant-Appellee.

No. 21-2744

M.H., INDIVIDUALLY, AND ON BEHALF OF M.T.,
A CHILD WITH A DISABILITY,

Plaintiff-Appellant,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant-Appellee.

No. 21-2848

A.G., INDIVIDUALLY, AND ON BEHALF OF R.P.,
A CHILD WITH A DISABILITY,

Plaintiff-Appellant,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant-Appellee.

No. 22-259

D.P., INDIVIDUALLY, AND ON BEHALF OF S.P.,
A CHILD WITH A DISABILITY,

Plaintiff-Appellant,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant-Appellee.

Appendix A

No. 22-290

S.H., INDIVIDUALLY, AND ON BEHALF OF K.H.,
A CHILD WITH A DISABILITY,

Plaintiff-Appellant,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant-Appellee.

No. 22-315

V.W., INDIVIDUALLY, AND ON BEHALF OF A.H.,
A CHILD WITH A DISABILITY,

Plaintiff-Appellant,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant-Appellee.

No. 22-422

L.L., INDIVIDUALLY, AND ON BEHALF OF S.L.,
A CHILD WITH A DISABILITY,

Plaintiff-Appellant,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant-Appellee.

No. 22-568

H.W., INDIVIDUALLY, AND ON BEHALF OF M.W.,
A CHILD WITH A DISABILITY,

Plaintiff-Appellant,

Appendix A

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant-Appellee.

No. 22-586

H.A., INDIVIDUALLY, AND ON BEHALF OF M.A., A CHILD WITH A DISABILITY,

Plaintiff-Appellant,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant-Appellee.

No. 22-772

N.G.B, INDIVIDUALLY, AND ON BEHALF OF J.B., A CHILD WITH A DISABILITY,

Plaintiff-Appellant,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant-Appellee.

No. 22-775

BOARD OF EDUCATION OF THE YORKTOWN CENTRAL SCHOOL DISTRICT,

Plaintiff-Counter-Defendant-Appellee,

v.

Appendix A

S.S., INDIVIDUALLY, AND ON BEHALF OF M.S., A MINOR, C.S., INDIVIDUALLY, AND ON BEHALF OF M.S., A MINOR,

Defendants-Counter-Claimants-Appellants.

No. 22-855

A.W., INDIVIDUALLY, AND ON BEHALF OF E.D., A CHILD WITH A DISABILITY,

Plaintiff-Appellant,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant-Appellee.

No. 22-977

R.P., INDIVIDUALLY, AND ON BEHALF OF E.H.P., A CHILD WITH A DISABILITY,

Plaintiff-Appellant,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant-Appellee.

On Appeal from the United States District Court for the Southern District of New York

Argued: May 1, 2023
Decided: June 21, 2023

Before: JACOBS, MENASHI, and MERRIAM, *Circuit Judges.*

Appendix A

Each appellant in these tandem appeals is a parent of a disabled child. Arguing that his or her child was entitled to benefits under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1415(i), each parent brought an administrative action against his or her local education agency and prevailed. Subsequently, each parent brought a federal action for attorneys' fees pursuant to 20 U.S.C. § 1415(i)(3)(B). In each case, the district court awarded less in attorneys' fees than the parent requested, and the parents now appeal. We hold that a district court awarding attorneys' fees under the lodestar approach may consider the complexity of the matter both when it considers the number of hours reasonably expended and when it considers the reasonable hourly rate. We also hold that the IDEA's fee-shifting provision does not authorize the district court to award an unreasonable fee when the district court concludes that the education agency has unreasonably protracted proceedings. Finally, we hold that while a district court does not abuse its discretion when it adjusts excessive travel costs or fees that an attorney billed to a client, a district court abuses its discretion when it denies travel-related fees altogether. We therefore reverse the district court's denial of travel-related fees in No. 21-1961 and remand for further proceedings. We otherwise affirm.

PER CURIAM:

These tandem appeals concern an important issue in our education law: fee shifting under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1415(i). The general question presented is whether the district court abused its discretion in awarding less in

attorneys' fees and costs than requested. For the reasons stated below, we reverse the district court's denial of travel-related fees in No. 21-1961, *M.D. v. New York City Department of Education*, and remand for further proceedings. *See infra* Part V. We otherwise affirm the district courts' awards of attorneys' fees and costs.

BACKGROUND

Each appellant in these cases is the parent of a disabled child. The appellees are the local education agencies ("LEAs") that the IDEA requires to provide services for each child.

In each case, the parent brought an administrative action under the IDEA against the child's LEA. The Cuddy Law Firm ("CLF") was retained to represent the parent and child in those administrative actions. Ultimately, CLF's services were effective: the parents and children prevailed in each of the proceedings.[1] CLF then sought compensation for its services. But when the parents and CLF requested that the LEAs pay CLF's fees, the LEAs refused on the ground that the fees requested were unreasonable.

As a result, the parents brought these individual actions in federal court seeking attorneys' fees pursuant to 20 U.S.C. § 1415(i)(3)(B). CLF updated the amount

1. In *Board of Education of the Yorktown Central School District v. C.S.*, the parent prevailed on appeal to the state review officer. *See* Affirmation in Opposition to Application for Attorney Fees and Costs ¶ 23, No. 17-CV-06542 (S.D.N.Y. May 5, 2021), ECF. No. 50.

requested to include not only fees and costs related to the administrative proceedings but also fees and costs related to the federal actions. In each case, the district court evaluated the evidence presented by the parties and concluded that CLF's request was unreasonable. Accordingly, the district court calculated a reasonable fee and ordered the LEA to pay that fee. The parents and CLF appealed.

DISCUSSION

"We review a district court's award for attorney's fees, expenses, and costs for abuse of discretion." *Lilly v. City of New York*, 934 F.3d 222, 227 (2d Cir. 2019). Our review is "highly deferential" in this area because of "the district court's inherent institutional advantages" in determining attorneys' fees. *Toussaint v. JJ Weiser, Inc.*, 648 F.3d 108, 111 (2d Cir. 2011) (quoting *McDonald ex rel. Prendergast v. Pension Plan of the NYSA-ILA Pension Tr. Fund*, 450 F.3d 91, 96 (2d Cir. 2006)). Fee disputes "essentially are factual matters," and the district courts have a "superior understanding of the litigation." *Hensley v. Eckerhart*, 461 U.S. 424, 437, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983). Moreover, the "essential goal" of fee shifting "is to do rough justice, not to achieve auditing perfection." *Fox v. Vice*, 563 U.S. 826, 838, 131 S. Ct. 2205, 180 L. Ed. 2d 45 (2011). For these reasons, the Supreme Court has said that it "can hardly think of a sphere of judicial decisionmaking in which appellate micromanagement has less to recommend it." *Id.*

The IDEA provides that "the court, in its discretion, may award reasonable attorneys' fees as part of the costs

... to a prevailing party who is the parent of a child with a disability." 20 U.S.C. § 1415(i)(3)(B)(i)(I). The statute specifies that the reasonable fees awarded "shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished." *Id.* § 1415(i)(3)(C).

To calculate reasonable attorneys' fees under the IDEA, courts apply the "lodestar" method. *A.R. ex rel. R.V. v. N.Y.C. Dep't of Educ.*, 407 F.3d 65, 79 (2d Cir. 2005). Under the lodestar method, a "fee award is derived by multiplying the number of hours reasonably expended on the litigation [by] a reasonable hourly rate." *G.M. ex rel. R.F. v. New Britain Bd. of Educ.*, 173 F.3d 77, 84 (2d Cir. 1999) (internal quotation marks omitted). In "rare circumstances," the "district court may adjust the lodestar when it does not adequately take into account a factor that may properly be considered in determining a reasonable fee." *Millea v. Metro-North R.R. Co.*, 658 F.3d 154, 167 (2d Cir. 2011) (internal quotation marks omitted).

In determining the first component of the lodestar—the number of hours reasonably expended—the district court may exclude hours that are "excessive, redundant, or otherwise unnecessary." *Raja v. Burns*, 43 F.4th 80, 87 (2d Cir. 2022) (quoting *Hensley*, 461 U.S. at 434). But the district court also "has discretion simply to deduct a reasonable percentage of the number of hours claimed as a practical means of trimming fat from a fee application." *Id.* The other component of the lodestar—the reasonable hourly rate—"is the rate a paying client would be willing to pay," *Arbor Hill Concerned Citizens Neighborhood Ass'n. v. County of Albany*, 522 F.3d 182, 190 (2d Cir.

2008), after "considering all pertinent factors, including the *Johnson* factors," *Lilly*, 934 F.3d at 230 (referencing *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)).[2]

I

Here, we are persuaded that there was no abuse of discretion in the district courts' calculation of reasonable attorneys' fees in each case. For example, the district court in *J.R.* cited recent cases from the Southern District of New York to determine the "prevailing market rate for experienced, special-education attorneys in the New York area" as the statute requires. *J.R. v. N.Y. City Dep't of Educ.*, No. 19-CV-11783, 2021 U.S. Dist. LEXIS 146057, 2021 WL 3406370, at *3 (S.D.N.Y. Aug. 4, 2021). The district court noted that it considered all the *Johnson* factors, and it made specific findings as to several of those factors: the case posed issues that were not "especially novel or difficult," the subject matter was not "undesirable," and the administrative proceedings

2. The *Johnson* factors include: "[t]he time and labor required"; "[t]he novelty and difficulty of the questions"; "[t]he skill requisite to perform the legal service properly"; "[t]he preclusion of other employment by the attorney due to acceptance of the case"; "[t]he customary fee"; "[w]hether the fee is fixed or contingent"; "[t]ime limits imposed by the client or the circumstances"; "[t]he amount involved and the results obtained"; the experience, reputation, and skill of the attorneys; whether the case is undesirable and may not be "pleasantly received by the community" or the attorney's contemporaries; "[t]he nature and length of the professional relationship with the client"; and "[a]wards in similar cases." *Johnson*, 488 F.2d at 717-19.

took—in total—"less than two hours." 2021 U.S. Dist. LEXIS 146057, [WL] at *4. The district court lowered the hourly rates for attorneys and paralegals on those grounds. It also found that the number of hours billed were excessive given that the matter "lack[ed] ... complexity," so the district court reduced the total number of hours by twenty percent. 2021 U.S. Dist. LEXIS 146057, [WL] at *5. With these reductions, the district court cut CLF's total request for attorneys' fees by a little more than fifty percent. The district court did not abuse its discretion in calculating the lodestar in this way.

CLF makes two principal counterarguments on appeal. First, CLF argues that the district courts erred as a matter of law by evaluating the complexity of the underlying disputes twice: when considering the number of hours reasonably expended as well as when considering the reasonable hourly rate. CLF claims that this "double deduct[ion]," N.G.B. Br. 56, violated our statement in *Millea* that a district court may not "double-count[] ... factors." 658 F.3d at 167. In *Millea*, we said that a district court "may not adjust the lodestar based on factors already included in the lodestar calculation itself." *Id.* In other words, the district court may not use a factor both to compute the lodestar and to adjust the lodestar once it has been computed. The district courts here did something different, consulting the same factor when evaluating both components of the lodestar—reasonable hours and reasonable rates. CLF provides no reason to think that was impermissible. In fact, the complexity of the underlying dispute affects those two components of the lodestar. One of the *Johnson* factors is "[t]he novelty

and difficulty of the questions" presented in the matter, so the complexity of the matter factors into the reasonable hourly rate. 488 F.2d at 718; *see also Lilly*, 934 F.3d at 228. If a matter is complex, an attorney will reasonably expend more hours on it, but a simple matter will be subject to additional reductions in hours expended. We therefore hold that a district court does not err when it considers the complexity of the dispute both when it evaluates the time reasonably expended as well as the reasonable hourly rate. We see no error in the district courts' lodestar calculations in this respect.

Second, CLF argues that it was erroneous to reduce its requested award *at all* because the LEAs unreasonably protracted the proceedings. *See, e.g.*, M.H. Br. 33. CLF's argument proceeds as follows. Subparagraph F of the statute, 20 U.S.C. § 1415(i)(3)(F), provides that the district court "shall" reduce an award of attorneys' fees when, as applicable here, "the amount of the attorneys' fees ... unreasonably exceeds the hourly rate prevailing in the community" or "the time spent and legal services furnished were excessive considering the nature of the action or proceeding." *Id.* § 1415(i)(3)(F)(ii)-(iii). But Subparagraph G, 20 U.S.C. § 1415(i)(3)(G), provides that those mandatory reductions "shall not apply" if the district court "finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding." *Id.*

CLF's argument cannot prevail here because none of the district courts found as a factual matter that the LEAs unreasonably protracted the proceedings. For

example, the district court in *H.C.* acknowledged that the LEA "fail[ed] to offer substantive relief at the resolution session," "fail[ed] to adopt a consistent position on whether [it] would defend the case," and "delay[ed] implementation" of the hearing officer's final decision—which means that the LEA could have hastened the proceedings if it had been better organized. *H.C. v. New York City Dep't of Educ.*, No. 20-CV-844, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *8 (S.D.N.Y. June 17, 2021). But the LEAs' apparent disorganization in these cases does not necessarily establish that the LEA persisted when "there was absolutely no need to continue litigating," which would suggest unreasonable protraction. *Gary G. v. El Paso Indep. Sch. Dist.*, 632 F.3d 201, 211 (5th Cir. 2011) (internal quotation marks omitted). For that reason, we are not left with "a definite and firm conviction that the district court made a mistake" when it found no unreasonable protraction here, so we identify no clear error. *Gater Assets Ltd. v. AO Moldovagaz*, 2 F.4th 42, 52 (2d Cir. 2021) (internal quotation marks omitted); *see also McDaniel v. County of Schenectady*, 595 F.3d 411, 416 (2d Cir. 2010) (noting that a "clearly erroneous factual finding" is an abuse of discretion).

Moreover, even if a district court had found that an LEA unreasonably protracted the proceedings,[3]

3. In M.H.'s case, the district court did not determine whether the New York City Department of Education unreasonably protracted the proceedings. *See M.H.v. New York City Dep't of Educ.*, No. 20-CV-1923, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *25 (S.D.N.Y. Oct. 13, 2021) ("It is less clear that the Department's disorganization and unpreparedness protracted the

Subparagraph G would not prohibit that district court from reducing the fees requested. That is because the IDEA authorizes an award only of "*reasonable* attorneys' fees," 20 U.S.C. § 1415(i)(3)(B)(i) (emphasis added), and the IDEA further provides that those fees must be "based on rates prevailing in the community," *id.* at § 1415(i)(3)(C). If an LEA unreasonably protracts the proceedings—thereby triggering Subparagraph G—the mandatory reductions found in Subparagraph F would not apply, but the district court still would need to ensure that the fees awarded are reasonable and based on prevailing rates in accordance with § 1415(i)(3)(B)(i) and § 1415(i)(3)(C). The district court would not be free to award an unreasonable fee that a party requests. We agree with those circuits that have held that when a district court finds that the LEA unreasonably protracted proceedings the statute still requires the district court to conduct a lodestar calculation. *See Somberg ex rel. Somberg v. Utica Cmty. Schs.*, 908 F.3d 162, 181 (6th Cir. 2018) (holding that Subparagraph G "does not mandate that the district court abandon its discretion to ensure that fees are reasonable"); *accord Williams ex rel. Williams v. Fulton Cnty. Sch. Dist.*, 717 F. App'x 913, 917 (11th Cir. 2017).

For these reasons, we conclude that the district court in each case did not abuse its discretion when it awarded

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final resolution in the sense of making the proceedings 'prolonged,' or longer than what would ordinarily be needed for the conclusion of the proceedings."). But the district court concluded that, even if the Department had done so, that "would not entitle CLF to more than a reasonable attorney's fee" because "the plain language of the statute" authorizes only reasonable attorneys' fees. *Id.*

attorneys' fees. We affirm the judgments—except as noted below with respect to No. 21-1961, *M.D. v. New York City Department of Education*.

II

CLF argues on appeal that the district courts should have awarded prejudgment interest here. But "[i]n a suit to enforce a federal right, the question of whether or not to award prejudgment interest is ordinarily left to the discretion of the district court." *Gierlinger v. Gleason*, 160 F.3d 858, 873 (2d Cir. 1998). The district courts that declined to award prejudgment interest did not abuse their discretion because "delay[s] in payment" may be remedied by "application of current rather than historic hourly rates." *Missouri v. Jenkins ex rel. Agyei*, 491 U.S. 274, 284, 109 S. Ct. 2463, 105 L. Ed. 2d 229 (1989); *see M.H.v. New York City Dep't of Educ.*, No. 20-CV-1923, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *31 (S.D.N.Y. Oct. 13, 2021) ("The Court thus concludes that in IDEA cases, as in other fee-shifting contexts, the Court should take into account 'delay' by using current rates in calculating a 'reasonable' attorneys' fee.").

We note that district courts may award prejudgment interest under 20 U.S.C. § 1415(i)(3)(B)(i). In interpreting the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988, the Supreme Court explained that "an enhancement for delay in payment is, where appropriate, part of a 'reasonable attorney's fee'" and that "an appropriate adjustment for delay in payment—whether by the application of current rather than historic hourly rates

or otherwise—is within the contemplation of the statute." *Jenkins*, 491 U.S. at 282, 284 (emphasis added). The same considerations apply to fee awards under the IDEA.

For these reasons, we will not disturb the district courts' decisions with respect to prejudgment interest.

III

C.S. and S.S. contend that the district court erred when it failed to specify an entitlement to post-judgment interest in its judgment awarding attorney fees. "Pursuant to 28 U.S.C. § 1961, 'the award of post-judgment interest is mandatory on awards in civil cases as of the date judgment is entered.'" *Tru-Art Sign Co. v. Loc. 137 Sheet Metal Workers Int'l Ass'n*, 852 F.3d 217, 223 (2d Cir. 2017) (alteration omitted) (quoting *Lewis v. Whelan*, 99 F.3d 542, 545 (2d Cir. 1996)). For that reason, we understand the district court's order to include post-judgment interest on the awarded fees and costs. We affirm the judgment based on that understanding.

IV

Separately, M.H. contends that the New York City Department of Education ("DOE") violated the impartial hearing officer's order and that she was entitled to equitable relief. *See* M.H. Br. 20. We affirm the district court's dismissal of M.H.'s claims for equitable relief because the DOE has complied with the order: (1) the DOE has paid the invoices for all applied behavior analysis provided to M.H.; (2) as required, the DOE developed a new individualized education program ("IEP") that placed

the student in a non-public school that provides applied behavior analysis services; (3) there was no requirement that the IEP reference home-based applied behavior analysis and it is undisputed that there are no outstanding invoices for such services; (4) at the time of the complaint, M.H. had not chosen a provider for the occupational therapy services and the order requires the DOE to fund such services at the parent's chosen provider; and (5) the DOE confirmed that parent counseling and training services hours were outstanding and that it would pay for such services once M.H. had chosen a provider.

V

Last, CLF claims that the district court erred in denying it fees for time spent traveling to the administrative hearing for M.D.[4] We agree.

The district court abused its discretion when it denied any travel-related fees to M.D.'s counsel. The district court reasoned that no fee award for time attributable to travel was warranted because it was "doubtful that a reasonable client would retain an Auburn or Ithaca attorney over a

4. CLF also requested $245 in transportation costs for mileage and parking related to counsel's attendance at the administrative hearing. The district court regarded that request as unreasonable because "[l]ocal counsel attending a hearing in New York City would likely take public transit, some sort of commuter rail, or a short car ride." *M.D. v. New York Dep't of Educ.*, No. 20-CV-06060, 2021 U.S. Dist. LEXIS 132930, 2021 WL 3030053, at *7 (S.D.N.Y. July 16, 2021). The district court concluded that a "reasonable reimbursement" for such travel costs is "$50 each way, for a total of $100." *Id.* CLF does not challenge that award on appeal.

New York City attorney if it meant paying New York City rates and an additional five hours in billable time for each trip." *M.D. v. New York Dep't of Educ.*, No. 20-CV-06060, 2021 U.S. Dist. LEXIS 132930, 2021 WL 3030053, at *5 (S.D.N.Y. July 16, 2021) (quoting *K.F. v. New York City Dep't of Educ.*, No. 10-CV-5465, 2011 U.S. Dist. LEXIS 88653, 2011 WL 3586142, at *6 (S.D.N.Y. Aug. 10, 2011)). A district court may permissibly adjust excessive travel costs—as many did in these cases. But the district court could not "eliminate[] all of the hours submitted by [CLF] as travel time" by denying travel-related fees altogether. *Cruz v. Loc. Union No. 3 of Int'l Bhd. of Elec. Workers*, 34 F.3d 1148, 1161 (2d Cir. 1994). We reverse the denial of travel-related fees, and we remand with instructions to award attorneys' fees for two hours of travel time at half the hourly rate the district court otherwise applied of $375, for a total of $375 in travel-related fees. *M.D.*, 2021 U.S. Dist. LEXIS 132930, 2021 WL 3030053, at *6; *see also J.R.*, 2021 U.S. Dist. LEXIS 146057, 2021 WL 3406370, at *6 (awarding two hours of travel time); *D.P. v. New York City Dep't of Educ.*, No. 21-CV-27, 2022 U.S. Dist. LEXIS 5002, 2022 WL 103536, at *13 (S.D.N.Y. Jan. 10, 2022) (same). We otherwise affirm.

* * *

We have considered the appellants' remaining arguments, which we conclude are without merit. For the foregoing reasons, we reverse the district court's denial of travel-related fees in No. 21-1961 and remand for further proceedings. We otherwise affirm the judgments of the district courts.

APPENDIX B — R.P. OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, DATED APRIL 27, 2022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

21-CV-4054 (JMF)

R.P., INDIVIDUALLY AND ON BEHALF OF E.H.P., A CHILD WITH A DISABILITY,

Plaintiff,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant.

April 27, 2022, Decided;
April 27, 2022, Filed

OPINION AND ORDER

JESSE M. FURMAN, United States District Judge:

In this action, Plaintiff R.P. seeks attorney's fees and costs from the New York City Department of Education (the "DOE") pursuant to the fee-shifting provisions of the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1415(i)(3). R.P. now moves, pursuant to Rule

56 of the Federal Rules of Civil Procedure, for summary judgment, seeking $56,340.58 in fees, costs, and interest, part of which ($33,506.80) is attributable to the underlying administrative proceedings and part of which ($22,833.78) is attributable to this action. The DOE concedes that R.P. is "a prevailing party" and that fees and costs are therefore appropriate, but it argues that the fees and costs R.P. is seeking are excessive in various respects. The Court agrees substantially with the DOE. Accordingly, and for the reasons that follow, R.P.'s motion is granted, but she is awarded far less than she requested.

BACKGROUND

The following facts are undisputed. R.P. is the parent of E.H.P., a minor who, during the period relevant to this action, was classified as a child with disabilities within the meaning of the IDEA. ECF No. 23 ("SOF"), ¶¶ 3, 4. Acting on E.H.P.'s behalf, R.P. filed an impartial due process complaint ("DPC") on September 9, 2019, alleging that the DOE had failed to provide the child a "free appropriate public education" within the meaning of the IDEA and seeking appropriate remedies. *Id.* ¶¶ 8, 10; *see also* ECF No. 20-1 ("DPC"). On September 24, 2019, the parties executed a partial resolution agreement, in which the DOE agreed to conduct a speech evaluation and reconvene the Committee on Special Education. SOF ¶ 12. On February 16, 2020, the assigned Independent Hearing Officer ("IHO") issued an interim order directing that E.H.P. receive an independent neuropsychologic evaluation at the DOE's expense. *Id.* ¶ 15.

On February 26, 2020, R.P. filed an amended DPC, alleging denial of a free appropriate public education for the 2018-2019 and 2019-2020 school years. *Id.* ¶ 13; *see also* ECF No. 20-2 ("Amended DPC"). On April 1, 202[0], a fifteen-minute hearing on the merits was held. SOF ¶ 16; ECF No. 25 ("Etheridge Decl."), ¶ 12. At the hearing, R.P. submitted twenty-one documentary exhibits and called no witness. SOF ¶ 18. The DOE did not present a case and agreed to the relief sought by R.P. *Id.* ¶ 17; Etheridge Decl. ¶ 12. Neither party submitted post-hearing briefing. Etheridge Decl. ¶ 26. Thereafter, the IHO issued a decision granting R.P.'s requested relief. SOF ¶ 19; Etheridge Decl. ¶ 15.

On December 13, 2020, after unsuccessful settlement negotiations, R.P.'s counsel, the Cuddy Law Firm ("CLF"), submitted a demand for attorney's fees and costs incurred in connection with the administrative proceedings. SOF ¶ 20. On May 6, 2021, R.P. filed the instant action, seeking attorney's fees, costs, and expenses for the administrative proceedings and for this action. *See* ECF No.1 ("Compl."). On July 7, 2021, the DOE made a written offer of settlement in the amount of $19,192.50. ECF No. 26 ("Bowe Decl."), ¶ 45. R.P. rejected the offer and now seeks $56,340.58 in attorney's fees and costs, consisting of $33,506.80 for the administrative stage and $22,833.78 for this action. ECF No. 32 ("Second Cuddy Decl."), ¶ 9.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate where the admissible evidence and the pleadings demonstrate "no

genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see Est. of Gustafson ex rel. Reginella v. Target Corp.*, 819 F.3d 673, 675 (2d Cir. 2016). A dispute over an issue of material fact qualifies as genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986); *accord Roe v. City of Waterbury*, 542 F.3d 31, 35 (2d Cir. 2008). The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). In ruling on a motion for summary judgment, all evidence must be viewed "in the light most favorable to the non-moving party," *Overton v. N.Y. State Div. of Mil. & Naval Affs.*, 373 F.3d 83, 89 (2d Cir. 2004), and the court must "resolve all ambiguities and draw all permissible factual inferences in favor of the party against whom summary judgment is sought," *Sec. Ins. Co. of Hartford v. Old Dominion Freight Line, Inc.*, 391 F.3d 77, 83 (2d Cir. 2004). Affidavits submitted in support of, or opposition to, summary judgment must be based on personal knowledge, must "set forth such facts as would be admissible in evidence," and must show "that the affiant is competent to testify to the matters stated therein." *Patterson v. Cty. of Oneida*, 375 F.3d 206, 219 (2d Cir. 2004) (quoting Fed. R. Civ. P. 56(e)).

DISCUSSION

Congress enacted the IDEA "to ensure that all children with disabilities have available to them a free

appropriate public education that emphasizes special education and related services designed to meet their unique needs." 20 U.S.C. § 1400(d)(1)(A). To that end, the IDEA guarantees children with disabilities and their parents certain procedural rights, including the right to seek relief from local educational agencies at an "impartial due process hearing." *Id.* § 1415(f). A court may award "reasonable" attorney's fees and costs to a parent who is the "prevailing party" at such a hearing. 20 U.S.C. § 1415(i)(3)(B)(i); *see also R.G. v. N.Y.C. Dep't of Educ.*, 18-CV-6851 (VEC), 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *1 (S.D.N.Y. Sept. 26, 2019). Such an award may cover work performed in connection with the hearing, before the district court, and on appeal from the district court. *See, e.g., M.D. v. N.Y.C. Dep't of Educ.*, No. 17-CV-2417 (JMF), 2018 U.S. Dist. LEXIS 156923, 2018 WL 4386086, at *1; *C.D. v. Minisink Valley Cent. Sch. Dist.*, No. 17-CV-7632 (PAE), 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *3 (S.D.N.Y. Aug. 9, 2018). "[T]he fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates." *Hensley v. Eckerhart*, 461 U.S. 424, 437, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983).

In considering a claim for attorney's fees under the IDEA, "a district court must ordinarily make two determinations. It must first determine whether the party seeking the award is in fact a prevailing party" and, second, whether that party should be awarded attorney's fees and costs "under the appropriate standard." *Mr. L. v. Sloan*, 449 F.3d 405, 407 (2d Cir. 2006); *see also H.C. v. N.Y.C. Dep't of Educ.*, No. 20-CV-844 (JLC), 2021 U.S.

Dist. LEXIS 113620, 2021 WL 2471195, at *3 (S.D.N.Y. June 17, 2021). Here, the DOE does not dispute that R.P. qualifies as a "prevailing party" within the meaning of the IDEA and is entitled to attorney's fees. ECF No. 29 ("Def.'s Opp'n"), at 1. Thus, the sole question for the Court is what fees and costs are "reasonable." *Hensley*, 461 U.S. at 433. Because courts are to interpret the IDEA's fee-shifting provision "in consonance with those of other [federal] civil rights fee-shifting statutes," *A.R. ex rel. R.V. v. N.Y.C. Dep't of Educ.*, 407 F.3d 65, 73 & n.9 (2d Cir. 2005), the relevant inquiry is well established. "[A] 'reasonable' fee is a fee that is sufficient to induce a capable attorney to undertake the representation of a meritorious civil rights case." *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552, 130 S. Ct. 1662, 176 L. Ed. 2d 494 (2010). "The initial estimate of a reasonable attorney's fee is properly calculated by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate," *Blum v. Stenson*, 465 U.S. 886, 888, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984), resulting in a figure often referred to as the "lodestar," but which the Second Circuit prefers to call the "presumptively reasonable fee," *Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cty. of Albany & Albany Cty. Bd. of Elections*, 522 F.3d 182, 183, 190 (2d Cir. 2008). Adjustments to that fee then may be made as necessary in the particular case," *Blum*, 465 U.S. at 888, although because the calculation's twin inputs already account for "most, if not all, of the relevant factors," the presumption that the lodestar represents a reasonable fee award is especially strong, and departures from that figure will be "rare," *Perdue*, 559 U.S. at 552-54.

Appendix B

A. Billing Rates

The Court begins by addressing the reasonable hourly rates to be used in calculating the presumptively reasonable fee. A "reasonable hourly rate" is defined as "the rate a paying client would be willing to pay," *Arbor Hill*, 522 F.3d at 190, and should be "based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of the services furnished," 20 U.S.C. § 1415(i)(3)(C); *see also A.R. v. N.Y.C. Dep't of Educ.*, 407 F.3d 65, 79 (2d Cir. 2005), and on the so-called "*Johnson* factors," to wit:

> (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.

Lilly v. City of New York, 934 F.3d 222, 228 (2d Cir. 2019) (citing *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974)); *see also M.D. v. N.Y.C. Dep't of Educ.*, No. 20-CV-6060 (LGS), 2021 U.S. Dist. LEXIS

132930, 2021 WL 3030053, at *2 (S.D.N.Y. July 16, 2021). A court "need not recite and make separate findings as to all twelve *Johnson* factors, provided that it takes each into account in setting the attorneys' fee award." *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *4. Moreover, in determining the "reasonable hourly rate," district courts have "considerable discretion." *Arbor Hill*, 522 F.3d at 190.

The parties sharply disagree on the reasonable hourly rate for CLF attorneys and paralegals. R.P. seeks hourly rates of $550 for senior attorneys, $425-50 for mid-level attorneys, $375 for junior attorneys, and $225 for paralegals. ECF No. 18 ("Cuddy Decl."), ¶ 145. The DOE argues that, based on the *Johnson* factors and recent attorney's fee cases in this district involving CLF, the hourly rates should be reduced to $350 for senior attorneys, $250 for mid-level and junior attorneys, and $100 for paralegals. Def.'s Opp'n 7-8.

Upon consideration of all the *Johnson* factors, the Court concludes that R.P.'s proposed hourly rates are indeed excessive. Among other things, the DOE did not oppose R.P.'s DPC and did not to present a case at the impartial hearing. Etheridge Decl. ¶¶ 11-13; Bowe Decl. ¶ 40. Nor did the case involve any "novel or difficult questions"; "the issues raised were like those in many other DPC proceedings in this District in which [the DOE] concedes at the outset that the relief sought in a DPC is proper." *M.D.*, 2021 U.S. Dist. LEXIS 132930, 2021 WL 3030053, at *3. It is true, as R.P. stresses, that counsel's efforts resulted in a high degree of success, *see*

ECF No. 22 ("Pl.'s Mem."), 9-10, and that the degree of success is the "most critical factor in determining the reasonableness of a fee award," *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *11 (citing *Farrar v. Hobby*, 506 U.S. 103, 114, 113 S. Ct. 566, 121 L. Ed. 2d 494 (1992); *Kassim v. City of Schenectady*, 415 F.3d 246, 255 (2d Cir. 2005)). Nevertheless, and mindful of the fact that the DPC was ultimately uncontested, "this factor alone does not outweigh the rest, which support a reduction in the fee rate sought." *J.R. v. N.Y.C. Dep't of Educ.*, No. 19-CV-11783 (RA), 2021 U.S. Dist. LEXIS 146057, 2021 WL 3406370, at *4 (S.D.N.Y. Aug. 4, 2021). In addition to the *Johnson* factors, "courts should generally use the hourly rates employed in the district in which the reviewing court sits in calculating the presumptively reasonable fee," *Simmons v. New York City Transit Auth.*, 575 F.3d 170, 174 (2d Cir. 2009) (internal quotation marks omitted), including by taking "judicial notice of the rates awarded in prior cases," *Farbotko v. Clinton Cty. of New York*, 433 F.3d 204, 209 (2d Cir. 2005). As discussed below, the prevailing market rates are lower than what R.P. seeks.

The Court begins with the senior lawyers. "The prevailing market rate for experienced, special-education attorneys in the New York area circa 2018 was between $350 and $475 per hour." *J.R.*, 2021 U.S. Dist. LEXIS 146057, 2021 WL 3406370, at *3 (collecting cases). Taking into consideration recent cases from this district involving CLF in similar IDEA litigation, as well as the relevant *Johnson* factors, the Court concludes that a reasonable hourly rate in this case for R.P.'s senior attorneys, Andrew Cuddy and Jason Sterne, each of whom has been practicing

IDEA law since at least 2005, is $375. *See J.R.*, 2021 U.S. Dist. LEXIS 146057, 2021 WL 3406370, at *4 (reducing A. Cuddy and Sterne's hourly rates to $350 in an essentially uncontested proceeding where the plaintiff failed to allege novel or difficult issues); *L.L. v. N.Y.C. Dep't of Educ.* No. 20-CV-2515 (JPO), 2022 U.S. Dist. LEXIS 25047, 2022 WL 392912, at *3 (S.D.N.Y. Feb. 9, 2022) (awarding A. Cuddy and Sterne $360 per hour due to minimal contention and substantive tasks); *M.D.*, 2021 U.S. Dist. LEXIS 132930, 2021 WL 3030053, at *3 (awarding A. Cuddy and M. Cuddy $375 per hour in line with similar attorneys in the district); *cf. C.B. v. N.Y.C. Dep't of Educ.*, No. 18-CV-7337 (CM), 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *6-8 (awarding A. Cuddy and Sterne $400 per hour for a contested administrative hearing that lasted almost ten hours).

Next, the Court concludes that a reasonable hourly rate for Kevin Mendillo, the lead counsel in the underlying action, is $300. Mendillo is a mid-level associate who has been practicing law since 2011, ECF No. 20 ("Mendillo Decl."), ¶¶ 10-11, and has litigated over one hundred due process hearings since he joined CLF in 2014, *id.* ¶ 13. Courts in this district have awarded him $300 per hour when he served as a lead counsel during similar administrative proceedings. *See, e.g., L.L.*, 2022 U.S. Dist. LEXIS 25047, 2022 WL 392912, at *3; *H.C.*, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *5; *see also R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *3 (awarding $300 per hour to a CLF associate with similar special education litigation experience). By contrast, the Court finds that $200 is the reasonable hourly rate for

Justin Coretti, another mid-level attorney for whom R.P. entirely failed to provide a declaration attesting to his credentials and experience. *See* Cuddy Decl. ¶ 122. In addition, the Court concludes that the reasonable hourly rate for Erin Murray, a junior associate who earned her J.D. in 2019 and joined CLF in 2020, ECF No. 21 ("Murray Decl."), ¶¶ 24, 28, is $150. *See, e.g., C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *7 (noting that "for associates with three to fewer years of experience in [IDEA] litigation, courts in this District have typically approved rates of $150-275 per hour"); *see also R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050 at *3 (awarding $150 per hour to a junior associate at CLF who had one year of experience).

Finally, the Court finds that R.P.'s proposal of $225 per hour for legal assistant John Slaski and paralegals Emma Bianco, Allison Bunnell, Shobna Cuddy, Cailin O'Donnell, Amanda Pinchak, ChinaAnn Reeve, Khrista Smith, and Sarah Woodard, *see* Cuddy Decl. ¶ 145, is unreasonable. "Paralegals, depending on skills and experience, have generally garnered between $100 and $125 per hour in IDEA cases in this District." *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *3 (collecting cases). With evidence of specialized qualifications, paralegals typically receive an hourly rate of $120 or $125. *C.B.*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *9; *M.D.*, 2018 U.S. Dist. LEXIS 156923, 2018 WL 4386086, at *3; *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *7. But "[w]here plaintiffs have failed to provide evidence showing that a paralegal has special qualifications in the form of formal paralegal training, licenses, degrees, or

certifications or longer paralegal experience, courts have typically awarded fees at the lower rate of $100-per-hour for that paralegal." *C.B.*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 316277, at *9 (internal quotation marks omitted). Applying those standards here, the Court concludes that a $125 is a reasonable hourly rate for Slaski, Pinchak, and Woodard given their credentials and experience. *See* Cuddy Decl. ¶¶ 126, 128, 131; ECF No. 18-1 ("CLF Admin. Fee Packet"), at 40, 47-48;[1] *see also C.B.*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *9 (awarding $125 to Pinchak given her formal training). By contrast, R.P. has failed to show that Bianco, Bunnell, S. Cuddy, O'Donnell, Reeve, and Smith have similar qualifications. In line with other courts in this District, the Court concludes that $100 per hour is reasonable for each of them. *See, e.g., R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *3 ("When the fee-seeking party fails to explain what qualifications entitle the paralegal to a higher rate, a rate at the bottom of the range is warranted.").

B. Hours Reasonably Expended

The Court turns, then, to the number of "hours reasonably expended." *Hensley*, 461 U.S. at 433. To arrive at that number, a district court looks to the "contemporaneously created time records that specify, for each attorney, the date, the hours expended, and the nature of the work done." *Kirsch v. Fleet St., Ltd.*, 148 F.3d 149, 173 (2d Cir. 1998). The court must then exclude "[h]ours

1. Citations to page numbers in ECF No. 18-1, CLF's administrative fee demand packet, are to the page numbers automatically assigned by the Court's electronic filing system.

that are excessive, redundant, or otherwise unnecessary," and may reduce the number of compensable hours "for vagueness, inconsistencies, and other deficiencies in the billing records." *Id.* (internal quotation marks omitted). All the same, "[a] request for attorney's fees should not result in a second major litigation," *Hensley*, 461 U.S. at 437, not the least because lengthy fee-award proceedings undermine the purpose of fee-shifting statutes by "increas[ing] the costs to plaintiffs of vindicating their rights," *id.* at 442 (Brennan, J., concurring in part and dissenting in part). Accordingly, "trial courts need not, and indeed should not, become green-eyeshade accountants. The essential goal in shifting fees (to either party) is to do rough justice, not to achieve auditing perfection. So trial courts may take into account their overall sense of a suit, and may use estimates in calculating and allocating an attorney's time." *Fox v. Vice*, 563 U.S. 826, 838, 131 S. Ct. 2205, 180 L. Ed. 2d 45 (2011); *see also M.D.*, 2021 U.S. Dist. LEXIS 132930, 2021 WL 3030053, at *1; *C.B.*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *5. Indeed, rather than engage in a painstaking line-item review of each billing entry, in calculating an appropriate reduction of compensable hours "[a] district court may exercise its discretion and use a percentage deduction as a practical means of trimming fat from a fee application." *McDonald ex rel. Prendergast v. Pension Plan of the NYSA-ILA Pension Tr. Fund*, 450 F.3d 91, 96 (2d Cir. 2006) (internal quotation marks omitted).

1. Administrative Proceedings

The Court begins with the hours attributable to the administrative proceedings before the IHO. R.P. requests

compensation for 85.2 hours of work for the administrative proceedings, totaling $31,867.5. Cuddy Decl. ¶ 145; Second Cuddy Decl. ¶ 9. The DOE asks the Court to reduce the compensable hours attributable to the administrative proceedings by at least fifty percent, arguing that the number of hours that CLF billed for preparation of the initial DPC (14.7 hours) and the amended DPC (1.5 hours) and for hearing preparation (9.7 hours, of which 1.2 hours were billed after March 18, 2020, when the DOE informed R.P. that it would not present a case at the hearing, *see* CLF Admin. Fee Packet 14-17, 21) was excessive. Def.'s Opp'n 16-17.

The Court agrees with the DOE that the number of hours billed was excessive. First, each of the DPCs consisted of ten pages and largely constituted a chronological recitation of R.P.'s educational history. DPC 2-4; Amended DPC 2-5. Considering the number of hours other courts have awarded CLF for drafting DPCs, *see, e.g., L.L.*, 2022 U.S. Dist. LEXIS 25047, 2022 WL 392912, at *4 (reducing CLF's time working on a nine-page DPC to nine hours); *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *4 (reducing CLF's time spent on drafting a three-page DPC to 1.5 hours), the Court concludes that a reduction is warranted. Second, given the short and uncontested nature of the hearing, the Court agrees that the number of hours billed preparing for it was unreasonable. *See, e.g., H.C.*, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *8, *24 (reducing CLF's time by 20% where the DOE changed their position at the "eleventh hour" following substantial hearing preparation). Although R.P. asserts that the proceeding was longer because the parties

engaged in a forty-five-minute off-the-record discussion prior to the official hearing, Mendillo Decl. ¶¶ 44-45, the "preparation-to-proceeding" ratio of nine to one remains unreasonably high. *See, e.g., L.L.*, 2022 U.S. Dist. LEXIS 25047, 2022 WL 392912, at *5 (reducing CLF's time billed for hearing preparation by half to "align with the preparation-to-proceeding ratio of between 5:1 and 6:1 in similar cases"). In short, "[w]hile counsel of course needed to marshal arguments, exhibits and evidence, even for an uncontested hearing, the hours expended by CLF are on the high end for an unchallenged . . . hearing," *M.D.*, 2021 U.S. Dist. LEXIS 132930, 2021 WL 3030053, at *5, and thus warrant reduction.

In short, the Court agrees with the DOE that a percentage reduction is appropriate "as a practical means of trimming fat." *McDonald*, 450 F.3d at 96. That said, the Court concludes that a more modest twenty-percent reduction is sufficient. In recent cases of comparable complexity brought by CLF in this District, courts have generally reduced CLF's hours spent on administrative proceedings by about that percentage. *See, e.g., J.R.*, 2021 U.S. Dist. LEXIS 146057, 2021 WL 3406370, at *5 (ordering a twenty-percent reduction in the hours spent on the underlying action due to the brevity of the parties' submission, the DOE's cooperation, and the lack of complexity in the matter); *M.D.*, 2021 U.S. Dist. LEXIS 132930, 2021 WL 3030053, at *5 (reducing hours spent on an uncontested administrative proceeding by twenty percent); *H.C.*, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *8-10 (reducing hours expended for the administrative proceeding by twenty percent); *R.G.*,

2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *3-4 (reducing hours spent on administrative proceeding by roughly twenty percent when the defendant introduced one witness during a four-hour hearing). In light of these cases, the parties' submissions, the record in this case, and the governing legal standard for reasonable hours expended, the Court concludes that a reduction of twenty percent in CLF's hours billed to the administrative proceedings is appropriate.

Finally, the Court rejects R.P.'s contention that a reduction would be inappropriate because the DOE unreasonably protracted the final resolution of the action and intentionally delayed the proceeding by failing to respond. Pl.'s Mem. 5-7. Although the DOE could perhaps have been more responsive, "any protraction on the DOE's part did not rise to the level of being unreasonable." *H.C.*, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *8 (internal quotation marks omitted); *see also S.J. v. N.Y.C. Dep't of Educ.*, No. 20-CV-1922 (LGS), 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *4 (S.D.N.Y. Jan. 12, 2021) (rejecting CLF's argument that DOE unreasonably protracted because the DOE representative was unresponsive, leading to significant delays in the administrative proceedings).

After careful consideration of the parties' submissions, the record in this case and the governing legal standard, and in accordance with the rulings above, the Court awards CLF attorneys' fees for the administrative hearing as follows:

Appendix B

Individual	Hourly Rate	Hours 1.2	Total $450
A. Cuddy	$375	1.2	$450
Sterne	$375	0.48	$180
Mendillo	$300	42.72	$12,816
Bianco	$100	6.8	$680
Bunnell	$100	2.16	$216
S. Cuddy	$100	2.08	$208
O'Donnell	$100	4.16	$416
Pinchak	$125	4.48	$560
Slaski	$125	2.88	$360
Smith	$100	0.88	$88
Woodard	$125	0.32	$40
Total			$16,014

2. This Action

Next, the Court turns to the hours attributable to this action. R.P. requests compensation for fifty-eight hours in connection with this action, totaling $22,115. Second Cuddy Decl. ¶ 9. The DOE seeks an eighty-percent reduction, arguing that CLF engaged in excessive and duplicative billing for basic tasks and "copy and paste work" and improperly sought compensation for activities after the settlement offer. Def.'s Opp'n 18-21. The Court largely agrees with the DOE.

For starters, the Court agrees that no fees should be awarded for costs or work performed after July 7, 2021,

when the DOE made a written offer of settlement to R.P. in the amount of $19,192.50. Bowe Decl. ¶ 45; ECF No. 32-2. Under the IDEA's fee-shifting provisions, a court may not award attorney's fees and related costs "subsequent to the time of a written offer of settlement to a parent if" the court "finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement." 20 U.S.C. § 1415(i)(3)(D)(i). That is the case here, as the total fees and costs to which R.P. was entitled as of July 7, 2021, was, as discussed below, lower than the DOE's settlement offer. *See H.C.*, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *10 (declining to award any fees or costs incurred after the date of DOE's written offer because the plaintiffs were entitled to less in fees and costs); *O.R. v. N.Y.C. Dep't of Educ.*, 340 F. Supp. 3d 357, 371 (2018) (same); *cf. C.G. v. Ithaca City School Dist.*, 531 F. App'x. 86, 88 (2d Cir. 2013) (summary order) (holding that the prohibition did not apply because the administrative relief obtained by the plaintiff was more favorable than the settlement offer).

R.P. argues that the DOE's written settlement offer does not bar her entitlement to fees because she was "substantially justified" in rejecting it. ECF No. 31 ("Pl.'s Reply"), at 9 (citing 20 U.S.C. § 1415(i)(3)(E)).[2] In

2. R.P. also claims that, on August 2, 2021, she received another settlement offer marked as the DOE's final offer pursuant to 20 U.S.C. § 1415(i)(3)(D). *See* Murray Decl. ¶¶ 14, 18. And Andrew Cuddy's second declaration purports to attach this August 2, 2021 settlement offer as Exhibit B, *see* Second Cuddy Decl. ¶ 6, but review of the exhibit shows that it is actually a copy of the July 26, 2021 offer of judgment in the amount of $19,192.50, ECF No. 32-2. In any event,

particular, R.P. contends that she was justified in rejecting the DOE's offer because, first, the DOE "rel[ied] solely on case law from prior decisions and not prevailing market rates to arrive at its proposed offer" and, second, the offer would "waive the right to any claim for interest on the settlement amount," especially post-judgement interest. *Id.* Neither argument is persuasive. First, as discussed above, the recent court decisions cited by the DOE (and the Court) take into account the prevailing market rates in the New York area. And second, if the DOE were to delay payment past the ninety-day statutory period for a municipality to pay all sums due to a settling plaintiff, *see* N.Y. C.P.L.R. § 5003-a, R.P. could bring a separate action seeking an award of interest on the settlement amounts, as CLF has done in other recent cases. *See, e.g., D.M. v. N.Y.C. Dep't of Educ.*, No. 19-CV-1477 (ER), 2021 U.S. Dist. LEXIS 185654, 2021 WL 4441508, at *2 (S.D.N.Y. Sept. 28, 2021) (granting CLF the settlement amount of $28,000 plus 9% interest because the DOE failed to tender payment within ninety days of the settlement); *C.S. v. N.Y.C. Dep't of Educ.*, No. 19-CV-11419 (CM) (GWG), 2021 U.S. Dist. LEXIS 69716, 2021 WL 1851366, at *3 (S.D.N.Y. Apr. 8, 2021) (awarding CLF 9% interest on a settlement that DOE failed to pay within the required ninety-day period). In short, R.P. is not entitled to any fees or costs after July 7, 2021.

With respect to the hours that R.P. lists for the period before that date, the Court concludes that a thirty-percent

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whether the Court uses July 7, 2021, or August 2, 2021, makes little difference as CLF billed for little work in the intervening period. *See* ECF No. 32-1.

reduction is warranted. As the DOE notes, CLF billed 4.6 hours of attorney time to draft its Complaint, *see* Bowe Decl. ¶ 20, but the Complaint is a mere six pages, three of which contain boilerplate language nearly identical to complaints submitted by CLF in other cases in recent years, *see, e.g.*, *J.R.*, 2021 U.S. Dist. LEXIS 146057, 2021 WL 3406370, ECF No. 1; *V.W.*, 2022 U.S. Dist. LEXIS 1289, 2022 WL 37052, ECF No. 1; *see also* Def.'s Opp'n 20. Notably, recent cases in this district have reduced the hours that CLF spent litigating attorney's fees between twenty-five percent to fifty percent. *See, e.g., R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *5 (reducing CLF's hours spent litigating attorney's fees by approximately twenty-six percent because the brief "discusse[d] no novel questions and contain[ed] approximately five pages [out of thirty] of boilerplate language"); *J.R.*, 2021 U.S. Dist. LEXIS 146057, 2021 WL 3406370, at *6 (reducing CLF's times by twenty-five percent for its straightforward motion to award attorney's fees); *M.D.*, 2021 U.S. Dist. LEXIS 132930, 2021 WL 3030053, at *6 (reducing CLF's 76.2 hours spent on federal court litigation by fifty percent due to "low degree of complexity"); *L.L.*, 2022 U.S. Dist. LEXIS 25047, 2022 WL 392912, at *5 (reducing CLF's hours spent on a similar summary judgement motion by roughly half). In light of the straightforward nature of this action, the Court concludes that a thirty-percent reduction is reasonable.

In accordance with the foregoing rulings, the Court grants R.P. fees for the following rates and hours in connection with the federal action:

Appendix B

Individual	Hourly Rate	Hours	Total
A. Cuddy	$375	0.49	$183.75
Mendillo	$300	0.49	$147
Coretti	$200	0.14	$28
Murray	$150	7.07	$1.060.50
S. Cuddy	$100	0.7	$35
O'Donnell	$100	0.35	$70
Reeve	$100	0	$0
Total			$1,524.25

C. Costs, Expenses, and Interest

That leaves costs, expenses, and interest. "Attorney's fees awards include those reasonable out-of-pocket expenses incurred by attorneys and ordinarily charged to their clients." *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 763 (2d Cir. 1998) (cleaned up). Here, R.P. seeks reimbursement of $506 in costs for faxes, $325 in costs for the administrative proceedings, and $402 in court filing fee for the federal action. Cuddy Decl. ¶ 145. First, the Court agrees with the DOE that $0.50 per page for printing is excessive and that this rate should be reduced to $0.10 per page. Def.'s Opp'n 21; *see, e.g., R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *6 (finding $0.10 per page an "entirely reasonable compensation for printing costs, absent any indication in the record why the copies in this case are exceptionally expensive"). Although the DOE does not dispute the fax costs, the Court finds, in

line with other courts in this District, that CLF's request for fax reimbursement is unreasonable. *See, e.g., id.* (denying fax costs when "[p]laintiff has made no showing why communicating via fax was necessary or appropriate," especially given that "[m]odern copy machines have the ability to scan documents so that they can be emailed, a method of communication that costs virtually nothing"); *D.P. v. N.Y.C. Dep't of Educ.*, No. 21-CV-0027 (KPF), 2022 U.S. Dist. LEXIS 5002, 2022 WL 103536, at *15 (S.D.N.Y. Jan. 10, 2022) (same). Accordingly, the Court awards R.P. the following costs: $65 in printing, $1.77 in postage, and $402 in filing, for a total of $468.77.

Finally, R.P. requests both pre-judgment interest and post-judgment interest. Compl. 6. In support of the former, however, she cites no authority from this Circuit. *See* Pl.'s Mem. 25; Second Cuddy Decl. ¶ 9; Def.'s Opp'n 21-22. Moreover, as discussed above, R.P. is not entitled to fees and costs after the DOE's written offer on July 7, 2021. Accordingly, and in line with other cases in this District, R.P.'s request for pre-judgment interest is denied. *See, e.g.*, *.S.J.*, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *5 ("Plaintiff did not adequately support the legal basis for the Court to award prejudgment interest for an award of attorneys' fees pursuant to IDEA."); *M.H. v. N.Y.C. Dep't of Educ.*, No. 20-CV-1923 (LJL), 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *29-31 (S.D.N.Y. Oct. 13, 2021) (denying prejudgment interest because courts are not permitted "to mix and match, giving counsel current rates when that would generate a greater fee award and prejudgment interest on historic rates when that would generate the greater fee") (citing cases). By contrast,

"[p]ursuant to 28 U.S.C. § 1961, the award of post-judgment interest is mandatory on awards in civil cases as of the date judgment is entered." *True-Art Sign Co. v. Local 137 Sheet Metal Workers Int'l Ass'n*, 852 F.3d 217, 223 (2d Cir. 2017) (internal quotation marks omitted). Accordingly, R.P.'s request for post-judgment interest is granted.

CONCLUSION

For the reasons stated above, R.P.'s motion for summary judgment is GRANTED, but she is awarded less in fees and costs than she requests. In particular:

(1) R.P. is entitled to fees at an hourly rate of $375 for Andrew Cuddy and Jason Sterne, $300 for Kevin Mendillo, $200 for Justin Coretti, $150 for Erin Murray, $125 for Amanda Pinchak, John Slaski, and Sarah Woodard, and $100 for the other paralegals;

(2) CLF is not entitled to costs or fees for work performed after July 7, 2021;

(3) CLF's hours attributable to the administrative proceedings are reduced by twenty percent and its compensable hours attributable to the federal action are reduced by thirty percent; and

(4) CLF is not entitled to costs for faxing and to only $0.10 per page for copying.

In total, R.P. is awarded $18,007.02, consisting of $16,014.00 in attorney's fees and $66.77 in costs for the administrative proceedings and $1,524.25 in attorney's fees and $402.00 in costs for this action for work performed before July 7, 2021. In addition, R.P. is awarded post-judgement interest on this amount, calculated at the applicable statutory rate.

The Clerk of Court is directed to terminate ECF No. 1.

SO ORDERED.

Dated: April 27, 2022
New York, New York

/s/ Jesse M. Furman
JESSE M. FURMAN
United States District Judge

APPENDIX C — S.S. OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED MARCH 21, 2022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

17 CV 6542 (VB)

BOARD OF EDUCATION OF THE YORKTOWN CENTRAL SCHOOL DISTRICT,

Plaintiff,

v.

C.S. AND S.S., INDIVIDUALLY AND ON BEHALF OF M.S., A MINOR,

Defendants.

OPINION AND ORDER

Briccetti, J.:

Plaintiff Board of Education of the Yorktown Central School District (the "District") brought this action pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400, seeking to reverse the decision of a State Review Officer ("SRO") that ordered the District to provide reimbursement of tuition paid by defendants for their child's private school education. By Opinion and Order dated January 23, 2019, this Court upheld the SRO's decision (Doc. #35), and the Second Circuit subsequently affirmed (Doc. #41).

Appendix C

Now pending is defendants' motion for an award of attorneys' fees and costs pursuant to 20 U.S.C. § 1415(i)(3), in the amount of $307,475.70. (Doc. #44).

For the reasons set forth below, the motion is GRANTED to the following extent: the Court awards reasonable attorneys' fees in the amount of $220,034.25 and costs in the amount of $1,391.81, for a total award of $221,426.06.

The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 20 U.S.C. § 1415(i)(3)(A).

BACKGROUND

The Court presumes the parties' familiarity with the factual background and summarizes only the relevant factual allegations and procedural history below.

On September 26, 2016, C.S. and S.S., the parents ("Parents") of M.S., a child with a disability, represented by the Cuddy Law Firm, PLLC ("CLF"), submitted a due process complaint about M.S.'s individualized education program ("IEP"). In the complaint, the Parents alleged the District failed to provide M.S. with a free appropriate public education ("FAPE") for the 2016-2017 school year. The Parents argued Eagle Hill School ("Eagle Hill"), which M.S. attended the prior year, was a more appropriate placement for M.S. As relief, the Parents sought reimbursement for tuition and fees for Eagle Hill for the 2016-2017 school year.

Appendix C

During a resolution meeting on October 7, 2016, the District claimed the 12:1+1 class size provided for in the IEP was a mistake, and the IEP should have provided for a class size of 15:1+1. The District subsequently mailed a revised IEP to the Parents reflecting the 15:1+1 class size, which the parents received on November 1, 2016.

On December 5, 2016, the Parents filed a second due process complaint alleging denial of a FAPE for M.S. based on the second IEP.

An impartial hearing officer ("IHO") found in favor of the District. However, on appeal, the SRO reversed, finding the District denied M.S. a FAPE and granting the Parents' request for tuition reimbursement.

The SRO's decision was affirmed by this Court, *Bd. Educ. Yorktown Cent. Sch. Dist. v. C.S. and S.S. ex rel. M.S.*, 357 F. Supp. 3d 311 (S.D.N.Y. 2019), and by the Second Circuit, *Bd. Educ. Yorktown Cent. Sch. Dist. v. C.S. ex rel. M.S.*, 990 F.3d 152 (2d Cir. 2021).

A number of CLF attorneys and paralegals performed work for Parents in this case. The billing records submitted by Parents reflect work by CLF senior attorneys Adrienne Arkontaky, Jason Sterne, and Andrew Cuddy; associate attorneys Kerry McGrath, Benjamin Kopp, Francesca Adamo, Alison Morris, Joseph Sulpizio, and Mark Gutman; and paralegals Amanda Ford, Brian Lovett, Carmen Barton, Emma Bianco, and Theresa Ciemniecki.

The Parents seek $304,772.50 in attorneys' fees and $2,703.20 in costs, for a total of $307,475.70.

DISCUSSION

I. Attorneys' Fees

In an action brought under the IDEA, prevailing parents may be entitled to "reasonable attorneys' fees." 20 U.S.C. § 1415(i)(3)(B)(i)(I).[1]

In determining the amount of reasonable attorneys' fees, the Second Circuit follows a "presumptively reasonable fee" approach. *See Simmons v. N.Y.C. Transit Auth.*, 575 F.3d 170, 172 (2d Cir. 2009).[2] That is, the Court must "determin[e] a reasonable hourly rate by considering all pertinent factors . . . , and then multiplying that rate by the number of hours reasonably expended to determine the presumptively reasonable fee." *Lilly v. City of New York*, 934 F.3d 222, 230 (2d Cir. 2019). "It is only after this initial calculation of the presumptively reasonable fee is performed that a district court may, in extraordinary circumstances, adjust the . . . fee when it does not adequately take into account a factor that may properly be considered." *Id.*

A reasonable hourly rate is a rate that "a paying client would be willing to pay." *Arbor Hill Concerned Citizens*

1. The parties agree the Parents are "prevailing parties." (Doc. #51, at 1).

2. Unless otherwise indicated, case quotations omit all internal citations, quotations, footnotes, and alterations.

Neighborhood Ass'n v. County of Albany, 522 F.3d 182, 190 (2d Cir. 2008). Moreover, courts must also consider:

> (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.

Id. at 186 n.3 (citing *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 718-19 (5th Cir. 1974)). A district court need not make specific findings as to all twelve factors, "provided that it takes each into account in setting the attorneys' fee award." *E.F. ex rel. N.R. v. N.Y.C. Dep't of Educ.*, 2014 U.S. Dist. LEXIS 34606, 2014 WL 1092847, at *3 (S.D.N.Y. Mar. 17, 2014).

The burden is on the prevailing party to show "that 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, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984). In addition, courts "may . . . tak[e] judicial notice of the rates awarded in other cases, the court's own

familiarity with the prevailing rates in the district, and consideration of the evidence submitted by the parties." *E.F. ex rel. N.R. v. N.Y.C. Dep't of Educ.*, 2014 U.S. Dist. LEXIS 34606, 2014 WL 1092847, at *2.

In determining the number of hours reasonably expended on a case, the Court should exclude hours that are "excessive, redundant, or otherwise unnecessary." *Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983). "Attorneys applying for court-ordered compensation must document the application with time records: these records should specify, for each attorney, the date, the hours expended, and the nature of the work done." *Kahlil v. Original Old Homestead Rest., Inc.*, 657 F. Supp. 2d 470, 477 (S.D.N.Y. 2009). "To determine the reasonableness of hours spent on a matter, 'the district court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award' by a reasonable percentage." *H.W. v. N.Y.C. Dep't of Educ.*, 2022 U.S. Dist. LEXIS 31987, 2022 WL 541347, at *4 (S.D.N.Y. Feb. 23, 2022) (quoting *Hensley v. Eckerhart*, 461 U.S. at 436-37); *see also McDonald v. Pension Plan of the NYSA-ILA Pension Tr. Fund*, 450 F.3d 91, 96 (2d Cir. 2006) ("A district court may exercise its discretion and use a percentage deduction as a practical means of trimming fat from a fee application.").

District courts are "afford[ed] . . . broad discretion in awarding attorneys' fees," including "determin[ing] what is reasonable and appropriate in the fee calculus for the particular case." *Lilly v. City of New York*, 934 F.3d at 234. This includes the "authority and discretion to award

attorney's fees for hours expended on a fee application." *Id.* at 235.

Ultimately, the most important factor in determining a reasonable attorneys' fee is "the degree of success obtained." *See Farrar v. Hobby*, 506 U.S. 103, 114, 113 S. Ct. 566, 121 L. Ed. 2d 494 (1992). This analysis is not limited to whether a party prevails on each individual claim. Rather, the "quantity and quality of relief obtained, as compared to what the [party] sought to achieve as evidenced in [their] complaint, are key factors in determining the degree of success achieved." *Barfield v. N.Y.C. Health & Hosps. Corp.*, 537 F.3d 132, 152 (2d Cir. 2008).

A. Reasonable Hourly Rates

The Parents seek the following hourly rates for its attorneys: $550 for Arkontaky, $525 ($550 for services during 2019) for Cuddy and Sterne, $400 ($425 for services during 2019) for McGrath, $250 for Adamo, $425 for Kopp, $350 for Gutman, $350 for Morris, and $300 for Sulpizio. The Parents also seek $225 per hour for work performed by five paralegals.

Having considered all the pertinent factors in this case, including the Court's own familiarity with the prevailing rates in this district, the Court finds that the reasonable hourly rates for the CLF professionals are as follows: $425 for Arkontaky, Cuddy, and Sterne; $350 for McGrath; $280 for Morris, Sulpizio, and Gutman; $225 for Adamo and Kopp; and $125 for the five paralegals.

Appendix C

1. Arkontaky, Cuddy, and Sterne

The reasonable hourly rate for attorneys Arkontaky, Cuddy, and Sterne is $425.

"The prevailing market rate for experienced, special-education attorneys in the New York area *circa* 2018 is between $350 and $475 per hour." *R.G. v. N.Y.C. Dep't of Educ.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *2 (S.D.N.Y. Sept. 26, 2019); *see also C.D. v. Minisink Valley Cent. Sch. Dist.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *6 (S.D.N.Y. Aug. 9, 2018) (collecting cases and setting a rate of $400 per hour for Cuddy and Sterne). An analysis of the *Johnson* factors supports a reasonable hourly rate at the higher end of this range. Arkontaky, Cuddy, and Sterne have all extensively practiced in this field, with over eighteen, twenty, and fourteen years of special education law experience, respectively. This action presented novel and difficult issues, involved substantial and contested proceedings at the administrative, district court, and circuit court levels, and most significantly, CLF procured a favorable result for the Parents. Therefore, in an exercise of its discretion, the Court finds that $425 for attorneys Arkontaky, Cuddy, and Sterne is a reasonable hourly rate.

2. McGrath

The reasonable hourly rate for attorney McGrath is $350.

An analysis of the *Johnson* factors supports an upward adjustment on the range typically awarded in this district

for mid-level associates performing special education work. *See, e.g., A.B. v. N.Y.C. Dep't of Educ.*, 2021 U.S. Dist. LEXIS 47573, 2021 WL 951928 (S.D.N.Y. Mar. 13, 2021) (finding a $280 hourly rate reasonable for an associate with six years' experience in special education work); *M.D. v. N.Y.C. Dep't of Educ.*, 2018 U.S. Dist. LEXIS 156923, 2018 WL 4386086 (S.D.N.Y. Sept. 14, 2018) (awarding $280 per hour for services by mid-level associates). Billing over 540 hours to the Parents' action, McGrath billed far more time than any other CLF professional. McGrath has more than eight years of special education law experience and the Parents provided retainers and billing records demonstrating two other clients agreed to pay $400 and $425 per hour, respectively, for McGrath's services. As discussed above, this was a complex and lengthy action in which CLF obtained a favorable result for the Parents. Accordingly, given McGrath's exclusive focus on special education law, her sustained attention to the Parents' case, and the successful outcome for the Parents, the Court finds that $350 is a reasonable hourly rate for attorney McGrath.

3. Morris and Sulpizio

The reasonable hourly rate for attorneys Morris and Sulpizio is $280.[3]

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3. The District's argument that Sulpizio's out-of-state registration and admission disqualifies him from attorney-level fees is misplaced. "[A]n out-of-state attorney admitted to practice in any federal court may appear in a specific federal case, and recover fees, if he collaborates with a New York attorney." *Brooks v. Cohen, Jayson & Foster, P.A.*, 2010 U.S. Dist. LEXIS 89597, 2010 WL 3528919, at *4 (S.D.N.Y. Aug. 26, 2010).

Courts in this district regularly award up to $275 per hour for associates with up to three years of special education experience and $280 per hour for mid-level associates, including those with six years' experience in special education work. *See, e.g., C.D. v. Minisink Valley Cent. Sch. Dist.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *7 (collecting cases); *A.B. v. N.Y.C. Dep't of Educ.*, 2021 U.S. Dist. LEXIS 47573, 2021 WL 951928, at *5-6; *M.D. v. N.Y.C. Dep't of Educ.*, 2018 U.S. Dist. LEXIS 156923, 2018 WL 4386086, at *3. Morris has practiced special education law for five years and Sulpizio has practiced law for five and a half years, with an exclusive focus in special education law since 2017. For these and the reasons discussed above, the Court determines that a reasonable hourly rate for attorneys Morris and Sulpizio is $280 under the *Johnson* factors.

4. Adamo, Kopp, and Gutman

The reasonable hourly rate for attorneys Adamo and Kopp is $225, and the reasonable hourly rate for attorney Gutman is $280.

"For associates with three or fewer years of experience in [special education] litigation, courts in this District have typically approved rates of $150-$275." *C.D. v. Minisink Valley Cent. Sch. Dist.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *7 (collecting cases). Here, Adamo, Kopp, and Gutman each have three years of special education litigation experience. Gutman's work on this matter also required more general litigation work in support of the fee motion. As discussed above, this matter

involved complex proceedings and a successful outcome for the Parents. Accordingly, the Court determines a reasonable hourly rate for these attorneys near (and for attorney Gutman, exceeding) the upper range awarded in comparable cases is appropriate.

5. Paralegals

The reasonable hourly rate for the five paralegals is $125.

"Paralegals, depending on skills and experience, have generally garnered between $100 and $125 per hour in IDEA cases in this District." *R.G. v. N.Y.C. Dep't of Educ.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *3. The CLF paralegals have significant experience in the field of special education litigation and special needs planning. *S.J. v. N.Y.C. Dep't of Educ.*, 2020 U.S. Dist. LEXIS 194258, 2020 WL 6151112, at *5 (S.D.N.Y. Oct. 20, 2020). Thus, the Court finds an hourly rate of $125 is reasonable.

B. Reasonable Hours

Having considered all the relevant factors in this case, the Court finds that the number of hours reasonably expended by the CLF attorneys and paralegals is somewhat lower than the hours requested. Accordingly, the Court reduces the hours by ten percent for the underlying action and twenty percent with respect to the fee motion.

Appendix C

1. Clerical/Administrative Tasks

First, CLF's billing records indicate attorneys engaged in certain clerical or administrative tasks. Time billed for purely clerical or administrative tasks is not reimbursable. *Kahlil v. Original Old Homestead Rest.*, 657 F. Supp. 2d at 477. For example: On October 24, 2016, attorney McGrath billed 1.50 hours to "review of file" and "organiz[ing] documents"; on November 11, 2016, December 9, 2016, and March 10, 2017, she billed 1.6 hours for emails related to scheduling; on June 15, 2017, she billed 0.1 hours to serve and file a document by mail; on October 4, 2017, she billed 0.2 hours to file documents on ECF; and on March 30, 2018, she billed 0.1 hours to compile courtesy copies. (Doc. #44-2).

2. Deficient Billing Entries

Second, CLF's billing records contain inconsistencies. For example, on February 23, 2017, attorney McGrath billed 0.3 hours to a "[s]trategy session with [attorney Arkontaky]" without a corresponding Arkontaky entry; on April 14, 2017, attorney Cuddy billed 0.3 hours to "phone call with [attorney McGrath]" without a corresponding McGrath entry; and on May 13, 2019, attorney McGrath billed 0.3 hours to a "[p]hone call with JS" without a corresponding Sterne (or other attorney or paralegal) entry. The District identifies a January 28, 2019, entry by attorney Cuddy for 0.1 hours where the billing narrative indicates a "NC" *(i.e.*, no charge) entry, but a fee is nonetheless charged for the time. Because deficient entries preclude the Court from determining whether

each attorney reasonably expended their time, the Court "may reduce the number of compensable hours for vagueness, inconsistencies, and other deficiencies in the billing records." *M.D. v. N.Y.C. Dep't of Educ.*, 2018 U.S. Dist. LEXIS 156923, 2018 WL 4386086, at *4.

3. Travel Time

Third, the Court declines to award fees for unreasonable travel time. "[I]t is doubtful that a reasonable client would retain an Auburn[, New York,] . . . attorney over a New York City attorney if it meant paying New York City rates and an additional five hours in billable time for each trip." *J.R. v. N.Y.C. Dep't of Educ.*, 2021 U.S. Dist. LEXIS 146057, 2021 WL 3406370, at *6 (S.D.N.Y. Aug. 4, 2021). Therefore, reimbursable fees for attorneys Cuddy and Sterne's travel to and from New York City on December 4 and December 5, 2019, shall be reduced to one hour each way. *See, e.g., H.W. v. N.Y.C. Dep't of Educ.*, 2022 U.S. Dist. LEXIS 31987, 2022 WL 541347, at *5; *V.W. v. N.Y.C. Dep't of Educ.*, 2022 U.S. Dist. LEXIS 1289, 2022 WL 37052, at *7 (S.D.N.Y. Jan. 4, 2022). The remaining four hours of billable travel are reimbursable at the $425 reasonable hourly rate.

4. Degree of Success

Fourth, the Court declines to reduce the fee award on the basis that CLF expended hours on claims that did not ultimately prevail. That the Parents did not prevail on every claim does not detract from the "quantity and quality of relief obtained." *Barfield v. N.Y.C. Health &*

Hosps. Corp., 537 F.3d at 152. Accordingly, the Court declines to reduce the award on that basis. *See M.D. v. N.Y.C. Dep't of Educ.*, 2018 U.S. Dist. LEXIS 156923, 2018 WL 4386086, at *5.

For the reasons described above, the Court determines a ten percent reduction in the billable hours incurred in the underlying action, as well as a reduction for travel time, is reasonable and appropriate, as set forth below.

Administrative Proceedings and Federal Action			
Attorney	**Awarded Hourly Rate**	**Awarded Hours**	**Awarded Total**
Adrienne Arkontaky, Esq.	$425.00	0.72	$306.00
Alison Morris, Esq.	$280.00	2.52	$705.60
Andrew Cuddy, Esq.	$425.00	12.33	$5,240.25
Andrew Cuddy, Esq. (2019)	$425.00	27.18	$11,551.50
Benjamin Kopp, Esq.	$225.00	0.45	$101.25
Francesca Adamo, Esq.	$225.00	0.63	$141.75

Appendix C

Jason Sterne, Esq.	$425.00	3.42	$1,453.50
Jason Sterne, Esq. (2019)	$425.00	28.18	$11,976.50
Kerry McGrath, Esq.	$350.00	361.88	$126,658.00
Kerry McGrath, Esq. (2019)	$350.00	128.88	$45,108.00
AWARDED ATTORNEY FEES		566.29	**$203,277.35**

Paralegal	**Awarded Hourly Rate**	**Awarded Hours**	**Awarded Total**
Amanda Ford	$125.00	0.27	$33.75
Brian Lovett	$125.00	7.02	$877.50
Carmen Barton	$125.00	0.36	$45.00
Emma Bianco	$125.00	1.17	$146.25
Theresa Ciemniecki	$125.00	4.32	$540.00
AWARDED PARALEGAL FEES		13.14	**$1,642.50**

5. Fee Motion

The Court finds the number of hours expended on the fee motion reflects inefficient staffing and warrants a greater reduction than applied to the fees for the underlying action. Arkontaky and Cuddy billed approximately forty percent of the submitted hours. "The legal basis for fee petitions is well-plowed acreage," *B.B. v. N.Y.C. Dep't of Educ.*, 2018 U.S. Dist. LEXIS 38271, 2018 WL 1229732, at *3 (S.D.N.Y. Mar. 8, 2018), and more of this work could have been performed by a junior associate. *E.F. ex rel. N.R. v. N.Y.C. Dep't of Educ.*, 2014 U.S. Dist. LEXIS 34606, 2014 WL 1092847, at *5. Therefore, the Court determines to reduce the billable hours submitted for the fee motion by twenty percent, as set forth below.

Fee Motion			
Attorney	**Awarded Hourly Rate**	**Awarded Hours**	**Awarded Total**
Adrienne Arkontaky, Esq.	$425.00	10.8	$4,590.00
Andrew Cuddy, Esq.	$425.00	5.28	$2,244.00
Joseph Sulpizio, Esq.	$280.00	9.52	$2,665.60

Mark Gutman, Esq.	$280.00	14.16	$3,964.80
AWARDED ATTORNEY FEES			**$13,464.40**

Paralegal	**Awarded Hourly Rate**	**Awarded Hours**	**Awarded Total**
Amanda Ford	$125.00	13.2	$1,650.00
AWARDED PARALEGAL FEES			**$1,650.00**

II. Costs

The Court declines to award the full amount of the requested copying costs, lodging costs, and transportation costs.

"A district court may award reasonable costs to the prevailing party in IDEA cases." *C.D. v. Minisink Valley Cent. Sch. Dist.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *12 (citing 20 U.S.C. § 1415(i)(3)(B)(i)(I)). Reimbursable costs comprise "reasonable out-of-pocket expenses incurred by attorneys and ordinarily charged to their clients." *Kahlil v. Original Old Homestead Rest., Inc.*, 657 F. Supp. 2d at 478.

Consistent with other courts in this district, only $0.10 per page in printing and copying expenses is appropriate. *See, e.g., H.A. v. N.Y.C. Dep't of Educ.*, 2022 U.S. Dist.

LEXIS 33561, 2022 WL 580772, at *11 (S.D.N.Y. Feb. 25, 2022); *R.G. v. N.Y.C. Dep't of Educ.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *6;.

Moreover, the Court agrees with the District that awarding $554.66 for one night of lodging in New York City for attorney Cuddy is unreasonable. "A reasonable client, in the Court's judgment, would not agree to pay in-district attorney rates while also paying for extensive lodging expenses necessitated by out-of-district attorneys' travel." *C.D. v. Minisink Valley Cent. Sch. Dist.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *13. The Court therefore denies the Parents' request for any lodging costs.

For similar reasons, the Court determines that CLF's costs for transportation, including to and from their offices and New York City, are excessive. However, a reasonable client, in the Court's judgment, would expect some amount of travel by his attorneys to and from administrative and court proceedings. Accordingly, the Parents' reimbursement for transportation costs is limited to thirty percent of the amount requested. *See V.W. v. N.Y.C. Dep't of Educ.*, 2022 U.S. Dist. LEXIS 1289, 2022 WL 37052, at *7 (S.D.N.Y. Jan. 4, 2022).

The awarded costs are set forth below.

Costs and Expenses	Awarded Total
Copies (per page)	$0.10
Postage	$31.87

Appendix C

Meals	$10.49
Lodging	$0.00
FedEx	$80.89
Other	$997.74
Transportation	$195.92
AWARDED COSTS	**$1,391.81**

CONCLUSION

The motion for attorneys' fees and costs is GRANTED to the following extent: Defendants are awarded $220,034.25 in reasonable attorneys' fees and $1,391.81 in costs, for a total award of $221,426.06.

The Clerk is instructed to enter Judgment in defendants' favor in that amount.

The Clerk is further instructed to terminate the motion. (Doc. #44).

Dated: March 21, 2022
White Plains, NY

SO ORDERED:

/s/ Vincent L. Briccetti
Vincent L. Briccetti
United States District Judge

APPENDIX D — N.G.B. MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, DATED MARCH 16, 2022

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

20-cv-6571 (JGK)

N.G.B., *et al.*,

Plaintiffs,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant.

March 16, 2022, Decided;
March 16, 2022, Filed

MEMORANDUM OPINION AND ORDER

JOHN G. KOELTL, District Judge:

The plaintiffs, N.G.B. and J.B., brought this action against the defendant, the New York City Department of Education (the "defendant" or "DOE"), pursuant to the Individuals with Disabilities Education Act ("IDEA") and 42 U.S.C. § 1983. The plaintiffs have moved for summary judgment pursuant to Federal Rule of Civil Procedure 56,

seeking an order directing the defendant to pay certain outstanding invoices and an award of attorney's fees, costs, and interest. The defendant opposes the motion in part, arguing that the requested hourly rates and the numbers of hours billed by the plaintiffs' counsel at the Cuddy Law Firm ("CLF") are excessive and unreasonable. For the reasons set forth below, the plaintiffs' motion is **granted in part and denied in part**.

I.

The following facts are based on the parties' Local Civil Rule 56.1 statements and supporting papers and are undisputed unless otherwise noted.[1]

J.B. is a child with a disability as defined by the IDEA. Def.'s Response to Pl.'s 56.1 Statement ¶ 3 ("Statement"). N.G.B. is J.B.'s parent. *Id.* ¶ 4. On September 19, 2016, the plaintiffs initiated an impartial due process hearing with the DOE, which was assigned Case No. 163644. Bush Decl. ¶ 16. The plaintiffs alleged that the defendant had failed to provide J.B. with a free appropriate public education ("FAPE") during the preceding school years. *Id.* ¶¶ 16-18. On March 13, 2017, an Impartial Hearing Officer ("IHO") found in favor of the plaintiffs and awarded J.B. 575 hours of special education teacher services (the "March 2017 Award").[2] Statement ¶ 6. The plaintiffs recovered

1. Unless otherwise noted, this Memorandum Opinion and Order omits all alterations, omissions, emphasis, quotation marks, and citations in quoted text.

2. The DOE's Impartial Hearing Order Implementation Unit ("IHOIU") subsequently modified and extended the initial award in

attorney's fees and costs related to the litigation of Case No. 163644 on October 30, 2017. Bush Decl. ¶ 6. Following the March 2017 Award, the defendant periodically paid invoices for J.B.'s special education services late and, as of the time that the plaintiffs filed their motion for summary judgment, had failed to pay the invoices for services rendered between March 2021 and August 2021. *Id.* ¶¶ 32-44.

On June 19, 2017, the plaintiffs initiated a second impartial due process hearing with the DOE, which was assigned Case No. 166515. *Id.* ¶ 45. The plaintiffs alleged in their Demand for a Due Process Hearing that the defendant denied J.B. a FAPE during the 2016-17 and 2017-18 school years. *Id.* ¶ 46. After the plaintiffs filed their Demand, the defendant agreed to have several assessments and evaluations of J.B. performed. *Id.* ¶¶ 49-55. Following these assessments and evaluations, an impartial due process hearing was held and concluded in one day. *Id.* ¶ 56; ECF No. 50-11 at 3-4. The defendant did not admit any documents or present any witnesses during the hearing. ECF No. 50-11 at 4.

On March 18, 2018, the IHO issued a Finding of Facts and Decision (the "March 2018 FOFD") that included a finding that the defendant had failed to "provide FAPE to [J.B.] for the 2016/17 and 2017/18 school years." Statement ¶¶ 57-61. It is undisputed that between March 18, 2018 and January 16, 2019, the plaintiffs' counsel performed tasks

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January 2019. Statement ¶ 18. For the purposes of this Memorandum Opinion and Order, the "March 2017 Award" refers to the initial award and any subsequent modifications agreed to by the IHOIU.

aimed at ensuring that the March 2018 FOFD was fully implemented. *Id.* ¶ 62.

The plaintiffs then filed the present action seeking attorney's fees and costs incurred in connection with Case No. 166515 and this action. The plaintiffs subsequently filed an amended complaint in which they added a cause of action seeking to compel the defendant to pay any outstanding invoices for special education services pursuant to the March 2017 Award.

II.

The plaintiffs move for summary judgment directing the defendant to pay any outstanding invoices for special education services rendered in connection with the March 2017 Award. The defendant does not oppose this portion of the plaintiffs' motion and contends that "court intervention is not necessary to address" these claims. ECG' No. 54 at 1 n.1. By the time that the plaintiffs filed their reply brief, all but one of the outstanding invoices had been paid. Because there appears to be one outstanding invoice and the defendant does not dispute that it is obligated to pay any outstanding invoices, summary judgment directing the defendant to pay any outstanding invoices for special education services rendered in connection with the March 2017 Award is granted.

III.

The plaintiffs seek attorney's fees and costs incurred in connection with Case No. 166515 and this action. Under the

IDEA, "the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing party who is the parent of a child with a disability," based on "rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished." 20 U.S.C. § 1415(i)(3)(B)-(C). "The court may award fees for work on the fee application itself." *G.T. v. New York City Dep't of Educ.*, No. 18-cv-11262, 2020 U.S. Dist. LEXIS 25557, 2020 WL 1516403, at *3 (S.D.N.Y. Feb. 12, 2020). To calculate a "presumptively reasonable fee," a court determines the appropriate billable hours expended and sets a reasonable hourly rate. *Lilly v. City of New York*, 934 F.3d 222, 229-30 (2d Cir. 2019) (citing *Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cnty. of Albany & Albany Cnty. Bd. of Elections*, 522 F.3d 182, 190 (2d Cir. 2008)). In making these determinations, a court should step "into the shoes of the reasonable, paying client, who wishes to pay the least amount necessary to litigate the case effectively." *O.R. v. New York City Dep't of Educ.*, 340 F. Supp. 3d 357, 364 (S.D.N.Y. 2018) (quoting *Arbor Hill*, 522 F.3d at 184). However, "trial courts need not, and indeed should not, become green-eyeshade accountants. The essential goal in shifting fees . . . is to do rough justice, not to achieve auditing perfection." *C.B. v. New York City Dep't of Educ.*, No. 18-cv-7337, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *5 (S.D.N.Y. July 2, 2019) (quoting *Fox v. Vice*, 563 U.S. 826, 838, 131 S. Ct. 2205, 180 L. Ed. 2d 45 (2011)). "A district court may exercise its discretion and use a percentage deduction as a practical means of trimming fat from a fee application." *M.D. v. New York City Dep't of Educ.*, No. 17-cv-2417, 2018 U.S. Dist. LEXIS 156923, 2018 WL 4386086, at *4 (S.D.N.Y. Sept. 14, 2018).

Appendix D

There is no dispute that the plaintiffs are the prevailing parties and that they are entitled to recovery under the IDEA. However, the parties dispute whether the rates, hours, and costs billed by the plaintiffs' counsel were "reasonable."

A.

The determination of a reasonable hourly rate "contemplates a case-specific inquiry into the prevailing market rates for counsel of similar experience and skill to the fee applicant's counsel, an inquiry that may include judicial notice of the rates awarded in prior cases and the court's own familiarity with the rates prevailing in the district." *Townsend v. Benjamin Enters., Inc.*, 679 F.3d 41, 59 (2d Cir. 2012). In determining a reasonable hourly rate, courts must also consider the factors articulated in *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). *See H.C. v. New York City Dep't of Educ.*, No. 20-cv-844, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *4 (S.D.N.Y. June 17, 2021) (citing *Arbor Hill*, 522 F.3d at 190). The *Johnson* factors are:

> (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.

H.C., 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *4. A court need not make specific findings as to each factor as long as it considers all of them when setting the fee award. *See id.*

The plaintiffs seek an award of fees for work performed by CLF attorneys Andrew Cuddy, Jason Sterne, Kenneth Bush, Justin Coretti, and Benjamin Kopp. The plaintiffs also seek an award of fees for work performed by CLF paralegals.

1.

The plaintiffs seek an hourly rate of $550 for CLF attorneys Andrew Cuddy and Jason Sterne. The plaintiffs attempt to justify the $550 hourly rate by pointing to the rates charged by lawyers with similar experience, historic rates that comparable lawyers have demanded from the defendant, the rates paid by CLF's paying clients, and inflation. Mr. Cuddy is the founder and managing attorney of CLF and has litigated special education cases since 2001. Cuddy Decl. ¶¶ 101-10. Mr. Sterne has concentrated in the area of special education law since 2005. *Id.* ¶ 113. The defendant contends that Messrs. Cuddy and Sterne should be award no more than $360 per hour.

Courts in this district have awarded these attorneys, and attorneys with similar levels of experience, around $350 per hour in cases such as this one, in which certain issues before the IHO were uncontested, the hearing was relatively short, and the defendant introduced no documentary evidence and few, if any, witnesses. *H.C.*, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *6 (awarding Messrs. Cuddy and Sterne a $360 hourly rate; collecting cases); *M.D. v. New York Dep't of Educ.*, No. 20-cv-6060, 2021 U.S. Dist. LEXIS 132930, 2021 WL 3030053, at *3 (awarding Mr. Cuddy a $375 hourly rate); *M.D.*, 2018 U.S. Dist. LEXIS 156923, 2018 WL 4386086, at *3 (awarding senior CLF attorneys a $360 hourly rate). Although these awards were rendered in the relatively recent past, the plaintiffs argue persuasively that some increase is appropriate and reasonable in view of the passage of time and inflation. *See, e.g.*, ECF No. 49-3; *C.D. v. Minisink Valley Cent. Sch. Dist.*, No. 17-cv-7632, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *6 (S.D.N.Y. Aug. 9, 2018). Accordingly, considering the parties' arguments, the evidentiary submissions, and the *Johnson* factors, a rate of $400 per hour is reasonable for Messrs. Cuddy and Sterne. *See V.W. v. New York City Dep't of Educ.*, No. 20-cv-2376, 2022 U.S. Dist. LEXIS 1289, 2022 WL 37052, at *5 (S.D.N.Y. Jan. 4, 2022) ("Balancing [Messrs. Cuddy's and Sterne's] significant experience, the passage of time since previous awarded rates, and the relative lack of complexity in this case, the Court finds that an hourly rate of $400 is appropriate.").

2.

The plaintiffs seek a rate of $425 per hour for Kenneth Bush and Justin Coretti, and $400 per hour for Benjamin Kopp. Mr. Coretti was first admitted to practice law in 2013 and has worked at CLF on special education matters since 2015. Cuddy Decl. ¶ 114. Mr. Bush was first admitted to practice law in 2015 and worked at CLF on special education matters from 2016 until his departure in January 2019. Bush Decl. ¶¶ 53-61. Mr. Kopp was first admitted to practice law in 2016 and worked for two years practicing general litigation at a different firm before joining CLF. Kopp Decl. ¶¶ 102-12. The defendant argues that these attorneys should be awarded no more than $200 per hour.

Mr. Coretti is the most experienced lawyer of this group and has several years of specialized experience in the relevant field. Messrs. Bush and Kopp both have relatively less experience than Mr. Coretti. Accordingly, considering the parties' arguments, the evidentiary submissions, and the *Johnson* factors, a rate of $300 per hour is reasonable for Mr. Coretti, and a rate of $225 per hour is reasonable for Messrs. Bush and Kopp. *See, e.g., S.J. v. New York City Dep't of Educ.*, No. 20-cv-1922, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *4 (S.D.N.Y. Jan. 12, 2021) (awarding a similar rate for Mr. Kopp); *V.W.*, 2022 U.S. Dist. LEXIS 1289, 2022 WL 37052, at *5 (awarding $300 per hour for Mr. Coretti) (collecting cases); *see also C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *7 ("For associates with three or fewer years of experience in [IDEA] litigation, courts in this District have typically approved rates of $150-$275.").

3.

The plaintiffs seek a rate of $225 per hour for all work performed by CLF's paralegals. The defendant argues that any paralegal work should be awarded at a rate of no more than $100 per hour. In August 2021, Judge Abrams explained that "paralegals, depending on skill and experience, have generally garnered between $100 and $125 per hour in IDEA cases in this district." *J.R. v. New York City Dep't of Educ.*, No. 19-cv-11783, 2021 U.S. Dist. LEXIS 146057, 2021 WL 3406370, at *3 (S.D.N.Y. Aug. 4, 2021). The rates sought here are therefore significantly higher than the market rate typically awarded in this district.

One paralegal that billed time on this matter, Shobna Cuddy, is a "senior paralegal" and has significant experience working as a paralegal and office manager at CLF. *See* Cuddy Decl. ¶¶ 116, 132. The remaining paralegals all appear to have relatively less experience than Ms. Cuddy. Accordingly, considering the parties' arguments, the evidentiary submissions, and the *Johnson* factors, a rate of $125 per hour is reasonable for Ms. Cuddy, and a rate of $100 is reasonable for the remaining paralegals. *See, e.g., V.W.*, 2022 U.S. Dist. LEXIS 1289, 2022 WL 37052, at *6 (awarding $125 per hour for Ms. Cuddy's work and $100 per hour for remaining paralegal work).

B.

The defendant argues that the numbers of hours billed in connection with both the administrative proceedings and this federal action are unreasonable and excessive.

CLF attorneys billed 55.2 hours in connection with the administrative proceedings and 87.4 hours in connection with this federal action. Cuddy Decl. ¶ 132. Mr. Bush also billed 10 hours of travel time in connection with the administrative proceedings. CLF paralegals billed 32 hours in connection with the administrative proceedings and 2.4 hours in connection with this federal action. *Id.*

The numbers of hours billed in connection with the administrative proceedings is excessive and warrant reduction. Although the plaintiffs had to prepare for the possibility of a more heavily contested hearing, the defendant did not contest key issues and did not present any witnesses before the IHO. In administrative proceedings of comparable complexity litigated by CLF, courts in this district have reduced the firm's hours by twenty to fifty percent. *J.R.*, 2021 U.S. Dist. LEXIS 146057, 2021 WL 3406370, at *5 (collecting cases). In view of the brevity of the hearing, the defendant's decision not to submit evidence at the hearing, and the apparent lack of complexity of the matter, a twenty percent reduction of the hours spent in connection with the administrative proceedings, exclusive of travel, is appropriate.

The ten hours of travel billed by Mr. Bush should not be awarded because a hypothetical reasonable client would not be willing to pay for such travel. *See C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *10; *K.F. v. New York City Dep't of Educ.*, No. 10-cv--5465, 2011 U.S. Dist. LEXIS 88653, 2011 WL 3586142, at *6 (S.D.N.Y. Aug. 10, 2011). Accordingly, the award for Mr. Bush's travel time is reduced to two hours. *V.W.*, 2022 U.S. Dist. LEXIS 1289,

2022 WL 37052, at *7 (finding that a similar reduction was reasonable).

The number of hours billed in connection with this federal proceeding is likewise excessive. Courts in this district have found approximately 40 and 60 hours of work billed in similar federal proceedings to be reasonable even where, as here, the federal proceedings are limited in scope and "straightforward." *See* 2022 U.S. Dist. LEXIS 1289, [WL] at *6 (collecting cases). CLF billed substantially more than that in this case, but at least some of those additional hours were justified given the defendant's failure to pay outstanding invoices relating to the March 2017 Award. This failure created the need for the plaintiffs to file an amended complaint and brief those issues on this motion for summary judgment. Accordingly, considering all the relevant circumstances, a twenty percent reduction of time billed litigating this federal matter is appropriate.

C.

The plaintiffs seek the following costs: $262 for copying (at 50 per page); $23.94 for meals; $296 for faxes (at $2.00 per page); $1.88 in postage; $145.61 in lodging; $272.50 in mileage; $45 in parking; $13.50 in tolls; and $400 for filing fees. Cuddy Decl. ¶ 132. The defendant argues that (1) the copying costs should be reduced: (2) the fax costs are unjustified; and (3) the lodging and travel costs are not compensable.

Courts have found that copying and printing costs of "fifty cents per page seems unlikely to be ordinarily

charged to clients." *See, e.g., S.J.*, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *5. Because fifty cents per page does indeed seem unreasonable, the award for copying costs is reduced to 10 per page. *See id.*

Although courts have found fax costs to be "non-reimbursable" because documents can be emailed at no cost, *V.W.*, 2022 U.S. Dist. LEXIS 1289, 2022 WL 37052 at *7, the plaintiffs represent that the defendant and certain schools only accept necessary records requests via fax. Cuddy Decl. ¶ 68. While some fax costs appear to have been necessary on this record, $2.00 per page is unreasonable.

Accordingly, the award for fax costs is reduced to 10¢ per page. Courts in this district routinely decline to award lodging expenses, explaining that a reasonable client "would not agree to pay in-district attorney rates while also paying for extensive lodging expenses necessitated by out-of-district attorneys' travel." *See, e.g., R.G. v. New York City Dep't of Educ.*, No. 18-cv-6851, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *6; *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *13. This reasoning is sound and applicable here. Accordingly, all lodging costs are deducted from any award.

Finally, the mileage costs are unreasonable and should be reduced. A reasonable paying client would expect their counsel to "take public transit or some form of commuter rail" to attend any hearings, rather to than drive long distances and to incur high mileage costs. *See, e.g., R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *6.

Accordingly, mileage costs are reduced to $60. *See id.* (concluding that a similar reduction was reasonable).

The defendant does not contend specifically that an award of any other of the requested costs is unreasonable. Accordingly, the remaining requested costs are awarded without any reductions.

D.

The plaintiffs seek pre-judgment interest on the award of attorney's fees and costs. The defendant does not address this request in its papers.

Judge Liman recently undertook a comprehensive review of whether courts have the power to award pre-judgment interest on awards of attorney's fees and costs in these circumstances. *See M.H. v. New York City Dep't of Educ.*, No. 20-cv-1923, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *29-31 (S.D.N.Y. Jan 10, 2022); *see also D.P. v. New York City Dep't of Educ.*, No. 21-cv-27, 2022 U.S. Dist. LEXIS 5002, 2022 WL 103536, at *16 (S.D.N.Y. Jan. 10, 2022) (discussing *M.H.*). Judge Liman concluded that "in IDEA cases, as in other fee-shifting contexts, the Court should take into account 'delay' by using current rates in calculating a 'reasonable' attorneys' fee," rather than make a separate award of pre-judgment interest. *See M.H.*, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *31. Judge Failla has since agreed with Judge Liman's conclusions and adopted this approach. *See D.P.*, 2022 U.S. Dist. LEXIS 5002, 2022 WL 103536, at *16. Like Judge Failla, this Court finds Judge Liman's

reasoning persuasive and has taken any delay into account when determining the reasonable hourly rates that CLF attorneys and paralegals should be awarded. Accordingly, the plaintiffs' request for a separate award of pre-judgment interest is denied. *See M.H.*, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *31; *see also D.P.*, 2022 U.S. Dist. LEXIS 5002, 2022 WL 103536, at *16; *S.H. v. New York City Dep't of Educ.*, No. 21-cv-4967, 2022 U.S. Dist. LEXIS 14385, 2022 WL 254070, at *9 (S.D.N.Y. Jan. 26, 2022).

Finally, the plaintiffs seek post-judgment interest. The plaintiffs' request for post-judgment interest is granted. "Pursuant to 28 U.S.C. § 1961, the award of post-judgment interest is mandatory on awards in civil cases as of the date judgment is entered." *M.H.*, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *31.

CONCLUSION

The Court has considered all of the arguments of the parties. To the extent not discussed above, the arguments are either moot or without merit. For the foregoing reasons, the plaintiffs' motion for summary judgment and fees, costs, and interests is **granted in part and denied in part**.

The Clerk is directed to close Docket No. 47. The plaintiffs are directed to submit a proposed judgment within five days. The defendant may submit any objections two days thereafter.

SO ORDERED.

Dated: New York New York
March 16, 2022

/s/ John G. Koeltl
John G. Koeltl
United States District Judge

APPENDIX E — A.W. TRANSCRIPT TO THE PROCEEDING, DATED MARCH 10, 202[2]

[1]UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A.W., *et al.*,

Plaintiffs,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant.

20 Civ 6799 (JPC)
Remote Proceeding

New York, N.Y.
March 10, 202[2]
2:00 p.m.

Before:

HON. JOHN P. CRONAN,

U.S. District Judge

***

[2]So the purpose of this conference is to address plaintiff's motion for summary judgment in this case

involving fees pursuant to the IDEA. I will briefly review the background of the case and the administrative and procedural [3]history, but I otherwise assume the parties' familiarity with the facts that are really not much in dispute.

As summarized in the complaint, the plaintiff, A.W., brings this action on behalf of E.D., a child with a disability. The plaintiff is E.D.'s mother, and she brought a due process complaint on October 31st, 2017, alleging that the defendant, the New York City Department of Education -- or the DOE -- failed to provide a free, appropriate public education for the 2016-2017 and the 2017-2018 school years. The plaintiff alleges that failure violated the Individuals with Disabilities and Education Act, 20 U.S. Code Section 1411, et seq.

There were three administrative hearings that occurred before an impartial hearing officer -- or an IHO -- on January 25, March 14th, and June 8th, 2018. After that, at the January 25th hearing, the IHO issued an interim order that established E.D.'s pendency placement and related services. At the March 14 hearing, the parties discussed the evaluations requested for E.D., which was followed by another interim order by the IHO granting the requested evaluations. At the final hearing on June 8, the plaintiff presented testimony from expert witnesses and from the plaintiff herself. That was followed by a closing brief by the plaintiff in support of the relief sought. On October 3, 2018, the IHO issued a decision finding that E.D. was denied a free appropriate public education for the 2016 to [4]2017 and the 2017 to 2018 school years and awarded relief in connection with that failure.

At the conclusion of those administrative proceedings the parties tried to negotiate a settlement of fees, costs, and expenses for those proceedings but were not able to reach an agreement, so on August 24th the plaintiff initiated this action by filing a complaint seeking fees. She has then moved for summary judgment, that motion was filed on April 16, 2021. The motion seeks an award of reasonable attorney fees, costs, and expenses for the administrative proceeding in the amount of $78,300.25, and also fees in the amount of $30,297.50 in connection with this action.

***

[9]THE COURT:

So I will begin by outlining the applicable legal standard. The IDEA grants the district courts discretion to award reasonable attorneys fees and costs to prevailing party. 20 United States Code Section 1415(i)(3)(B)(I). The defendant concedes that the plaintiff is a proceed veiling party in *Lilly v. City of New York*, 934 F.3d 222, 230-31 (2d Cir. 2019). The Second Circuit explains that District Court's should consider all case-specific variables including the so-called *Johnson* factors to determine what rate a paying client would be willing to pay, bearing in mind that a reasonable paying client wishes to pay the minimum necessary. The *Johnson* factors include the time and labor required, the novelty and difficulty of the questions, the legal skill required, the preclusion of employment by the attorney due to the case, and the, the attorney's customary hourly rate, whether the fee is fixed

or contingent, time limitations, the amount in controversy, and the result obtained, the experience, reputation, and ability of the attorneys, the undesirability of the case, the nature and length of the professional relationship with the client, and awards in similar cases. That is from *G.B. ex rel. N.B. v. Tuxedo Union Free Sch. Dist.,* 894 F. Supp. 2d 415, 428 (S.D.N.Y. 2012). Hours that are excessive, redundant, or otherwise unnecessary are to be excluded from fee awards. That's a cite to *Kirsch v. Fleet St., Ltd.*, 148 F.3d 149, 173 [10](2d Cir. 1998).

While I have considered all of the *Johnson* factors in setting the fee, the case-specific variables that are most helpful in setting hourly rates in this case include the difficulty of the case, the attorneys' customary hourly rates, the result obtained, and awards in similar cases. I will discuss customary rates and similar cases with respect to specific attorneys in a moment, but I begin by addressing the difficulty of this case and the extent of the plaintiff's success.

To some extent, those factors cut in different directions. On one hand, the plaintiff received full relief, a major success for the client. On the other hand, the defendant did not, in the end, contest the case on the administrative level, reducing the difficulty of the undertaking. The defendant did consider contesting the case, though, and did not inform the plaintiff's counsel that it did not intend to contest the case until the second of three administrative hearings on March 14, 2018.

So the first step is to fix reasonable hourly rates for the attorneys involved. Biographical information on the

attorneys comes from Docket 22, which is Britton Bouchard's declaration, Docket 23, which is Nina Aasen's declaration, and Docket 24, which is Andrew Cuddy's declaration.

Four senior attorneys worked on this case. Mr. Andrew [11]Cuddy, who was barred in 1996, and has practiced special education law since 1998. He is the founder and head of the Cuddy Law Firm. He has taught continuing legal education classes and published a book on special education law. Mr. Michael Cuddy was barred in 1989 and has practiced special education law since 2010. He was previous a school district administrator and education law practitioner from 1990 to 2010. Mr. Jason Sterne was barred in 1998 and has practiced special education law since 2005. And Ms. Nina Aasen was barred in 1994 and has practiced special education law since that time. She, too, has taught continuing legal education classes and has worked with the child advocacy clinic at Cornell Law School.

The plaintiff requests that all four of these senior attorneys be compensated at a rate of $550 per hour. Mr. Cuddy's declaration at page 9 states that his firm has been paid those rates through settlement or on direct payments from clients in 2020. But, as Judge Engelmayer noted in *C.D. v. Minisink Valley Central School District*, which is Docket no. 18 Civ. 6851, and Westlaw cite 2018 Westlaw 3769972, a decision on August 9, 2018. Rates approved for experienced attorneys in IDEA fee shifting cases have tended to be between $350 and $475 per hour. In that decision, Judge Engelmayer awarded Mr. Andrew Cuddy and his senior colleagues $400 per hour for work, and that was for work completed in 2015 and 2016. At the same

time, Judge Oetken recently awarded senior attorneys at [12]the Cuddy law firm only $360 per hour, which is the rate the defendant seeks in this case, and Judge Oetken arrived at that rate after examining awards in this district including ones that are cited by the defendant. The Judge Oetken case was *L.L. v. New York City Department of Education*, with a Westlaw cite of 2020 Westlaw 392912, and that decision is from February 9th of this year.

After considering the relevant factors that I mentioned in this case, I note that the plaintiff's counsel won full relief for their client which favors a higher fee. Now, the administrative hearings were eventually uncontested which generally would favor a lower fee but the word "eventually" is important here. The fact that the hearings were uncontested does not weigh in favor of a lower fee as much as it might in other circumstances given that counsel did not know that the Department of Education would not contest the hearings until the second of three hearings and therefore had to prepare for that hearing as if it would be contested. I would also note, that as the plaintiff does, that inflation affecting legal fees has occurred in recent years and the plaintiff's counsel, of course, also have gained experience over their years of practice.

On balance, I find a rate of $420 to be reasonable for the four senior attorneys. In doing so, I largely concur with Judge Abrams' reasoning in *V.W. v. New York City Department of* [13]*Education,* 2020 Westlaw 37052, a January 4th case, A decision out of this district. There, Judge Abrams arrived at a slightly lower rate of $400 for Mr. Andrew Cuddy, Mr. Michael Cuddy and Mr. Sterne,

after she thoughtfully surveyed many of the considerations raised by both parties in that case and also here. In setting the rate of $420 per hour for the four senior attorneys, I am factoring in a slight adjustment for inflation including since Judge Engelmayer's August 2018 decision in *C.D.* finding $400 to be reasonable.

Two associates also worked on this case, one of them is on the line, Mr. Mendillo. Mr. Mendillo has practiced special education law since 2014 and he previously practiced general litigation. The plaintiff seeks an award of $450 per hour for Mr. Mendillo while defendant advocates limiting his fee to $300 per hour. I find that a fee of $310 per hour is appropriate for Mr. Mendillo. That hourly fee generally aligns with Judge Cott's recent award in *H.C. v. New York City Department of Education*, 2020 Westlaw 2471195, a June 17, 2021 decision, although I do, in setting the rate of $310 for Mr. Mendillo, allow for recent inflation.

The second associate is Britton Bouchard, a junior associate, who mainly worked on this fee petition. Britton Bouchard was barred in 2020 and has practiced special education law since then. The plaintiff seeks a fee of $375 per hour for Britton Bouchard while the defendant seeks to limit that fee to [14]$200 per hour. I will award a $200 per hour fee for Britton Bouchard which aligns with the fee awarded to a less junior Cuddy law firm associate in Judge Oetken's aforementioned *L.L.* decision.

Finally, several paralegals worked on this matter. First, Shobna Cuddy handled tasks related to billing and fee demands. Ms. Cuddy has been a paralegal since 2007,

and since 2012 she has also worked as a firm-wide office administrator.

Paralegals Allison Bunnell, Amanda Pinchak, and Sarah Woodard worked on the administrative proceedings. Ms. Bunnell and Ms. Pinchak are more junior than Ms. Cuddy. Both of them worked at the Cuddy Law Firm from 2016 to 2019. Ms. Bunnell previously worked as an administrative assistant at the Cayuga County District Attorney's office and Ms. Pinchak completed a paralegal certificate program at Cayuga Community College. And Ms. Woodard worked as a paralegal at the firm from 2015 to 2018, and she previously was a legal assistant for an attorney in Weedsport, New York, for about 20 years.

Two other paralegals, Alyson Green and Cailin O'Donnell assisted in the federal proceeding. They both worked at the firm's Auburn office. Ms. O'Donnell has a Bachelor of Arts degree from Houghton College, and Ms. Green has an Associates Degree from Cayuga Community College.

The plaintiffs seek an award of $150 for Ms. Bunnell, Ms. Pinchak, Ms. Woodard, Ms. Green, and Ms. O'Donnell, and [15]$175 per hour for Ms. Cuddy, while the defendant seeks to limit the award to $100 per hour for all of them.

As Judge Cott noted in *H.C.*, paralegals, depending on skill and experience, have generally garnered between $100 and $125 per hour in IDEA cases in this district. I find an award of $100 per hour for Ms. Bunnell, Ms. Pinchak, Ms. Woodard, Ms. Green, and Ms. O'Donnell to

be appropriate. And I find a rate of $125 per hour for Ms. Cuddy to be appropriate. This, too, largely aligns with Judge Abrams' decision in *V.W.*

Next I will turn to the hours expended in this case, both at the administrative level and in this federal action. The plaintiff has produced detailed billing records for both the federal action and the underlying administrative action. They're at Docket 24, Exhibit 1. The defendant has made a number of specific objections which I will turn to now.

First, the defendant argues that the 9.4 hours that the plaintiff's counsel bill for drafting and revising the seven-page due process compliant, which is at Docket no. 23 Exhibit A, was excessive. Having reviewed that due process complaint, I do not find the entries and hours to be unreasonable. The due process complaint was specific to *E.D.* and clearly entailed a careful and detailed review of the child's education records and diagnosis.

Second, as we discussed earlier, the defendant objects to bills for administrative work such as small amounts of time [16]billed by paralegals for reviewing e-mails and saving files, and also, in particular, 2.7 hours billed by Mr. Andrew Cuddy and Ms. Cuddy for reviewing billing statements. I find the small time billed for saving files to be immaterial and appropriately billed, but I do deduct from Mr. Cuddy's and Ms. Cuddy's hours the 2.7 hours for reviewing billing statements, following Judge Cott's decision in *H.C.*, and also the decision that was mentioned earlier from Judge Caproni in *R.G. v. New York City*

Department of Education, 2019 Westlaw 4735050, a September 26, 2019 decision. As I mentioned earlier, Judge Caproni rejected a request to bill time for reviewing a billing statement for accuracy and commented that DOE should not have to compensate the Cuddy law firm for administrative clean-up of their own entries.

Third, the defendant objects to the 30.9 hours that counsel billed for communicating with the plaintiff, reviewing documents, and preparing for administrative hearings. One hearing occurred on January 25, 2018, lasting approximately one hour, at which the plaintiff presented an opening statement and two exhibits; one hearing occurred on March 14, 2018, lasting 30 minutes, at which the plaintiff entered 31 exhibits; and the last hearing occurred on June 8, 2018, lasting two hours and 38 minutes, at which the plaintiff presented an opening statement, entered seven exhibits, and examined four witnesses. While defendant did not, in the end, contest the case, as discussed [17]earlier, the defendant does not dispute that it did not inform the plaintiff of that decision not to contest until the day of the second hearing on March 14, 2018.

The defendant seems to suggest that the 30.9 hours of entries here are unreasonable and that they are largely due to hearing preparations alone. The actual time spent on hearing preparation, however, appears to be significantly shorter than the 30.9 total hours and the specific billing entry for hearing preparation appear to be reasonable to me. For example, the plaintiff's counsel prepared for 3.5 hours for the first one-hour hearing, in

billing entries on November 29, 2017 and January 24th, 2018. The plaintiff's counsel prepared for 5.9 hours for the second hearing which was a 30-minute hearing and that is in billing entries on January 29, February 8, February 20, March 8, and March 13, 2018. The bulk of that preparation entailed four hours of preparing a cross-examination or preparing cross-examinations of three witnesses, which turned out to be unnecessary, but that's not from the plaintiff's fault. The cross-examination of these witnesses was unnecessary because, again, the DOE only advised plaintiff that it was not contesting the hearing the day of the hearing. So in the absence of more particularized objections, I cannot find that plaintiff's counsel's preparations were unreasonable and, again, those preparations do appear to be reasonable.

In connection with this objection, the defendant [18]points to Judge Caproni's decision in another case, *A.D. v. New York City Department of Education*, 2019 Westlaw 1292432, a March 13, 2019 decision in which Judge Caproni allowed only six billed hours to prepare for 3.9 hours of hearings. That case, though, presented unusual circumstances. There, the plaintiff's counsel's conduct in the hearings reflected serious lack of preparation as the attorney arrived at one hearing without an opening statement or witnesses in violation of the hearing officer's express instructions. That is a very different situation than what happened here. So I will approve the 30.9 hours in connection with administrative hearings covering communications with the plaintiff, reviewing documents, and preparing for the hearing as billion.

Fourth, the defendant objects to approximately 16.6 hours billed by Mr. Sterne and Ms. Aasen to draft and revise the plaintiff's 19-page closing brief after the final hearing. The closing brief is docketed at Docket no. 23, Exhibit 3, and includes some significant block quotes and boiler plate recitations of IDEA law. I will reduce Mr. Sterne's time by 1.6 hours, and approve 15 hours to draft the brief in total. I note that this matches Judge Caproni's determination for a 19-page closing brief in *R.G.*

Fifth, the defendant objects to the billing rate for travel time by Mr. Michael Cuddy and Ms. Aasen. The plaintiff's counsel billed for travel time at $275 per hour. [19]Travel time is generally compensated at 50 percent of the attorney's hourly rate, as Judge Caproni noted in *A.D.* Since I lowered the traveling attorneys' hourly rates to $420 per hour, I also will lower their travel rates to $210 per hour.

Sixth, the defendant objects to certain costs that plaintiff has included. In particular, the defendant objects to plaintiff's lodging and travel time. Because a reasonable client likely would not retain an attorney at high New York City rates while also paying lodging costs, I decline to award lodging and I find 1.5 hours of travel each way between the plaintiff's counsel's offices and the hearing location. That partial award for 1.5 hours of travel balances the plaintiff's interest in retaining specialist counsel with the rate that a reasonable paying client would be willing to pay. It also accords with the norm for the Cuddy Law Firm travel in this district as Judge Failla explains in *D.P. v New York City Department of Education*, 2020

Westlaw 103536, a decision from January 10th of this year; and also with Judge Oetken explained in *L.L.* For similar reasons, I limit the plaintiff's counsel's meals, mileage, transportation, and tolls to one third of the amount sought as Judge Failla also did, and I reduced the plaintiff's copying costs to 10 cents per page.

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And also, I think it was clear but when I say I award 1.5 hours of travel each way, I mean just that, for travel from [20]office to New York City and then from New York City back to the office, as opposed to a total of 1.5 hours of travel altogether.

Turning to the seventh main objection, the defendant objects to the hours billed to work on this federal action, arguing that 7.2 hours for drafting and revising the complaint, and 47.7 hours for preparing the motion for attorneys' fees is excessive. The defendant is correct that plaintiff's counsel routinely brings similar actions as this one, but this case also had significant litigation, with several briefs including a sur-reply and declarations. And of course the facts of each case and the issues implicated are unique. It also is not surprising that the plaintiff does not accept the defendant's settlement demand which was barely above the defendant's position in this litigation. Courts in this district have recently found bills of 40, 46, and 56 hours to be reasonable for fee petitions. That is reflected in cases collected by Judge Abrams in *V.W.* I also have reviewed the brief that plaintiff's counsel filed before Judge Oetken in *L.L.*, and I note that significant

portions of the brief here were largely identical to the brief in *L.L.* In light of all that, I find that a reduction to 40 hours for the time preparing the motion for attorneys' fees is appropriate. That is referring just to the motion for judgment, not for the time billed for drafting and revising the complaint. I find the 7.2 hours drafting and [21]revising complaint to be reasonable and reduce to 40 hours the time to prepare the motion for summary judgment to receive attorneys fees that was filed. And in the absence of any more specific objections challenging the time spent on the federal case, I do not cut the hours in this regard any further.

I will briefly address the defendant's request that I not allow fees accrued after April 12, 2021 when it offered the plaintiff a settlement of $39,000 for the fees. The defendant's position, essentially, is that pursuant to 20, United States Code, Section 1415(i)(3)(D), which allows a procedure for settling attorneys fees similar to Rule 68 offer of judgment, they now should be frozen at that offer. Since the determinations I just outlined will result in the plaintiff being entitled to fees in excess of $39,000 through April 12, 2021, that statutory provision would not apply here.

Finally, I will address the plaintiff's argument that the defendant unreasonably delayed throughout this litigation, justifying an award of the plaintiff's full demand, regardless of the reasonableness of those fees citing 20, United States Code, Section 1415(i)(3)(G). Now, Section 1415(i)(3)(F)(ii) provides that the Court shall reduce the amount of attorneys fees in the amount the fees

otherwise authorized to be awarded unreasonably exceed the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience. Now, Section 1415(i)(3)(G) [22]says that sub paragraph (F) does not apply if the Court finds that the state or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of Section 1415.

Now, I have considered the alleged delays cited by the plaintiff. I considered those when assessing the fees for this action in determining the reasonableness of those fees that included, for instance, the defendant's failure to specify whether it would defend the case until well into the administrative process, so I conclude that those delays do not rise to the level of unreasonably protracting the final resolution of the proceeding here, or otherwise violated Section 1415. While perhaps not ideal conduct, the defendant's counsel was in contact with the plaintiff's counsel throughout the administrative process, including as to the hearings and the implementation of the terms of the IHO's orders, and defendant's counsel similarly engaged in settlement discussions with regard to the fee dispute. Obviously those discussions were not successful, but defendant's counsel was engaged with plaintiff's counsel. Perhaps, more importantly, regardless of whether the defendant unreasonably protracted the final resolution of the administrative process, the plaintiff has not provided case law or authority supporting the proposition that Section 1415(i)(3)(G) would allow me to make an award of an otherwise unreasonable attorneys' fees. Judge Liman [23]persuasively rejected such a position

after surveying relevant precedent in *M.H. v. New York City Department of Education*, which is at 2021, Westlaw 4804031, a decision he issued on October 13, 2021, and I adopt that reasoning and deny the plaintiff's request for full fees due to unreasonable delay.

Also, to be clear, I will order costs in the amount of $400 for this federal action, and also costs for the administrative action but with the reductions I mentioned earlier, namely for lodging, meals, mileage, transportation, tolls, and copying; and I also will award post-judgment interest under 21, United States Code, Section 1961.

That concludes my ruling. Any objections that I did not specifically address raised by the defendant are overruled.

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APPENDIX F — H.A. OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED FEBRUARY 25, 2022

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

20 Civ. 10785 (PAE)

H.A., INDIVIDUALLY AND ON BEHALF OF M.A., A CHILD WITH A DISABILITY,

Plaintiff,

-v-

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant.

February 25, 2022, Decided
February 25, 2022, Filed

Paul A. Engelmayer, United States District Judge.

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

This decision resolves a motion for attorneys' fees and costs in this action under the Individuals with Disabilities

Education Act of 1990 ("IDEA"), 20 U.S.C. § 1400 *et seq.*[1] Plaintiff H.A. sued the New York City Department of Education (the "DOE") after being awarded independent evaluations and related accommodations for her disabled child, M.A., in an administrative hearing before an independent hearing officer ("IHO"). H.A. requests attorneys' fees, costs, and interest, totaling $47,094.05, and covering both the underlying administrative proceeding and this action. Relatedly, as a means to secure a higher fee award, H.A. also asks the Court to issue a declaratory judgment that DOE unreasonably protracted the final resolution of the administrative proceeding.

For the reasons below, the Court grants the motion for fees and costs, but in sums below those sought, and denies the motion for declaratory relief.

I. Background

A. The IDEA Action and Proceedings Before the IHO

M.A. is a male child with a disability covered by the IDEA. Dkt. 26, ("56.1") ¶ 2. On August 5, 2019, H.A. submitted a due process complaint to DOE's Impartial Hearing Office. The complaint alleged that DOE had failed to fund independent educational evaluations of M.A. during the 2017-2018 school year while failing to file a due process complaint in response to M.A.'s earlier written

1. The IDEA, Pub. L. No. 108-46, 118 Stat. 2647 (2004), reauthorized (and amended) the IDEA. This opinion refers to the updated version of the statute.

requests for such funding. *Id.* ¶ 10.

The Impartial Hearing Office then initiated an impartial due process hearing on behalf of M.A. *Id.* ¶ 19. There, H.A. sought an order (1) requiring DOE to authorize and pay for independent neuropsychological, occupational therapy, and speech-therapy evaluations for MA.; (2) requiring DOE to pay for H.A.'s and M.A.'s transportation to and from appointments for these evaluations; (3) requiring DOE to convene an "IEP meeting" to consider new evaluations and special education and related services for M.A. in light of the independent evaluation reports; and (4) awarding H.A. attorneys' fees and expenses. *Id.* ¶ 11.

After H.A. submitted the complaint, DOE did not respond to inquiries from counsel submitted on September 9, October 8, and December 10, 2019 regarding whether DOE intended to defend the case. *Id.* ¶¶ 17, 23, 26. DOE also did not appear at a September 23, 2019 pre-hearing conference before the IHO. *Id.* ¶ 20. On December 16, 2019, H.A. moved for summary judgment before the IHO. DOE again did not respond. *Id.* ¶¶ 27, 29.

On December 19, 2019, the IHO informed the parties that it would not rule on summary judgment motions. It scheduled a January 10, 2019 pre-hearing conference. *Id.* ¶ 33. Each of the pre-hearing conferences lasted approximately 3 minutes. Dkt. 39 ("Pekala Decl.") ¶IJ 5, 7. On January 8, 2020, DOE informed H.A. that it did not have a case. 56.1 ¶ 42.

On January 24, 2020, the IHO held a 17-minute hearing, during which H.A. entered 14 exhibits into the record. No witnesses were presented. *Id.* ¶¶ 46-47; Pekala Decl. ¶ 8. At the hearing, DOE conceded that M.A. had not been evaluated. But it objected to H.A.'s request for payment for transportation to and from independent evaluation sites and proposal that DOE convene the IEP meeting within 10 days of receiving the independent evaluation reports. *Id.* ¶¶ 48-49; Pekala Decl. ¶¶ 8-9. On February 7, 2020, H.A. submitted an approximately 5-page brief in response to DOE's objections. 56.1 ¶ 51; *see* Dkt. 29-9. On February 21, 2020, the IHO issued a final decision. It awarded H.A. the requested evaluations, reimbursement for transportation expenses, and required the IEP meeting to occur within 3 weeks of DOE's receipt of all evaluations. 56.1 ¶ 52; *see* Dkt. 29-10.

B. Procedural History of H.A.'s Fees Action in this Court

On December 21, 2020, H.A. filed this action. It sought attorneys' fees and costs, and a declaratory judgment that DOE unreasonably protracted the final resolution of the administrative proceeding.[2] Dkt. 1. On March 2, 2021, DOE answered. Dkt. 13. On March 9, 2021, RA. filed an amended complaint. Dkt. 16 ("AC"). On August 6, 2021, H.A. filed a motion for summary judgment. Dkt. 27 ("Mot."). On October 6, 2021, DOE opposed the motion. Dkt. 38 ("City Opp'n"). On October 22, 2021, H.A. replied. Dkt. 44.

2. At the time H.A. commenced the action in this Court, DOE had not made all payments for the evaluations as required by the IHO's decision. It now has. Pekala Decl. ¶ 13.

II. Discussion

A. Applicable Legal Principles

"The IDEA aims 'to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs.'" *A.R. ex rel. R.V. v. N.Y. City Dep't of Educ.*, 407 F.3d 65, 72 (2d Cir. 2005) (quoting 20 U.S.C. § 1400(d)(1)(A)). States that receive certain federal funds must "offer parents of a disabled student an array of procedural safeguards designed to help ensure the education of their child." *Polera v. Bd. of Educ.*, 288 F.3d 478, 482 (2d Cir. 2002). Parents are entitled to bring complaints regarding the "provision of a free appropriate public education" ("FAPE") to their child, 20 U.S.C. § 1415(b)(6), and to have those complaints heard by an IHO. *See id.* § 1415(f)(1); N.Y. Educ. L. § 4404(1); *see also A.R.*, 407 F.3d at 72.

"In the United States, parties are ordinarily required to bear their own attorney's fees—the prevailing party is not entitled to collect from the loser." *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health and Human Res.*, 532 U.S. 598, 602, 121 S. Ct. 1835, 149 L. Ed. 2d 855 (2001) (citation omitted). However, under the IDEA, if a parent of the child with a disability is the "prevailing party" in the litigation, the district court has discretion to award the parent "reasonable attorneys' fees" and costs incurred. 20 U.S.C. § 1415(i)(3)(B)(i); *see also J.C. v. Reg'l Sch. Dist. 10, Bd. of Educ.*, 278 F.3d 119, 121 (2d Cir. 2002). The award may cover work performed before (1) the IHO, (2) the State Review Officer ("SRO"), (3) the district

court, and (4) on appeal. *See A.R.*, 407 F.3d at 84 (affirming award of fees incurred during IHO proceedings and before district court, and remanding to consider whether, on facts of the case, fees should be awarded for work during Second Circuit appeal); *G.B. ex rel. NB. v. Tuxedo Union Free Sch. Dist.*, 894 F. Supp. 2d 415, 437 (S.D.N.Y. 2012) (awarding fees for work conducted in SRO proceeding). Prevailing parties are also entitled to reimbursement for the reasonable costs incurred in litigating an IDEA case. *G.B.*, 894 F. Supp. 2d at 443.

To determine the award and the amount of fees, the court must engage in a two-step inquiry. First, the court must determine whether the party seeking to enforce the fee-shifting provision is the "prevailing party." *Mr. L. v. Sloan*, 449 F.3d 405, 405-07 (2d Cir. 2006). Second, the court must determine whether the party "should be awarded attorneys' fees." *Id.* In determining whether such fees should be awarded, and in what amount, the court examines whether the fees are reasonable in light of the litigation. *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983). The district court has the discretion to reduce the award if the fees or hours reported are excessive or misleading. *Id.* at 437; *see* 20 U.S.C. § 1415(i)(3)(F) (requiring court to reduce attorneys' fees awarded upon findings of, *inter alia*, excessive reported or hourly rates); *see also Id.* § 1415(i)(3)(G) (exception to subsection (F) where state or local agency unreasonably protracts final resolution of action or proceeding).

B. Prevailing Party

To be a prevailing party under the IDEA, a plaintiff must achieve (1) "some material alteration of the legal relationship of the parties" that is (2) "judicially sanctioned." *A.R.*, 407 F.3d at 67. The Second Circuit has held that a party who receives agency-ordered relief on the merits of their claim is a "prevailing party" for the purposes of IDEA. *Id.* at 75. A party need not recover on all of her claims in order to be considered the "prevailing party." *K.L. v. Warwick Valley Cent. Sch. Dist.*, No. 12 Civ. 6313 (DLC), 2013 U.S. Dist. LEXIS 126933, 2013 WL 4766339, at *5 (S.D.N.Y. Sept. 5, 2013), *aff'd*, 584 Fed. App'x 17 (2d Cir. 2014) (summary order). However, she "must succeed on a significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." *Id.*

C. Calculation of Fees

The starting point for determining the presumptively reasonable fee award is the "lodestar" amount, which is "the product of a reasonable hourly rate and the reasonable number of hours required by the case." *Millea v. Metro-N. R. Co.*, 658 F.3d 154, 166 (2d Cir. 2011). The lodestar is not "conclusive in all circumstances," and may be adjusted when it fails to "adequately take into account a factor that may properly be considered in determining a reasonable fee." *Id.* at 167.

Appendix F

1. Reasonable Hourly Rates

Under the fee-shifting provision of the IDEA, the court determines a reasonable hourly rate "based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished." 20 U.S.C. § 1415(i)(3)(C). A reasonable rate is one a reasonable, paying-per-hour client would pay for the same services rendered. *K.F. v. N.Y City Dep't of Educ.*, No. 10 Civ. 5465 (PKC), 2011 U.S. Dist. LEXIS 88653, 2011 Wt 3586142, at *3 (S.D.N.Y. Aug. 10, 2011), *adhered to as amended*, 2011 U.S. Dist. LEXIS 116665, 2011 WL 4684361 (S.D.N.Y. Oct. 5,2011) (citing *Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cnty. of Albany*, 522 F.3d 182, 190 (2d Cir. 2008)). The community used for purposes of IDEA fee-shifting litigation is the district in which the issue arose—specifically, where the student was denied a FAPE. 2011 U.S. Dist. LEXIS 88653, [WL] at *2. However, in determining reasonable hourly rates, it is also important to look to the area of legal practice at issue. That is because legal markets are today so interconnected that it is no longer meaningful, in assessing a reasonable rate, to look at geographic location alone. *See Arbor Hill*, 522 F.3d at 192.

In determining a reasonable rate, district courts are also to consider case-specific variables known as the "*Johnson* factors." These include:

> (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly;

> (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved 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.

Id. at 186-87. "A district court need not recite and make separate findings as to all twelve *Johnson* factors, provided that it takes each into account in setting the attorneys' fee award." *E.F. ex rel. N.R. v. N.Y. City Dep't of Educ.*, No. 11 Civ. 5243 (GBD) (FM), 2014 U.S. Dist. LEXIS 34606, 2014 WL 1092847, at *3 (S.D.N.Y. Mar. 17, 2014) (internal citations omitted).

2. Reasonable Hours

Once a reasonable rate of pay has been calculated, it is multiplied by a reasonable number of hours expended to determine the award amount. The Court has the discretion to disregard hours viewed as "excessive, redundant, or otherwise unnecessary." *Bliven v. Hunt*, 579 F.3d 204, 213 (2d Cir. 2009) (quoting *Hensley*, 461 U.S. at 434). To determine the reasonableness of hours spent on a matter, "[t]he district court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award" by a reasonable percentage. *Hensley*, 461 U.S. at 436-37; *see also McDonald ex rel. Prendergast v. Pension*

Plan of the NYSA-ILA Pension Tr. Fund, 450 F.3d 91, 96 (2d Cir. 2006) ("A district court may exercise its discretion and use a percentage deduction as a practical means of trimming fat from a fee application."); *J.R. v. N.Y. City Dep't of Educ.*, No. 19 Civ. 11783 (RA), 2021 U.S. Dist. LEXIS 146057, 2021 WL 3406370, at *5 (S.D.N.Y. Aug. 4,2021) (citing cases). As Justice Kagan has instructed, "trial courts need not, and indeed should not, become green-eyeshade accountants. The essential goal in shifting fees. . . is to do rough justice, not to achieve auditing perfection." *Fox v. Vice*, 563 U.S. 826, 838, 131 S. Ct. 2205, 180 L. Ed. 2d 45 (2011).

D. Costs

A district court may also award reasonable costs to the prevailing party. 20 U.S.C. § 1415(i)(3)(B)(i)(I). The term "costs" includes costs incurred in connection with work yielding fees covered by a fee award,[3] as well as the specific types of costs set out in 28 U.S.C. § 1920, the general provision governing the taxation of costs in federal court. *See Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 297-98, 126 S. Ct. 2455, 165 L. Ed. 2d 526 (2006); *G.B. ex rel. N.B. v. Tuxedo Union Free Sch. Dist.*, 894 F. Supp. 2d 415, 443 (S.D.N.Y. 2012). Commonly

3. The principles articulated in *LeBlanc—Sternberg v. Fletcher*, 143 F.3d 748 (2d Cir. 1998), control as to out-of-pocket expenses other than expert-witness fees. There, the Second Circuit held that an attorney's fee award includes those reasonable out-of-pocket expenses incurred by attorneys and ordinarily charged to their clients. *See M.K. ex rel. K. v. Sergi*, 578 F. Supp. 2d 425, 433-34 (D. Conn. 2008).

compensable costs include reasonable filing and process server costs. *See* 28 U.S.C. § 1920; *G.B.*, 894 F. Supp. 2d at 443; *M.K.*, 578 F. Supp. 2d at 434.

III. Discussion

A. Overview of H.A.'s Fee and Cost Requests

It is undisputed that HA. prevailed in the proceeding before the IHO. 56.1 ¶ 94; City Opp'n at 8. The IHO ordered DOE to fund the independent evaluations H.A. sought, pay for H.A.'s and M.A.'s transportation to and from those evaluations, and convene an IEP meeting to review the evaluations within three weeks of receiving the evaluations. 56.11 ¶ 52; *see* Dkt. 29-10. The principal issue before this Court is whether the fees and costs H.A. has requested are reasonable. As to both fees and costs, H.A. seeks compensation for work performed both before the IHO (the "administrative proceeding"), and in this follow-on fees litigation.

As to the administrative proceeding, H.A. seeks a fee award reflecting hours worked by four attorneys at the Cuddy Law Firm (Andrew Cuddy, Michael Cuddy, Justin Coretti, and Benjamin Kopp) and six of the firm's paralegals (Shobna Cuddy, Sarah Woodard, Amanda Pinchak, Cailin O'Donnell, Emma Bianco, and Burhan Meghezzi).[4] Before the IHO, Kopp served as lead counsel.

4. H.A. has rightly not requested fees for several other attorneys and staff whose involvement in these proceedings was very limited. *See* Dkt. 28 ¶ 49.

Dkt. 29 ("Kopp Decl.") ¶ 44. He led hearing preparation, communicated with DOE and H.A., attended conferences and the January hearing, and drafted briefs. *See id.*; Did. 28 ("Cuddy Decl.") ¶¶ 42-43. H.A. seeks an award for the following work during the administrative proceeding.[5]

Attorney's Fees: Administrative Proceeding			
Attorney	**Rate**	**Hours**	**Total**
Andrew Cuddy	$550.00	1.5	$825.00
Michael Cuddy	$550.00	0.5	$275.00
Justin Coretti	$425.00	0.3	$127.50
Benjamin Kopp	$400.00	34.5	$13,800.00
Total		**36.8**	**$15,027.50**

Paraegal Fees: Administrative Proceeding			
Paralegal	**Rate**	**Hours**	**Total**
Shobna Cuddy	$225.00	2.4	$540.00
Sarah Woodard	$225.00	0.7	$157.50
Amanda Pinchak	$225.00	6.3	$1,417.50
Cailin O'Donnell	$225.00	6.7	$1,507.50
Ermna Bianco	$225.00	1.6	$360.00
Burhan Meghezzi	$225.00	0.2	$45.00
Total		**17.9**	**$4,027.50**

As to litigation before this Court, Kopp again served as lead attorney, with assistance from Andrew Cuddy. *See* Cuddy Decl. ¶ 44. H.A. seeks an award for the following work:

5. The charts set out here reflect the data in paragraph 140 of docket entry 28.

Appendix F

Attorney's Fees: SDNY			
Attorney	**Rate**	**Hours**	**Total**
Andrew Cuddy	$550.00	8.5	$4,675.00
Benjamin Kopp	$400.00	49	$19,600.00
Total		**57.5**	**$24,275.00**

Paraegal Fees: SDNY			
Paralegal	**Rate**	**Hours**	**Total**
Shobna Cuddy	$225.00	1.6	$360.00
Cailin O'Donnell	$225.00	9.4	$2,115.00
Total		**11**	**$2,475.00**

H.A. also seeks reimbursement for costs incurred during both phases. These costs are summarized below.

Costs: Administrative Proceeding	
Expense	**Total**
Fax	$234 (at a cost of $2 per page)
Printing	$196.50 (at a cost of $0.50 per page)
Lodging	$128.64
Meal	$18.38
Postage	$43.83
Total	**$621.35**

Costs: SONY	
Expense	**Total**
Filing Fee	$402.00
Total	**$402.00**

The Court begins by determining the reasonable hourly rates for the relevant timekeepers, a point on which the parties' views are far apart. The Court then addresses DOE's objections to paying for certain hours billed; DOE's request for an across-the-board reduction in fees; and to H.A's request for costs.

B. Reasonable Rates

The Court has considered all *Johnson* factors in its analysis for each timekeeper. Its discussion here centers on the facts it has found determinative.

1. Analysis Applicable to All Timekeepers

IDEA litigation is undoubtedly a specialized field in which attorneys seek to vindicate vitally important interests of children in need of special education. H.A., however, has not adduced any evidence that, relative to a typical single-plaintiff IDEA case, this case presented novel or complex legal or factual issues. *See J.R.*, 2021 U.S. Dist. LEXIS 146057, 2021 WL 3406370, at *4 ("[T]his appears to have been a fairly standard action for special education and related services[,] . . . [as] Defendant did not put on any witnesses nor present any evidence and agreed to most of Plaintiffs requests before the [decision] was issued" and "the administrative proceedings in this case took less than two hours."). Quite the contrary, the main challenge confronting plaintiffs' counsel below appears to have been awakening DOE to engage with H.A.'s requests for assistance for her son. The administrative action itself was thereafter uncontested, comprising just two 3-minute

conferences and one 17-minute hearing, at which there was no witness testimony (oral or by affidavit) and at which 14 exhibits were entered into the record without objection. Nor is there any indication that, in taking or pursuing this case, the Cuddy Law Firm was inhibited from taking on other work. These facts bear on both the hourly rates reasonable here and the hours for which a fee award payable by DOE is warranted.

The relevant community for the purposes of determining a reasonable rate is the Southern District of New York, where both this litigation and the underlying administrative proceeding are centered.[6] The relevant practice area is special education law, specifically IDEA litigation. In recent years, "[t]he prevailing market rate for experienced, special-education attorneys in the New York area . . . [has been] between $350 and $475 per hour." 2021 U.S. Dist. LEXIS 146057, [WL] at *3 (citing *M.D. v. N.Y. City Dep't of Educ.*, 17 Civ. 417 (JMF), 2018 U.S. Dist. LEXIS 156923, 2018 WL 4386086, at *3 (S.D.N.Y. Sept 14, 2018) (collecting cases); *C.D. v. Minisink Valley Cent. Sch. Dist.*, No. 17 Civ. 7632 (PAE), 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *6 (S.D.N.Y. Aug. 9, 2018) (same)). "For associates with three or fewer years of experience in such litigation, courts in this District have typically approved rates of $150—$275." *C.D.*, 2018 U.S.

6. The Cuddy Law Firm is based in the Northern District of New York. However, "an out-of-district attorney may be entitled to receive a higher rate when practicing in this district than the rate . . . he or she ordinarily receives in the community in which he or she usually practices." *K.F.*, 2011 U.S. Dist. LEXIS 88653, 2011 WL 3586142, at *2.

Dist. LEXIS 134646, 2018 WL 3769972, at *7. "Paralegals, depending on skills and experience, have generally garnered between $100 and $125 per hour in IDEA cases in this District." *R.G. v. N.Y. City Dep't of Educ.*, No. 18 Civ. 6851 (VEC), 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *3 (S.D.N.Y. Sept. 26, 2019) (collecting cases).

2. Andrew and Michael Cuddy

H.A. seeks an hourly rate of $550 for attorneys Andrew and Michael Cuddy. DOE argues that their hourly rate should be $350. DOE Opp'n at 7. Andrew and Michael Cuddy are both experienced attorneys in special education law. Andrew Cuddy is a 1996 law school graduate who has been litigating special education matters since 2001. Cuddy Decl. ¶¶ 103, 108. Michael Cuddy is a 1988 law school graduate who has been practicing special education law for more than 10 years. *Id.* ¶ 120.

Courts in this District have recently awarded Andrew and Michael Cuddy $350—$375 per hour, despite their consistent requests for $500 per hour. *See J.R.*, 2021 U.S. Dist. LEXIS 146057, 2021 WL 3406370, at *4 (awarding $350 per hour); *M.D v. N.Y. Dep't of Educ.*, No. 20 Civ. 6060 (LGS), 2021 U.S. Dist. LEXIS 132930, 2021 WL 3030053, at *3 (S.D.N.Y. July 16, 2021) ($375 per hour); *H.C. v. N.Y. City Dep't of Educ.*, No. 20 Civ. 844 (JLC), 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *6 (S.D.N.Y. June 17, 2021) ($360 per hour); *S.J v. N.Y. City Dep't of Educ.*, No. 120 Civ. 1922 (LOS) (SDA), 2020 U.S. Dist. LEXIS 194258, 2020 WL 6151112, at *4 (S.D.N.Y. Oct. 20, 2020), *report and recommendation adopted as modified*, 2021

U.S. Dist. LEXIS 6180, 2021 WL 100501 (S.D.N.Y. Jan. 12, 2021) ($360 per hour); *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *3 ($350 per hour); *M.D.*, 2018 U.S. Dist. LEXIS 156923, 2018 WL 4386086, at *3 ($360 per hour).[7]

Such rates are consistent with awards granted in IDEA cases, including those litigated by the Cuddy Law Firm, where liability is essentially uncontested, as here. *See M.H. v. N.Y. City Dep't of Educ.*, 20 Civ. 1923 (LJL), 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *13 (S.D.N.Y. Oct. 1,2021) (awarding Andrew Cuddy $420 per hour in case involving contested hearing, including presentation and cross-examination of witnesses, and distinguishing "essentially uncontested" cases where courts awarded fees of $375 and $360 per hour); *M.D.*, 2021 U.S. Dist. LEXIS 132930, 2021 WL 3030053, at *3; *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 37669972, at *2, *7 (awarding Andrew Cuddy $400 per hour in an IDEA case with a comparatively far more complex procedural history than this one, given its contested nature and 11 days' worth of hearings).[8]

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7. H.A. argues that these decisions were "invalidated" by *A.B. v. N.Y. City Dep't of Educ.*, No. 21 Civ. 3129 (SDA), 2021 U.S. Dist. LEXIS 47573, 2021 WL 951928, at *3 (S.D.N.Y. Mat 13, 2021), which noted that "the prevailing market rate for experienced special education attorneys . . . surely has increased since *circa* 2018." The cases on which the Court relies here, however, were decided "since *circa* 2018" and supply apt guidance on the reasonable rates for these practitioners in like cases.

8. In defending the fee request, H.A. points to the hourly rates approved for other civil rights practitioners in this District

These precedents, along with the *Johnson* factors, make a rate of $375 per hour for the work here Andrew and Michael Cuddy reasonable. *See M.D.*, 2021 U.S. Dist. LEXIS 132930, 2021 WL 3030053, at *3 ("The hourly rate applied in eases of similar size and complexity as this one—in which Defendant conceded failure to provide a FAPE at the first hearing and presented no witnesses—is generally in the $350 to $400 range for experienced attorneys like Andrew and Michael Cuddy.").

3. Kopp

H.A. seeks an hourly rate of $400 for Kopp. Kopp is a 2015 law school graduate who has been litigating special education matters for two or three years. Kopp Decl. ¶¶ 215, 218. DOE argues that Kopp's hourly rate should be $225. DOE Opp'n at 7.

H.A.'s proposed rate for Kopp is well above the range of rates typically approved by courts in this District for junior associates in IDEA litigation. "For associates with three or fewer years of experience in such litigation, courts in this District have typically approved rates of $150—$275." *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *7 (citing *J.S. ex rel. Z.S. v. Carmel Cent. Sch. Dist.*, No. 10 Civ. 8021 (VB), 2011 U.S. Dist. LEXIS

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in various species of cases. *See* Kopp. Decl. ¶¶ 206-08. But as DOE points out, the most apposite rates—and the best evidence of the reasonable prevailing rates for this litigation—are those set in cases most closely resembling this: namely, uncontested IDEA cases litigated by the Cuddy Law Firm in this District in the past several years.

82169, 2011 WL 3251801, at *6 (S.D.N.Y. Jul. 26, 2011) (awarding first- and second-year associates rates of $150 to $175 per hour in IDEA litigation); *L.V v. N.Y.; City Dep't of Educ.*, 700 F. Supp. 2d 510, 519-20 (S.D.N.Y. 2010) (awarding $275 for a junior attorney with one-to-three years' experience).

Kopp was first admitted to practice in New York in January 2016, and practiced general litigation for two years before joining the Cuddy Law Firm, at which Kopp appears to have first started litigating IDEA cases. Kopp Decl. ¶¶ 214, 217-18. In August 2021, when this motion was filed, Kopp had worked at Cuddy Law Firm for two years. *Id.* ¶¶ 18-22; *but see S.J.*, No. 20 Civ. 1922, Dkt. 26 (IDEA case in which Kopp submitted a declaration in August *2020* also attesting that he had joined the Cuddy Law Firm two years prior). Thus, when Kopp took over H.A.'s case in August 2019, he appears to have had under a year's experience litigating IDEA cases and limited general litigation experience. That experience grew during this matter. Kopp is responsible for the lion's share of the Cuddy Law Firm's work in this case: he led hearing preparation, communicated with DOE and H.A., attended the two short conferences and the January hearing, and drafted briefs in the administrative proceeding and before this Court.

In October 2020, a court in this District found an hourly rate of $200 reasonable for Kopp's work in an IDEA case, rejecting the requested $350 per hour. *See S.J.*, 2020 U.S. Dist. LEXIS 194258, 2020 WL 6151112, at *5. A year later, a court in this District found an hourly rate

of $250 per hour reasonable, again rejecting a $350 per hour request. *See JR.*, 2021 U.S. Dist. LEXIS 146057, 2021 WL 3406370, at *4; *see also M.H.*, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *14 (finding hourly rate of $200 warranted for "quotidian" work Kopp performed in IDEA case). Consistent with these precedents, and in recognition of the fact that Kopp today has increased experience litigating IDEA matters, the Court will award an amount on the higher end of the range typically awarded junior attorneys,[9] but lower than H.A.'s outsize $400 request. *Cf C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 37669972, at *7 (in IDEA case with a more complex history than this one, finding $300 per hour rate reasonable for attorney who graduated law school in 1997, had specialized in special education law since joining the Cuddy Law Firm in 2012, and had more than a decade's worth of general litigation experience). The Court finds an hourly rate of $250 for Kopp's work reasonable.

4. Coretti

H.A. seeks an hourly rate of $425 for Coretti. Coretti is a 2012 law school graduate who has been litigating special education matters since 2015. Cuddy Decl. ¶ 121. DOE argues that Coretti's hourly rate should be $250. DOE Opp'n at 7. *See also J.R.*, 2021 U.S. Dist. LEXIS 146057,

9. H.A. argues that labeling Kopp a "junior" attorney is inaccurate given that he was admitted to the bar more than three years ago. *See* Mot. at 29. The decision here is based on an assessment of the *Johnson* factors (including the attorney's years of experience) and analogous precedents, not on labels like "junior" or "senior."

2021 WL 3406370, at *4 (setting $250 per hour rate for Coretti where $350—$375 per hour was requested); *M.H.*, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *14 (setting hourly rate at $280 where Coretti worked on administrative stage of IDEA case, including by preparing witnesses for testimony and attending hearings). Coretti performed virtually no work on this case, billing only 0.3 hours to the administrative action and none in the litigation in this Court. Dkt. 28 ¶¶ 43-44. Given his greater experience than Kopp, and comparatively lower experience than Andrew and Michael Cuddy, and in consideration of the *Johnson* factors, the Court finds an hourly rate of $275 for Coretti reasonable.

5. Shobna Cuddy, O'Donnell, Woodard, Pinchak, Bianco, and Meghezzi

H.A. seeks an hourly rate of $225 for paralegals Shobna Cuddy, O'Donnell, Woodard, Pinchak, Bianco, and Meghezzi. Shobna Cuddy is the Cuddy Law Firm's senior paralegal and has worked there as a paralegal and office manager since 2007. Cuddy Decl. ¶ 123. O'Donnell has a bachelor's degree and has worked as a paralegal with the firm since 2019. *Id* ¶ 124. Woodard has a bachelor's degree and worked for the firm from 2015 to 2018, and had worked as a paralegal or legal assistant for more than a decade before then. *Id* ¶ 126; *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *7. Pinchak worked as a paralegal with the firm from 2016 to 2019, Cuddy Decl. ¶ 127; Bianco for approximately 6 months, *id.* ¶ 128; and Meghezzi for approximately 8 months, *id.* ¶ 129. H.A. has not supplied further information regarding the paralegals'

relevant experience or qualifications. DOE argues that all paralegals' hourly rates should be $100. DOE Opp'n at 7.

H.A.'s proposed hourly rate for the paralegals far exceeds the prevailing rate in this District, as reflected in numerous recent decisions. Decisions involving the Cuddy Law Firm approved fee awards embodying hourly rates of $100 to $125 for paralegal work. *See, e.g., C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *7 (awarding $125 hourly rate for experienced Cuddy Law Firm paralegal with more than entry-level qualifications and $100 hourly rate for inexperienced Cuddy Law Firm paralegal or one with only entry-level qualifications in IDEA case); *J.R.*, 2021 U.S. Dist. LEXIS 146057, 2021 WL 3406370, at *4 (awarding $100 per hour for Cuddy Law Firm paralegals in IDEA case); *H.C. v. N.Y. City Dep't of Educ.*, No. 20 Civ, 844 (JLC), 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *7 (S.D.N.Y, June 17, 2021) (same); *M.D.*, 2018 U.S. Dist. LEXIS 156923, 2018 WL 4386086, at *3 (awarding $100-120 per hour for Cuddy Law Firm paralegals); *S.J.*, 2020 U.S. Dist. LEXIS 194258, 2020 WL 6151112, at *5 (same). And this case has not presented the difficulties paralegals might face in complex commercial cases that go to trial, which, in conjunction with paralegals' significant experience, have justified awarding $200 rates for paralegals. *Cf. Beastie Boys v. Monster Energy Co.*, 112 F. Supp. 3d 31, 56-57 (S.D.N.Y. 2015).

Consistent with these authorities, the Court finds that $125 per hour is a reasonable rate for work performed by an experienced paralegal with more than entry-level qualifications in this matter. The Court will apply that

rate to Woodard's work, *See C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *7 (awarding Woodard $125 per hour).

However, as to Shobna Cuddy, O'Donnell, Pinchak, Bianco, and Meghezzi, the Court cannot approve such a rate, let alone one the $225 rate H.A. seeks. H.A. bears the burden of providing evidence to support her fee application, including as to the timekeeper's relevant qualifications and experience. *See Torres v. City of New York*, No, 07 Civ. 3473 (GEL), 2008 U.S. Dist. LEXIS 11027, 2008 WL 419306, at *2 (S.D.N.Y. Feb. 14, 2008) ("Although it is his burden to do so, plaintiff presents no evidence regarding the skills, qualifications, or experience of the paralegal here."). When such evidence has not been provided, courts typically award fees at the bottom of the customary fee range. *See L.V.*, 700 F. Supp. 2d at 523 ("If plaintiffs had provided no information about the paralegals' levels of experience, an award at the lower end of the range might be appropriate."); *Robinson v. City of New York*, No. 05 Civ. 9545 (GEL), 2009 U.S. Dist. LEXIS 89981, 2009 WL 3109846, at *5 (S.D.N.Y. Sept. 29, 2009) ("While defendants are correct that the burden is on the moving party to show that the requested fees are reasonable, plaintiffs' request of $100 per hour is on the low end of the customary range in this district and therefore commensurate with the presumed inexperience of plaintiffs' paralegal staff."); *Torres*, 2008 U.S. Dist. LEXIS 11027, 2008 WL 419306, at *2 (noting that "compensation must be made near the lower end of the market range" given the lack of evidence regarding paralegals' qualifications). On the record presented, O'Donnell, Bianco, and Meghezzi each had less than a single year's worth of paralegal experience at the

time they worked on H.A.'s case, making an hourly rate of $100 warranted, And although Shobna Cuddy and Pinchak have more experience at the firm, they do not appear to have more than entry-level qualifications. Accordingly, the $100 hourly rate is appropriate for them as well. *See C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *7 (awarding Shobna Cuddy $100 per hour); *H.C.*, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *7 (same for Shobna Cuddy and Pinchak); *J.R.*, 2021 U.S. Dist. LEXIS 146057, 2021 WL 3406370, at *6 (same).

C. Reasonable Hours

As reviewed above, the underlying IDEA litigation was straightforward. It involved just two 3-minute pre-hearing conferences and one 17-minute hearing. DOE did not contest liability, although it did object in part to an aspect of H.A.'s remedial plan, an issue on which the IHO requested additional guidance. *See* Dkt. 29-8 at 29-31. H.A. also briefed summary judgment before the IHO, albeit before the IHO admonished the parties that it would not consider summary judgment motions.

The Cuddy Law Firm billed 36.8 hours in attorney time and 17.9 hours of paralegal time (54.7 hours total) in connection with the administrative proceeding. Before this Court, the Earn billed 57.5 hours of attorney time and 11 hours of paralegal time (68.5 hours total), DOE argues that the reported hours at both stages were excessive. For the reasons below, the Court agrees.[10]

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10. H.A. touts that its counsel "clearly made substantial discretionary reductions in billing and, further, scrubbed their requested time of even the appearance of vague or unnecessary

Appendix F

1. Administrative Proceeding

DOE is correct to contend that, in several respects, the Cuddy Law Firm's fee request reflects excessive hours with respect to the administrative proceeding.[11]

First, the firm billed nearly 9 hours preparing for the 17-minute January 24, 2020 hearing alone. DOE Opp'n at 15; 56.1 ¶ 46. Although the billing records reflect that most of the attorney time was billed before learning that DOE would not contest liability, *see* Dkt. 28-1 at 13; 56.1 ¶ 41, Kopp's view—even before learning of DOE's position—was that the hearing would take "less than 15 minutes," *see* Dkt. 29-16. H.A. does not suggest it reasonably took counsel 9 hours to reach that conclusion, which was plainly right given the simple nature of H.A.'s case and Cuddy Law Firm's experience litigating IDEA cases. In this context, it is excessive to shift responsibility from H.A. to the City for 9 hours of hearing preparation time.

Second, after the hearing, the firm billed another 7.2 hours to draft the approximately 5-page closing brief. City Opp'n at 15-16; *see* Dkt. 29-9. The filing was a response to the IHO's request for "guidance" as to whether DOE

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time," Mot. at 23; *see* Cuddy Decl. ¶ 49. Although the firm's pruning is commendable, such is also expected of counsel. The issue for the Court is not how many excess hours were removed but whether the hours on which the fee application is based are reasonable.

11. The Court does not agree with one of the City's critiques—that the Cuddy Law Firm's summary judgment motion before the IHO was gratuitous. It was only after that motion was made that the IHO admonished that she "would not rule on summary judgment motions." *See* 56.1 ¶¶ 28-33.

should pay for H.A.'s and M.A.'s transportation costs. Dkt. 29-8 at 18-20. The IHO expressly admonished that it "doesn't have to be a full legal brief." *Id.* at 20. And the 5-page brief H.A. submitted largely summarized the uncontested hearing and put in writing H.A. request for such relief, along with just a handful of paragraphs supplying the "guidance" requested. *See* Dkt. 29-9. It is unreasonable to expect the City to cover this much billable time from experienced IDEA counsel for work on this project.

Certain line items in the firm's billing are also problematic. For instance, Kopp billed 0.8 hours for travel to and from the January hearing or to the post office in connection with the administrative proceeding. Dk-t. 28-1 at 13-15. "Courts generally approve fees, at 50% of an attorney's usual rate, for reasonable travel conducted in service of ongoing litigation." *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *10 (citing *KF*, 2011 U.S. Dist. LEXIS 88653, 2011 WL 3586142, at *6; *Barfield v. N.Y. City Health & Hosps. Corp.*, 537 F.3d 132, 139 (2d Cir. 2008) (discussing how district court compensated at 50% rate for travel per "established court custom")). There is no indication that counsel made such a reduction here. Other problematic practices include the abundance of time entries billing in increments of 0.10 hours—the lowest available—for minor administrative tasks. *Cf. C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *8 (deducting half of reported hours where billing records reflected multiple 0.10 hour increments on the same day, given that "such a practice can improperly inflate the number of hours billed beyond what is appropriate").

The firm's attorneys and paralegals often billed H.A. 0.10 hours for mundane tasks such as sending a single email, Dkt. 28-1 at 12; attempting unsuccessfully to transfer a call from the client, *id.* at 11; attempting a call and leaving a voicemail, *id.* at 10; and reviewing USPS tracking information, *id.* at 13. A client such as H.A., of course, would be at liberty to tolerate such billing practices and pay the firm based on the full hours that counsel billed.[12] But a client's tolerance is not the measure of reasonableness. *See, e.g., Homeaway.com, Inc. v. City of New York*, 523 F. Supp. 3d 573, 599 (S.D.N.Y. 2021) ("For their services, HomeAway is a free agent, at liberty to pay Gibson Dunn the rates it negotiates. It is, however, unreasonable to the point of audacity to ask New York City to bear these rates under § 1988."). The Court's assessment is that a reasonable paying client would expect a timekeeper to consolidate such tasks into a single time entry, rather than paying for a series of 0.10-hour time entries, each for a task that likely could likely have been discharged in seconds. It follows that it is not reasonable to expect DOE to absorb such costs. *See Hensley*, 461 U.S. at 434 ("Hours that are not properly billed to one's client also are not properly billed to one's adversary pursuant to statutory authority.").

Considering these factors, and the overall lack of complexity of this action, the Court finds that an across-

12. Here, however, H.A. and the firm have a contingent-fee arrangement. *See* AC ¶ 115. It does not appear that the firm's reported time entries have any bearing on the amount, if any, of the fee that H.A. will pay the firm to supplement the award from the City approved here.

the-board 20% reduction is warranted to make the Cuddy Law Firm's claimed hours reasonable. A greater reduction would have been in order but for the welcome fact—for which the Cuddy Law Firm deserves credit—that the firm, rather than leaving this matter in the hands of partners, tasked a more junior lawyer, Kopp, with most administrativestage work. A 20% reduction is synchronous with the reductions in the firm's compensable hours that courts in this District have made, including in IDEA cases far more complex than this, in the interest of assuring that the fee award captures only reasonably incurred work. *See J.R.*, 2021 U.S. Dist. LEXIS 146057, 2021 WL 3406370, at *5 (reducing Cuddy Law Firm's hours by 20% where counsel spent 110.6 hours preparing for uncontested hearing); *M.D.*, 2021 U.S. Dist. LEXIS 132930, 2021 WL 3030053, at *5 (same where counsel spent 84.4 hours preparing for an uncontested 3-hour hearing); *H.C.*, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *8 (same where three hearings were held and DOE agreed to several of plaintiff's demands before the first hearing, and plaintiff spent 121.4 hours preparing); *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050 at *3-4 (same where four hours of hearings were held and City introduced one witness).

To be sure, the total hours for which the firm seeks recompense for the administrative proceeding here (54.7 hours) are lower than in the cases above. But the hearing regarding M.A. was also uncommonly quotidian, lasting 17 minutes and entailing the mere submission of a small set of uncontested exhibits. Not finding a persuasive showing why the hours claimed were reasonably necessary

to achieve the relief awarded, the Court finds a similar percentage reduction to the firm's billed hours warranted here.

2. Fee Litigation in This Court

Courts in this District also reduce compensable hours where the litigation concerns the "simple and straightforward issue" of "the reasonable amount of fees and costs that Plaintiff's attorneys should be paid for prevailing on behalf of the Plaintiff." *J.R.*, 2021 U.S. Dist. LEXIS 146057, 2021 WL 3406370, at *6 (quoting *S.J.*, 2020 U.S. Dist. LEXIS 194258, 2020 WL 6151112, at *6); *see id.* (reducing Cuddy Law Firm's hours billed to fees litigation in this District, 82.8 hours, by 25%); *M.D.*, 2021 U.S. Dist. LEXIS 132930, 2021 WL 3030053, at *6 (same, reducing 76.2 hours by 50% given the case's "low degree of complexity"); *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *5 (same, reducing 59.9 hours to 44.2, or approximately 26%, given case's simplicity). These precedents reflect that "a competent attorney should not have needed more than 40 hours to litigate [al fee petition. The legal basis for fee petitions is well-plowed acreage, leaving the task of the attorney to marshal the facts to support the number of hours expended on the underlying matter." *B.B. v. N.Y. City Dep't of Ethic.*, No. 17 Civ. 4255 (VEC), 2018 U.S. Dist. LEXIS 38271, 2018 WL 1229732, at *3 (S.D.N.Y. Mar. 8, 2018).

This case is not different. And H.A.'s contrary arguments—that H.A. received an excellent outcome and that DOE's failure to settle earlier accounts for much of

the claimed hours do not justify the full hours claimed. To be sure, "the most critical factor in determining the reasonableness of a fee award" is the degree of success obtained by plaintiffs' counsel. *See Farrar v. Hobby*, 506 U.S. 103, 114, 113 S. Ct. 566, 121 L. Ed. 2d 494 (1992). Here, H.A. won the full relief she sought for her son. But the firm also prevailed in all of the above cases in which its requested award was trimmed. And although DOE's decision not to settle earlier and its initial unresponsiveness doubtless generated some extra work for the funi, including the need to prod DOE, this chore did not make this case more complex or mandate a great deal of extra work. *See M.D.*, 2021 U.S. Dist. LEXIS 132930, 2021 WL 3030053, at *6 ("[A]ny delay by Defendant has not rendered this proceeding unduly complex or time-intensive."); *see also S.J.*, 2020 U.S. Dist. LEXIS 194258, 2020 WL 6151112, at *7 (reducing billed hours by 50% even where defendant engaged in tactics that drove up the plaintiff's billed hours).

Moreover, a review of the Cuddy Law Firm's submissions and time entries in this fees litigation reflects some of the "highly inefficient practices]" that decisions in previous fee actions have noted. *B.B.*, 2018 U.S. Dist. LEXIS 38271, 2018 WL 1229732, at *3. For instance, the firm billed 6 hours to drafting the federal complaint. But that 15-page document overwhelmingly consisted of a long series of single-sentence paragraphs that chronologically traced the administrative phase of the case, followed by largely boilerplate recitations of the two causes of action, each customary for IDEA litigation. H.A. has not explained why this effort took six hours, or why bulking

up the federal complaint to this length was necessary; the firm's complaints in IDEA cases where it has won fee awards in this District have often run just three to five pages. *See, e.g., M.D.*, No. 20 Civ. 6060 (LGS) Dkt. 1; *S.J.*, No. 20 Civ. 1922 (LGS) (SDA) Dkt. 1; *H.G.*, No. 18 Civ. 6851 (VEC) Dkt. 1.

Also unreasonable is H.A.'s bid for the City to cover all 8 hours that Kopp spent drafting a 57-page declaration defending, often in some detail, nearly each line item on the firm's 33-page billing statement. *See* Dias. 28-1; 29 at 8-55. Declarations from counsel in a follow-on litigation over fees can serve the useful process of explaining and contextualizing the projects to which counsel reasonably devoted time. But counsel's contemporaneous time records should themselves accurately and comprehensively report legal work. There is no need for counsel to undertake the costly exercise of preparing such a voluminous declaration to rehabilitate a long list of individual time entries, Finally, inasmuch as the Court has struck as unreasonable material aspects of H.A.'s fee request for the administrative proceeding, it follows that the time counsel spent unsuccessfully defending such work before this Court ought not be compensable, either.

The fee request here ought to have been routine. Simply put, as in *M.D.*, "Plaintiff filed the complaint, followed by service and summary judgment briefing on the straightforward issue of fees." 2021 U.S. Dist. LEXIS 132930, 2021 WL 3030053, at *6. The routine process of seeking a reasonable fee should not have taken nearly 70 hours of attorney and paralegal time. The Court finds that

an across-the board reduction of 20% of the hours devoted to the fees litigation is necessary to bring the fee request into line with reasonable billing practices. *Cf. HomeAway.com*, 523 F. Stipp. 3d at 593 (reducing fee award by 25%); *Beastie Boys*, 112 F. Supp. 3d at 57 (reducing fee award by 30% and citing cases).

3. Costs

Although many of the cost items for which H.A. seeks recompense are justified, the Court declines to shift the costs of select items to the City.

First, the Court declines to shift responsibility to the City for counsel's lodging expenses. *See C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *13 ("[T]he Court will not award any costs for lodging. An attorney who was sited within a reasonable distance of the hearing location could commute daily to the hearings, obviating any need for lodging."); *K.F.*, 2011 U.S. Dist. LEXIS 88653, 2011 WL 3586142, at *6 ("[I]t is doubtful that a reasonable client would retain an Auburn or Ithaca attorney over a New York City attorney if it meant paying New York City rates and an additional five hours in billable time for each trip."); *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *6 (declining to award lodging expenses to Cuddy Law Firm). The Court deducts from the award Kopp's $128.64 in lodging costs.

The Court also agrees with DOE that $.50 per page for printing is excessive. The Court reduces the reimbursable printing expenses to the reasonable rate of $.10 per

page. *See R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *6 (finding $.50 per page excessive, noting that 10.10 per page continues to be entirely reasonable compensation for printing costs, absent any indication in the record why the copies in this case are exceptionally expensive").

The Court deducts entirely Kopp's meal expenses, as "the meals were not necessitated by the representation and would not have been billed by local counsel." *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *6, This requires a deduction of $18.38.

The Court does not, however, deduct the fax costs incurred, as H.A. has explained that DOE requires records requests to be submitted by fax. *See* Did. 28 ¶ 78. Postage costs, too, are reasonably included in the award. *See J.R.*, 2021 U.S. Dist. LEXIS 146057, 2021 WL 3406370, at *6.

4. Pre- and Post-Judgment Interest

The Court exercises its discretion not to award pre-judgment interest. H.A. has not cited any IDEA case in this Circuit where it was awarded, or explained why such an award is necessary here for H.A. to be adequately compensated. *See S.J.*, 2020 U.S. Dist. LEXIS 194258, 2020 WL 6151112, at *7 (declining to award pre-judgment interest for similar reasons); *M.H.*, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *29-30 (analyzing in detail the statutory and precedential authority on the propriety of including pre-judgment interest in an attorney's fee

award in an IDEA case in this Circuit, and denying request for as much).

The Court does award, as required, post-judgment interest. *See* 28 U.S.C, § 1961; *Tru-Art Sign Co. v. Local 137 Sheet Metal Workers Int'l Ass'n*, 852 F.3d 217, 223 (2d Cir. 2017) ("The award of post-judgment interest is mandatory on awards in civil cases as of the date judgment is entered.") (quoting *Lewis v. Whelan*, 99 F.3d 542, 545 (2d Cir. 1996)); *see also S.J.*, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *5.

D. Declaratory Judgment

Finally, the Court denies H.A.'s bid for a declaration that DOE unreasonably protracted a final resolution of the administrative proceeding—a declaration it seeks in support of its request that the City pay the entire award H.A. seeks.

Such a declaration would not serve any functional purpose, as the Court's parsing of the fee request here has identified numerous components that would have required pruning whether or not the City unreasonably delayed the proceeding below. And courts in this District have repeatedly declined bids by the Cuddy Law Firm, on this ground, to effect a wholesale shift of responsibility for fees to the City. *See, e.g., M.D.*, 2021 U.S. Dist. LEXIS 132930, 2021 WL 3030053, at *6 (rejecting argument because "any delay by Defendant has not rendered this proceeding unduly complex or timeintensive"); *H.C.*, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at

*6 (declining to find that DOE unreasonably protracted final resolution by, *inter alia*, failing to adopt a consistent position on whether it would defend the case); *S.J.*, 2020 U.S. Dist. LEXIS 194258, 2020 WL 6151112, at *4 (same where DOE's representative was unresponsive, leading to significant delays in proceedings); *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *1 n.2; *M.H.*, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *25.

In arguing that an unreasonable delay by DOE justifies shifting all fees to the City, H.A. relies on Section 1415(i)(3)(G) of the IDEA. But Judge Liman, reviewing the statutory language and relevant case law on this provision, persuasively explained why an award, in all events, must be limited to work reasonably incurred:

> [A] conclusion that Defendant unreasonably protracted the resolution of the proceedings and forced Plaintiff to engage in what should have been unnecessary work might justify the reasonableness of some of the hours worked by counsel and the paralegals, However, it would not entitle [Cuddy Law Firm] to more than a reasonable attorney's fee calculated based on the standards well established by the Supreme Court and in this Circuit.

M.H., 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *25.

In any event, here, the Court is unprepared to find, on the record at hand, that DOE unreasonably protracted a final resolution. DOE appears at times during the

administrative proceeding to have been regrettably non-responsive, But neither that nor DOE's decision not to settle earlier with H.A. are grounds to find that it unreasonably protracted a final resolution here. Contrary to H.A.'s claims, DOE did not have a duty to settle at the various administrative-stage "midpoints" that H.A, identifies (*see* Mot. at 7-9). That H.A. had to attend a brief administrative hearing before prevailing also does not bespeak unreasonable delay by the DOE. *See M.D.*, 2021 U.S. Dist. LEXIS 132930, 2021 WL 3030053, at *6 (rejecting similar arguments as unpersuasive); *H.C.*, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *8 (same). The Court denies H.A.'s motion for declaratory judgment.

IV. Bottom-Line Calculations

The charts below summarize the Court's award of fees and costs, taking into account the rulings above. These include: (1) the hourly rates as determined by the Court, (2) the reductions for Kopp's travel time; (3) the across-the-board 20% reduction in the total fee award; and (4) the Court's rulings as to permitted and disallowed costs.

Attorney's Fees: Administrative Proceeding			
Attorney	**Rate**	**Hours**	**Total**
Andrew Cuddy	$375.00	1.5	$562.50
Michael Cuddy	$375.00	0.5	$187.50
Justin Coretti	$275.00	0.3	$82.50
Benjamin Kopp (excluding travel hours)	$250.00	33.7	$8,425.00
Preliminary Total		**36**	**$9,257.50**
Total (after 20% reduction)			**$7,406.00**

Appendix F

Attorney's Fees: Administrative Proceeding			
Attorney	**Rate**	**Hours**	**Total**
Paralegal Fees: Administrative Proceeding			
Shobna Cuddy	$100.00	2.4	$240.00
Sarah Woodard	$100.00	0.7	$70.00
Amanda Pinchak	$100.00	6.3	$630.00
Cailin O'Donnell	$100.00	6.7	$670.00
Emma Bianco	$100.00	1.6	$160.00
Burhan Meghezzi	$100.00	0.2	$20.00
Preliminary Total		**17.9**	**$1,790.00**
Total (after 20% reduction)			**$1,432.00**
Attorney's Travel Fees: Administrative Proceeding			
Attorney	**Rate**	**Hours**	**Total**
Benjamin Kopp Travel	$125.00	0.8	$100.00
Preliminary Total		**0.8**	**$100.00**
Total (after 20% reduction)			**$80.00**

Attorney's Fees: SDNY			
Attorney	**Rate**	**Hours**	**Total**
Andrew Cuddy	$375.00	8.5	$3,187.50
Benjamin Kopp	$250.00	49	$12,250.00
Preliminary Total		**57.5**	**$15,437.50**
Total (after 20% reduction)			**$12,349.60**
Paralegal Fees: SDNY			
Shobna Cuddy	$100.00	1.6	$160.00
Cailin O'Donnell	$100.00	9.4	$940.00
Preliminary Total		**11**	**$1,100.00**
Total (after 20% reduction)			**$880.00**

Appendix F

Costs: Administrative Proceeding	
Expense	**Total**
Fax	$234 (at a cost of $2 per page)
Printing	$39.30 (at a cost of $0.10 per page)
Postage	$43.83
Total	**$317.13**

Costs: SDNY	
Expense	**Total**
Filing Fee	$402.00
Total	**$402.00**

CONCLUSION

For the reasons reviewed above, the Court awards H.A., as the prevailing party, a total of $22,866.73 in reasonable attorneys' fees and costs. The Clerk of Court is respectfully directed to close the motion pending at docket entry 27 and to close this case.

SO ORDERED.

Appendix F

/s/ Paul A. Engelmayer
Paul A. Engelmayer
United States District Judge

Dated: February 25, 2022
New York, New York

APPENDIX G — H.W. MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED FEBRUARY 23, 2022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 20-CV-10591 (RA)

H.W., INDIVIDUALLY AND ON BEHALF OF M.W., A CHILD WITH A DISABILITY,

Plaintiff,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant.

MEMORANDUM OPINION & ORDER

RONNIE ABRAMS, United States District Judge:

Plaintiff H.W., individually and on behalf of her son, M.W., filed this lawsuit against the New York City Department of Education (the "DOE") in connection with two underlying administrative proceedings brought to enforce M.W.'s right to a free and appropriate public education ("FAPE"). After successfully obtaining funding for her son's private school tuition, Plaintiff filed this motion for attorneys' fees under the fee-shifting provision of the Individuals with Disabilities Education Act (the "IDEA"). 20 U.S.C. § 1415(i)(3). Plaintiff requests

$109,639.43 in fees and costs for both the underlying administrative proceedings and this federal action. The Court grants the request, with some modifications.

BACKGROUND

The Court draws the following facts from the declarations of the lawyers who represented the parties in this action: Andrew Cuddy ("Cuddy Decl."), Kevin Mendillo ("Mendillo Decl."), Martin Bowe ("Bowe Decl."), Emily Goldman ("Goldman Decl."), and Jeffrey Cassuto ("Cassuto Decl."), as well as the exhibits attached thereto.

Plaintiff's attorneys are from the Auburn, New York office of Cuddy Law Firm ("CLF"), which is "one of the largest private special education law firms in the country." Cuddy Decl. ¶¶ 11-12. Plaintiff's counsel initiated two underlying administrative proceedings—Case Numbers 169521 and 185460—on Plaintiff's behalf by filing a due process complaint ("DPC") with the Impartial Hearing Office of the DOE. Mendillo Decl. ¶¶ 16-20, 46-50. The DPCs alleged that the DOE had violated the IDEA by denying M.W. a free and appropriate public education during the 2017-2018 and 2019-2020 school years. *Id.* Plaintiff sought reimbursement and direct payment of M.W.'s tuition for those years at Gersh Academy, the private special education school that M.W. has attended since 2015. *Id.* ¶¶ 20, 50; Mendillo Decl. Ex. A at 2.

The administrative hearing on the merits for Case Number 169521 lasted a total of 3.2 hours across three days. Cassuto Decl. ¶¶ 12-16. At this hearing, Plaintiff

presented 27 exhibits and three witnesses, while the DOE presented 15 exhibits but no witnesses. *Id.* The DOE did not contest the issue of whether it had denied M.W. a FAPE during the 2017-2018 school year. Mendillo Decl. ¶ 34. At the conclusion of the hearing, Plaintiff submitted a 15-page closing statement. Cassuto Decl. ¶ 17.

The administrative hearing on the merits for Case Number 185460 lasted a total of 2.2 hours. *Id.* ¶ 28. This time, Plaintiff presented 25 exhibits and two witnesses, while the DOE introduced three exhibits but no witnesses. *Id.* ¶ 27-28; Mendillo Decl. ¶ 60. Again, the DOE declined to contest the issue of whether it had denied M.W. a FAPE during the 2019-2020 school year. *Id.* And again, Plaintiff submitted a 15-page closing statement after the hearing concluded. *Id.* ¶ 61.

The same Impartial Hearing Officer ("IHO"), Leah Murphy, presided over both administrative actions. In both cases, the IHO ultimately issued Findings of Fact and Decision ("FOFD") in favor of Plaintiff and ordered reimbursement or direct payment to Gersh Academy of M.W.'s tuition. *See* Mendillo Decl. Exs. E, H. Specifically, in both actions, the IHO found that the DOE had "conceded that it had not developed a free appropriate public education for M.W." and that "his parents sustained their burden to demonstrate that the program M.W. received at the Gersh Academy was appropriate to meet his needs." *Id.* Ex. E at 11; Ex. H at 14-15. In the months following the issuance of the IHO's FOFDs, CLF continued to assist Plaintiff with implementation efforts and with ensuring the DOE's compliance with the IHO's

orders. Mendillo Decl. ¶¶ 43, 64-65. On December 15, 2020, CLF commenced this federal action to compel the DOE to make the tuition payments that the IHO had ordered in the second administrative proceeding. *Id.* ¶ 67; *see* Dkt. 1. The claims relating to the DOE's failure to implement the IHO's order have since been resolved. Mendillo Decl. ¶ 70. Thus, the only dispute that remains concerns Plaintiff's entitlement to reasonable attorneys' fees and costs from the DOE. *Id.* ¶ 71.

On December 30, 2020, the DOE sent CLF an offer to settle Plaintiff's fee claims for $54,500 ($32,500 for Case Number 169521 and $22,000 for Case Number 185460). Cassuto Decl. ¶ 21 n.6, ¶ 34 n.10. That offer was not accepted. CLF now seeks a total of $109,639.43 in fees and costs—consisting of $53,577.86 for the first administrative action, $35,797.07 for the second, and $20,264.50 for the instant federal action. Cuddy Decl. ¶ 58. That amount reflects, respectively, 132.3, 88.1, and 44.8 total hours billed by CLF attorneys and paralegals for each of the three components of this case. *See id.* CLF also seeks post-judgment interest. *Id.* ¶ 61.

The DOE does not dispute that Plaintiff, as the prevailing party in the administrative actions, is entitled to attorneys' fees. However, the DOE argues that both the rate sought for CLF's attorneys and paralegals and the number of hours CLF billed are unreasonable.

Appendix G

LEGAL STANDARD[1]

"The IDEA grants district courts the discretion to award reasonable attorneys' fees and costs to a 'prevailing party.'" *R.G. v. N.Y.C. Dep't of Educ.*, No. 18-cv-6851 (VEC), 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *1 (S.D.N.Y. Sept. 26, 2019) (quoting § 1415(i)(3)(B)(i)). A plaintiff "prevails when actual relief on the merits of [her] claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff." *K.L. v. Warwick Valley Cent. Sch. Dist.*, 584 F. App'x 17, 18 (2d Cir. 2014). As stated, the DOE does not dispute that Plaintiff was the prevailing party in the administrative actions.

"Reasonable attorneys' fees under the IDEA are calculated using 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." *Streck v. Bd. of Educ.*, 408 F. App'x 411, 415-16 (2d Cir. 2010). In determining whether an hourly rate is reasonable, courts primarily consider the prevailing market rates in the community for comparable legal services. *See* § 1415(i)(3)(C) (providing that attorneys' fees "shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished"). The prevailing market rate has been characterized as "the rate a paying client would be willing to pay . . . bearing in mind that a reasonable,

1. Unless otherwise noted, case quotations omit all internal quotation marks, citations, alterations, and footnotes.

paying client wishes to spend the minimum necessary to litigate the case effectively." *Ortiz v. City of New York*, 843 F. App'x 355, 359 (2d Cir. 2021). Courts also consider the twelve factors discussed in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974):

> (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.

Lilly v. City of New York, 934 F.3d 222, 228 (2d Cir. 2019). Because "the determination of fees should not result in a second major litigation," *Fox v. Vice*, 563 U.S. 826, 838, 131 S. Ct. 2205, 180 L. Ed. 2d 45 (2011), courts may consider the *Johnson* factors holistically, rather than applying each factor individually to the facts of the case. *See Green v. City of New York*, No. 05-cv-0429 (SLT) (ETB), 2010 U.S. Dist. LEXIS 2946, 2010 WL 148128, at *10 (E.D.N.Y. Jan. 14, 2010). The trial court's goal should be "to do rough justice, not to achieve auditing perfection." *Fox*, 563 U.S. at 838. "The fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate

hours expended and hourly rates." *Hensley v. Eckerhart*, 461 U.S. 424, 437, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983).

The Second Circuit has observed that "recycling rates awarded in prior cases without considering whether they continue to prevail may create disparity between compensation available under [the applicable statute] and compensation available in the marketplace," which would "undermine [the statute's] central purpose of attracting competent counsel to public interest litigation." *Farbotko v. Clinton County*, 433 F.3d 204, 209 (2d Cir. 2005). Accordingly, while a court may consider rates awarded in prior similar cases and its "own familiarity with the rates prevailing in the district," it should also evaluate the "evidence proffered by the parties." *Id.*

ANALYSIS

Although Plaintiff was the prevailing party in both of the administrative actions and is therefore unquestionably entitled to fees and costs, the Court concludes that certain aspects of the hourly rates sought, the hours submitted, and the costs requested are not reasonable. The Court thus grants Plaintiff's motion for attorneys' fees and costs but makes reductions to the hourly rates, number of hours awarded, and certain costs.

I. Hourly Rates

Applying the *Johnson* factors holistically here, the Court concludes that they do not support Plaintiff's proposed hourly rates. Plaintiff does not allege that the issues in this case were especially novel or difficult,

nor does it appear that this matter was "undesirable." *Lilly*, 934 F.3d at 228. Rather, the two administrative proceedings appear to have been fairly standard impartial hearings on special education issues. *See* Goldman Decl. ¶ 10. Indeed, this was CLF's fourth and fifth consecutive year litigating a tuition reimbursement claim for the same student in the same school program, *id.*, and even the IHO noted that M.W. was "well known to the District," Mendillo Decl. Ex. H (FOFD) at 4. The proceedings were "minimally contested," Bowe Decl. ¶ 35, as the DOE did not put on any witnesses during the hearings and even conceded that it had denied M.W. a FAPE during the two relevant school years. And the hearings on the merits in both administrative actions lasted less than six hours combined.

To be sure, at least one factor does support the fees sought here. Specifically, the Court recognizes that CLF obtained for Plaintiff all of the relief she sought for her son, and that "the degree of success obtained by plaintiff's counsel" is "the most critical factor in determining the reasonableness of a fee award," *C.D. v. Minisink Valley Cent. Sch. Dist.*, No. 17 CIV. 7632 (PAE), 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *11 (S.D.N.Y. Aug. 9, 2018) (citing *Farrar v. Hobby*, 506 U.S. 103, 114, 113 S. Ct. 566, 121 L. Ed. 2d 494 (1992)). Yet this factor alone does not outweigh the rest, which support a reduction in the fee rate sought.

For the reasons already articulated in the Court's recent opinion in *V.W. v. New York City Dep't of Educ.*, No. 20-CV-2376 (RA), 2022 U.S. Dist. LEXIS 1289, 2022

WL 37052, at *3-6 (S.D.N.Y. Jan. 4, 2022), which concerns nearly all of the same CLF attorneys and paralegals as this case, the Court modifies the hourly rates as follows. For CLF's senior attorneys—Andrew Cuddy, Michael Cuddy, and Jason Sterne—the Court finds that an hourly rate of $400 is appropriate for each of them. For Kevin Mendillo, the Court finds that an hourly rate of $300 is appropriate. For Britton Bouchard, who had only one year of experience at the time he worked on this case, an hourly rate of $200 is appropriate.[2] Finally, the Court finds that a rate of $100 per hour is appropriate for paralegals Allison Bunnell, Amanda Pinchak, Khrista Smith, Cailin O'Donnell, Emma Bianco, Sarah Woodard, and Diana Gagliostro, while a rate of $125 per hour is appropriate for senior paralegal Shobna Cuddy.[3]

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2. Another junior attorney, Benjamin Kopp, appears to have worked on this case. Because all of Kopp's hours were subject to a discretionary reduction, *see* Cuddy Decl. Ex. A at 1, the Court does not consider him in its analysis.

3. The Court notes that Plaintiff did not provide any information regarding Khrista Smith and Emma Bianco's experience or qualifications. Plaintiff bears the burden of providing evidence to support her fee application. *See Torres v. City of New York*, No. 07 CIV. 3473 GEL, 2008 U.S. Dist. LEXIS 11027, 2008 WL 419306, at *2 (S.D.N.Y. Feb. 14, 2008) ("Although it is his burden to do so, plaintiff presents no evidence regarding the skills, qualifications, or experience of the paralegal here."). When such evidence has not been provided, courts typically award fees at the bottom of the customary fee range. *See L.V. v. New York City Dep't of Educ.*, 700 F. Supp. 2d 510, 523 (S.D.N.Y. 2010) ("If plaintiffs had provided no information about the paralegals' levels of experience, an award at the lower end of the range might be appropriate."). The Court thus assumes that Smith and Bianco, like Bunnell, Pinchak, O'Donnell, Woodard,

II. Number of Hours

District courts reviewing fee petitions must exclude "hours that are excessive, redundant, or otherwise unnecessary, allowing only those hours that are reasonably expended." *Hernandez v. Berlin Newington Assocs.*, LLC, 699 F. App'x 96, 97 (2d Cir. 2017). To determine the reasonableness of hours spent on a matter, "the district court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award" by a reasonable percentage. *Hensley*, 461 U.S. at 436-37; *see also M.D.*, 2018 U.S. Dist. LEXIS 156923, 2018 WL 4386086, at *4 (quoting *McDonald ex rel. Prendergast v. Pension Plan of the NYSA-ILA Pension Tr. Fund*, 450 F.3d 91, 96 (2d Cir. 2006)) ("Rather than engage in a painstaking line-item review of each billing entry, in calculating an appropriate reduction of compensable hours '[a] district court may exercise its discretion and use a percentage deduction as a practical means of trimming fat from a fee application.'").

The DOE argues that the hours billed for both the underlying administrative proceedings and the instant federal action are unreasonable, and provides several specific examples of purportedly improper time entries. *See* Bowe Decl. ¶¶ 17-43. The Court agrees that some of Plaintiff's billing entries evidence redundant or excessive billing practices and that a reduction is thus warranted.

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and Gagliostro, are junior paralegals at CLF with relatively little experience, to be distinguished from senior paralegal Shobna Cuddy, and approves a $100 hourly rate for them.

As discussed above, the DOE asserts (and Plaintiff does not dispute) that CLF had already represented the same student in his claim for tuition at the same private school for the 2014-2015, 2015-2016, and 2016-2017 school years. Plaintiff's counsel thus was, or should have been, intimately familiar with the details of M.W.'s case. But CLF billed 9.7 hours for drafting the first 10-page DPC and 10.5 hours for the second, despite the substantial overlap in content, particularly with regard to descriptions of the student's educational history, abilities, and needs, and descriptions of the school program. Although Plaintiff argues that "a DPC is largely drafted from scratch and involves a thorough review of the child's educational records before drafting of the DPC can commence," Dkt. 16 (Pl.'s Br.) at 24, the Court is not convinced that it was necessary to draft the DPCs entirely from scratch for the fourth and fifth time, given counsel's presumed familiarity with M.W.'s circumstances.

Additionally, following both of the IHO's favorable decisions, Andrew Cuddy and Kevin Mendillo both inexplicably billed 0.4 or 0.5 hours for "appeal analysis," even though Plaintiff received all of her requested relief from the IHO. Even if such an analysis were warranted, the Court is not persuaded that it was necessary for both Cuddy and Mendillo to spend time reviewing the IHO's favorable decisions. *See R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *4 n.7 ("A reasonable paying client would not pay two experienced litigators to determine that they had prevailed at the IHO level.").

Further, several billing entries indicate that time was billed for the mere receipt and filing of electronic or

paper documents and the review of ECF notifications. *See, e.g.*, Cuddy Decl. Ex. B at 13 (paralegal billed 0.2 hours to "[r]eceive impartial hearing transcript in mail, already on electronic file, forward to KMM"); *id.* at 16 (paralegal billed 0.1 hours to "prepare parent disclosure to be mailed to Leah Murphy Esq., upload to electronic file, forward to SC for postage"); *id.* at 22 (paralegal billed 0.1 hours to "[r]eceive emails between KMM and client . . . [and] categorize and upload to electronic file"); Cuddy Decl. Ex. C at 3 (attorney billed 0.1 hours to "[r]eview ECF notifications regarding assignment of judge and magistrate and processing of summons; update case notes to reflect the same"). Such activities, which are purely administrative in nature, are generally not compensable. *See Dotson v. City of Syracuse*, No. 5:04-CV-1388 NAM/GJD, 2011 U.S. Dist. LEXIS 20374, 2011 WL 817499, at *26 (N.D.N.Y. Mar. 2, 2011), *aff'd*, 549 F. App'x 6 (2d Cir. 2013) ("Clerical tasks such as *organizing case files* and *preparing documents for mailing* are not compensable.") (emphasis added); *Siegel v. Bloomberg L.P.*, 2016 U.S. Dist. LEXIS 38799, 2016 WL 1211849, at *7 (S.D.N.Y. Mar. 22, 2016) ("With respect to tasks that are 'purely clerical,' such as downloading, scanning, or copying documents and organizing files, such work is generally not compensable, whether performed by an attorney or a paralegal."); *Missouri v. Jenkins by Agyei*, 491 U.S. 274, 288 n.10, 109 S. Ct. 2463, 105 L. Ed. 2d 229 (1989) ("[P]urely clerical or secretarial tasks should not be billed under fee shifting statutes regardless of who performs them.").

As a last example, Kevin Mendillo billed 11.2 hours for drafting Plaintiff's memorandum of law in support of

her motion for summary judgment. *See* Cuddy Decl. Ex. C at 7. A comparison of Plaintiff's opening brief in this case with those recently filed by CLF in similar IDEA cases reveals that the vast majority of its substance—approximately 17 of the 25 pages—was copied and pasted from submissions in other cases. *See* Bowe Decl. Ex. A. Of the remaining pages, three to four are devoted to a straightforward recitation of procedural history. Although the Court recognizes that similar attorneys' fee motions will necessarily involve similar legal issues, the Court agrees with the DOE that the number of hours billed by CLF to do such "cut-and-paste" work is unreasonable. *See R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *5 n.8 ("The Court sees no reason why a legal brief that involves a recitation of straightforward procedural history, with recycled legal standards, should take counsel, with over 15 years of relevant experience, more than 10 hours to draft. If, in fact, the brief took that long to draft, then the hourly rates granted for those attorneys are excessive.").

As already discussed, this was a relatively straightforward case that was, as the DOE notes, only "minimally contested," CLF's submissions were not unusually complex and did not pose difficult legal questions, and the hearings lasted only a few hours total. In light of this, and the aforementioned examples of excessive billing, the Court finds that the number of hours billed is generally disproportionate to the complexity of and work required in this case. In comparable cases brought by CLF, courts in this District have reduced the firm's hours by 20 to 50 percent. *See, e.g., J.R. v. N.Y.C. Dep't of Educ.*, No. 19-cv-11783 (RA), 2021 U.S. Dist.

LEXIS 146057, 2021 WL 3406370, at *4-5 (S.D.N.Y. Aug. 4, 2021); *M.D. v. N.Y.C. Dep't of Educ.*, No. 20-cv-6060 (LGS), 2021 U.S. Dist. LEXIS 132930, 2021 WL 3030053, at *6 (S.D.N.Y. July 16, 2021). Accordingly, the Court finds that reducing CLF's hours billed by 20 percent across the board will achieve "rough justice."

III. Costs

CLF seeks $976.93 in costs, which includes: $329.50 in printing, $180.50 in copying, $15.93 in postage, $49.00 in tolls, and $402.00 in filing fees. Cuddy Decl. ¶ 58. CLF also seeks $2,250 in travel fees for Kevin Mendillo charged at a rate of $225 per hour (representing 50 percent of his standard requested rate). *Id.*

The DOE argues that CLF should not be compensated for time spent traveling between New York City and Auburn. In support of this proposition, it relies on *M.D. v. New York Dep't of Educ.*, in which the court denied an award of travel fees for another CLF attorney, reasoning that "it is doubtful that a reasonable client would retain an Auburn or Ithaca attorney over a New York City attorney if it meant paying New York City rates and an additional five hours in billable time for each trip." 2021 U.S. Dist. LEXIS 132930, 2021 WL 3030053, at *5 (quoting *K.F.*, 2011 U.S. Dist. LEXIS 88653, 2011 WL 3586142, at *6); *see also C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *10 ("The Court is skeptical that a reasonable client would agree to pay its counsel rates customary for this District and for protracted travel time to and from Auburn."). The Court takes the approach that several

other judges from this District have taken, which is to approve one hour of reimbursable travel time in each direction. *See id.* (noting that awarding one hour of travel time each way "gives due deference to a parent's desire to hire expert IDEA counsel . . . and to the inevitability of some travel time to the site of the hearing"). Mendillo's billable travel hours are thus reduced to one hour each way for each trip he took to and from New York City in relation to this action. *See, e.g., M.H. v. N.Y.C. Dep't of Educ.*, No. 20-CV-1923 (LJL), 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *18 (S.D.N.Y. Oct. 13, 2021) (doing the same and collecting cases). Those hours are to be charged at the rate of $150 an hour, or half of his approved hourly rate.

The Court also agrees with the DOE that $0.50 per page for printing and copying is excessive. *See R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *6. As in *R.G.*, the Court will accept only 10 cents per page in printing and copying expenses. *See id.*[4]

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4. To the extent Plaintiff argues that CLF's fees should not be reduced at all because the DOE unreasonably protracted the proceedings, the Court rejects this argument. "[A] conclusion that Defendant unreasonably protracted the resolution of the proceedings and forced Plaintiff to engage in what should have been unnecessary work might justify the reasonableness of some of the hours worked by counsel and the paralegals. However, it would not entitle CLF to more than a reasonable attorney's fee calculated based on the standards well established by the Supreme Court and in this Circuit." *M.H.*, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *25. And, in any event, the Court finds that any protraction on the DOE's part did not rise to the level of "unreasonable."

IV. Fees Incurred After Settlement Offer

Finally, the DOE contends that no fees should be awarded for work performed after December 30, 2020—the day that it sent Plaintiff an offer to settle her fee claims for $54,500. The IDEA's fee-shifting provision prohibits an award of fees and costs for work performed after a written offer of settlement is made if "the court . . . finds that the relief finally obtained by the parents is not more favorable to the parents than the offer." 20 U.S.C. § 1415(i)(3)(D)(i); *see also O.R. v. New York City Dep't of Educ.*, 340 F. Supp. 3d 357, 371 (S.D.N.Y. 2018). The IDEA also goes on to provide, however, that notwithstanding the preceding paragraph, "an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer." 20 U.S.C. § 1415(i)(3)(E).

Consistent with the Court's calculations and after applying the aforementioned reductions to CLF's fees and costs, the fee award Plaintiff was entitled to as of the settlement offer date was not more favorable than the offered settlement amount of $54,500. Nevertheless, Plaintiff was substantially justified in rejecting the settlement offer because, as she notes, the DOE's settlement proposal "did not amount to an offer that would have settled all issues raised in Plaintiff's complaint, but rather, only the issues involving Plaintiff's claim for attorneys' fees and related expenses." Dkt. 32 (Pl.'s Reply) at 2. As of December 30, 2020, Plaintiff's substantive claims concerning the DOE's failure to issue M.W.'s 2019-2020 tuition payment had not yet been resolved, and the

DOE's settlement offer did not provide for the resolution of these claims. The Court therefore concludes that the IDEA's settlement bar does not preclude an award of attorneys' fees for services rendered after the DOE's offer of settlement because Plaintiff was substantially justified in rejecting that offer.

CONCLUSION

For the foregoing reasons, the Court grants the motion for attorneys' fees and costs, as well as post-judgment interest, but with the following modifications:

(1) CLF is entitled to fees at: an hourly rate of $400 for Andrew Cuddy, Michael Cuddy, and Jason Sterne; an hourly rate of $300 for Kevin Mendillo (reduced by 50 percent for billable travel time); an hourly rate of $200 for Britton Bouchard; an hourly rate of $125 for Shobna Cuddy; and an hourly rate of $100 for Allison Bunnell, Amanda Pinchak, Khrista Smith, Cailin O'Donnell, Emma Bianco, Sarah Woodard, and Diana Gagliostro;

(2) the number of hours billed by all CLF attorneys and paralegals is reduced by 20 percent across the board;

(3) Kevin Mendillo may bill for only one hour of travel time each way for his trips to New York City in connection with the administrative actions; and

(4) printing and copying expenses are to be billed at 10 cents per page.

No later than March 1, 2022, Plaintiff shall submit a proposed judgment consistent with this decision. If the DOE objects to the proposed judgment, it shall file a letter explaining its position no later than March 8, 2022. Absent an objection from the DOE by that date, the Court will sign and docket Plaintiff's proposed judgment.

SO ORDERED.

Dated: February 23, 2022
New York, New York

/s/ Ronnie Abrams
Hon. Ronnie Abrams
United States District Judge

APPENDIX H — L.L. OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED FEBRUARY 9, 2022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

20-CV-2515 (JPO)

L.L., INDIVIDUALLY AND ON BEHALF OF S.L., A CHILD WITH A DISABILITY,

Plaintiffs,

-v-

NEW YORK CITY DEPARTMENT OF EDUCATION.,

Defendant.

February 9, 2022, Decided
February 9, 2022, Filed

OPINION AND ORDER

J. PAUL OETKEN, District Judge:

On behalf of herself and her minor child, S.L., Plaintiff L.L. filed this lawsuit against Defendant New York City Department of Education ("DOE"), claiming to have prevailed against DOE in an administrative hearing under the Individuals with Disabilities Education Act, 20

U.S.C. §§ 1400 *et seq.* ("IDEA"), and seeking $86,456.39 in total attorney's fees and costs under the statute's fee-shifting provision, *see* 20 U.S.C. § 1415(i)(3). (Dkt. No. 1 ("Compl."); Dkt. No. 30 at 3.)[1] Plaintiff has moved for summary judgment on her request for attorney's fees and costs. (Dkt. No. 25.) For the reasons that follow, Plaintiff's motion is granted in part and denied in part.

I. Background

None of the following facts are in dispute. S.L. is a child with a disability as defined by IDEA. (Dkt. No. 36 ¶ 2.) Plaintiff filed a due process complaint ("DPC"), alleging that DOE did not provide S.L. with a free appropriate public education ("FAPE") during the 2016-2017, 2017-2018, and 2018-2019 school years. (Dkt. No. 36 ¶¶ 7, 9.) Plaintiff sought the addition of applied behavior analysis and social skills training to S.L.'s Individualized Education Program (IEP), placement of S.L. in a non-public school, as well as other relief. (Dkt. No. 36 ¶ 10.)

An impartial due process hearing was held on August 26, 2019 (Dkt. No. 36 ¶ 12), in which Plaintiff entered documentary evidence into the record, presented three witnesses, and submitted a closing brief. (Dkt. No. 36 ¶ 13-14.) Three days prior, on August 23, 2019, DOE's counsel had informed Plaintiff's counsel that she would not be able to attend the hearing. (Dkt. No. 28 ¶ 33; Dkt. No. 36

1. Plaintiff had also asserted a cause of action pursuant to 42 U.S.C. § 1983 (*see* Compl. ¶¶ 31-38), but because the parties have resolved this claim (*see* Dkt. No. 30 at 1), the Court does not address it.

¶ 23.) DOE did not appear at the hearing, and therefore did not cross-examine any of Plaintiff's witnesses or submit any exhibits. (Dkt. No. 36 ¶¶ 20-22.) The administrative hearing lasted a little less than two hours. (*See* Dkt. No. 34-1 (noting that the hearing began at 11:47 A.M. and was adjourned at 1:32 P.M.)).

In November 2019, the Impartial Hearing Officer ("IHO") concluded that DOE "failed to meet its burden in demonstrating that its recommended programs of special education provided [S.L] with a FAPE during the disputed period of time." (Dkt. No. 28-2 at 10.) The IHO ordered DOE to provide the following relief for S.L.: completion of assistive technology; funding for a behavioral assessment, occupational therapy evaluation, applied behavior analysis, academic instruction, and speech therapy; amendment of S.L.'s IEP; and referral to a non-public school. (Dkt. No. 36 ¶ 15.) DOE did not appeal the IHO's decision.

Plaintiff filed this action on March 23, 2020. (*See* Compl.) The parties engaged in settlement negotiations but were unsuccessful. (Dkt. No. 36 ¶ 24; Dkt. No. 28 ¶¶ 52-53.)

II. Discussion

The IDEA provides that district courts, in their discretion, may award attorney's fees and costs to a "prevailing party." 20 U.S.C. § 1415(i)(3)(B)(i). A party "prevails" when "actual relief on the merits of [her] claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a

way that directly benefits the plaintiff." *K.L. v. Warwick Valley Cent. Sch. Dist.*, 584 F. App'x 17, 18 (2d Cir. 2014) (internal quotation marks and alterations omitted). The fees may be reduced under 20 U.S.C. § 1415(i)(3)(F), unless the court concludes that the "local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section," 20 U.S.C. § 1415(i)(3)(G).

To determine the attorney's fees to which a party is entitled, a court must calculate each attorney's and paralegal's "presumptively reasonable fee." *E.F. ex rel. N.R. v. N.Y. City Dep't of Educ.*, No. 11 Civ. 5243, 2014 U.S. Dist. LEXIS 34606, 2014 WL 1092847, at *2 (S.D.N.Y. Mar. 17, 2014). "When determining a reasonable hourly rate for an attorney or paralegal, courts consider both the prevailing market rates for such legal services as well as the case-specific factors articulated in *Johnson v. Georgia Highway Express Inc.*" *R.G. v. N.Y. City Dep't of Educ.*, No. 18 Civ. 6851, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *2 (S.D.N.Y. Sept. 26, 2019).

A. DOE's Unreasonable Protraction of the Final Resolution

The parties do not dispute that Plaintiff is a "prevailing party," but they do dispute what constitutes reasonable attorney's fees. Before turning to this calculation, the Court first addresses Plaintiff's argument that the fees should not be reduced at all because DOE unreasonably protracted the final resolution of the action by (1) issuing a due process response that made it difficult for Plaintiff's

counsel to evaluate DOE's position on the issues raised in Plaintiff's DPC; (2) failing to resolve any of the issues raised by Plaintiff during the resolution meeting; (3) failing to settle the matter prior to the hearing, even though DOE decided not to appear; and (4) failing to implement the relief awarded by the IHO in a timely manner. (Dkt. No. 30 at 7-10.)

The Court concludes that any protraction on DOE's part did not rise to the level of being "unreasonable." First, Plaintiff does not explain how the due process response was inadequate, nor does she expound on how the response delayed the final resolution of the action. Second, DOE's failure to agree to provide any relief requested to Plaintiff prior to the hearing, which required Plaintiff to attend and participate in an administrative hearing, is not an unreasonable protraction; as DOE notes, this is "nothing more than garden variety hearing preparation." (Dkt. No. 33 at 19.) Third, Plaintiff provides no additional details about DOE's failure to implement the relief awarded by the IHO and it is the Court's understanding that any issues with implementation have now been resolved. (*See* Dkt. No. 36 ¶ 16.) Finally, Plaintiff cites no case law to support her position that DOE's actions unreasonably protracted the resolution of this matter. And indeed, the case law supports the opposite conclusion — that DOE's actions did *not* cause an unreasonable delay. For instance, in *S.J. v. New York City Department of Education*, the court concluded that there was no unreasonable delay, No. 20 Civ. 1922, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *4 (S.D.N.Y. Jan. 12, 2021), even though Plaintiff argued that DOE's representative failed to schedule a resolution

hearing, required that the hearing be adjourned (resulting in the award being issued 170 days after the filing of the DPC), and was slow to implement the relief awarded by the IHO, *see* Plaintiffs' Memorandum of Law in Support of Summary Judgment at 6-8, in *S.J.* 2021 U.S. Dist. LEXIS 6180, at *3, 2021 WL 100501, Dkt. No. 36.

B. Reasonable Fees

The Court now turns to calculating the presumptively reasonable fees for Plaintiff's counsel. As with all summary judgment motions, "all evidence must be viewed in the light most favorable to the non-moving party." *M.D. v. N.Y.C. Dep't of Educ.*, No. 17 Civ. 2417, 2018 U.S. Dist. LEXIS 156923, 2018 WL 4386086, at *2 (S.D.N.Y. Sept. 14, 2018) (internal quotation marks omitted).

1. Hourly Rates

Plaintiff contends that Andrew Cuddy and Jason Sterne, two of the firm's senior attorneys, are entitled to $550 per hour; Kevin Mendillo, an associate and lead attorney on this case, to $450 per hour; Benjamin Kopp, a more junior associate, to $400 an hour; and the six paralegals who worked on this matter, to $225 per hour. (Dkt. No. 26-1 at 1.) DOE argues that based on the *Johnson* factors and the recent attorney's fee decisions in this district involving Plaintiff's counsel's firm, Cuddy and Sterne should be awarded no more than $360 per hour; Mendillo no more than $300 per hour; Kopp no more than $200 per hour; and paralegals no more than $100 per hour. (Dkt. No. 33 at 7, 12.) The Court agrees with DOE that

the requested rates must be reduced.

As to the senior attorneys, the prevailing rate in the New York area around 2019 was between $350 and $475. *See, e.g.*, *S.J.*, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *3. Indeed, Plaintiff's counsel's firm also represented the plaintiff in *S.J.*, *see* 2021 U.S. Dist. LEXIS 6180, [WL] at *3-4, making this decision particularly relevant. As in other cases, Plaintiff relies on declarations made by attorneys who specialize in special education law and practice in this district, to argue for the higher rate. (Dkt. No. 30 at 20-21.) Following the practice of other judges in this district, this Court declines to rely on these rates as the starting point for the analysis of presumptively reasonable fees, "because the submitted evidence either does not substantiate such rates were actually paid (versus claimed), or where rates are asserted to have been actually paid, does not provide relevant context for such rates billed." *S.J.*, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *3; *see also C.D. v. Minisink Valley Cent. Sch. Dist.*, No. 17 Civ. 7632, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *6 n.9 (S.D.N.Y. Aug. 9, 2018) (declining to rely on declarations of IDEA practitioners because "[t]hey provide isolated examples of billing rates of a few lawyers who may or may not be representative of the field").

Taking into consideration this information and the relevant *Johnson* factors, the Court concludes that a reasonable rate for Cuddy and Sterne is $360 per hour. Though courts in this district have occasionally awarded senior IDEA practitioners a higher hourly rate of around

$400 per hour, this is generally awarded when the impartial hearing was heavily contested and involved more complex matters than at issue here. *See, e.g.*, *C.B. v. N.Y.C. Dep't of Educ.*, No. 18 Civ. 7337, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *6 (S.D.N.Y. July 2, 2019) (awarding Cuddy and Sterne $400 an hour for contested administrative hearing that lasted almost 10 hours). Here, in contrast, DOE did not oppose Plaintiff's positions at the hearing. (*See* Dkt. No. 36 ¶¶ 20-22.) And the attorney's fees submitted by Plaintiff reflect that Cuddy's work on this matter related primarily to billing and the federal action, and Sterne's work on this matter was minimal and purely supervisory. (Dkt. No. 26-1 at 3, 23, 27, 28.)

As to Mendillo, the Court concludes that a rate of $300 per hour is reasonable. Mendillo is a 2010 law school graduate and was admitted to the New York bar in June 2011. (Dkt. No. 28 ¶ 4.) He has been employed by Cuddy Law Firm, PLLC since January 2014 and has represented parents in over one hundred impartial due process hearings. (Dkt. No. 28 ¶ 5.) In reaching this conclusion, the Court notes that the DPC did not raise especially novel or complex issues and DOE did not oppose Plaintiff's positions at the two-hour hearing. However, the Court also recognizes that because DOE did not inform Mendillo that it would not be appearing at the hearing until a few days prior to the actual date of the hearing, Mendillo had already substantially completed his preparation. (Dkt. No. 28 ¶ 33.) The Court also concludes that as a result, his hourly rate for travel, which was reduced to $225 per hour at the discretion of the law firm (*see* Dkt. No. 30 at 24), should be further reduced to $150 per hour.

As to Kopp, the Court concludes that a rate of $200 per hour is reasonable. Kopp graduated from law school in 2015 and joined the Cuddy Law Firm in 2018. (Dkt. No. 27 ¶ 13.) "For associates with three or fewer years of experience in [IDEA] litigation, courts in this District have typically approved rates of $150-$275." *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *3. Given Kopp's limited experience in IDEA litigation at the time of Plaintiff's hearing, a rate of $200 per hour is reasonable. *See S.J.*, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *4 (concluding that $200 per hour for Kopp was reasonable).

As to the paralegals, the Court concludes that a rate of $100 per hour is reasonable. *See R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *3 ("Paralegals, depending on skills and experience, have generally garnered between $100 and $125 per hour in IDEA cases in this District.").

2. Hours Billed

"Hours that are excessive, redundant, or otherwise unnecessary are to be excluded from fee awards." *Kirsch v. Fleet St., Ltd.*, 148 F.3d 149, 173 (2d Cir. 1998) (internal quotation marks omitted). In order to calculate an appropriate award, the district court may identify specific hours that should be disregarded, or it may choose to reduce the award by a reasonable percentage. *See R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *3. Here, Plaintiff seeks compensation for 134 hours of work and ten hours for travel for the administrative action (Dkt.

No. 26-1 at 1), and 60.9 hours for the federal fee action (Dkt. No. 26-2 at 1). The Court concludes that Plaintiff's counsel's hours are unreasonable.

First, DOE contends that the amount of time working on the DPC should be reduced because it appears that Kopp drafted the DPC, after meeting and receiving guidance from Mendillo (*see* Dkt. No. 26-1 at 7), and then it was substantially re-done by Mendillo without explanation. (Dkt. No. 33 at 13.) However, Mendillo explains that he had to revise and add to the DPC after receiving S.L.'s neuropsychological evaluation. (Dkt. No. 28 ¶ 16.) While the Court recognizes the need to add and revise the DPC after receiving the evaluation, spending 17.2 hours on drafting the nine-page DPC, as Mendillo purportedly did (*see* Dkt. No. 26-1), after Kopp had already drafted the DPC, is longer than reasonable. Indeed, it is unclear why Mendillo would have had to revise the *entire* DPC given the new information. Moreover, considering the number of hours courts have awarded for drafting DPCs, *see, e.g.*, *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050 at *4 (reducing the number of hours to draft a three-page DPC to 1.5 hours), the Court concludes that spending over twenty-five hours on the DPC was unreasonable. It therefore reduces Mendillo's time working on the DPC complaint to four hours and Kopp's time to five hours.

Second, DOE argues that the attorney's fees related to meeting with Plaintiff and advising her on various issues, such as participation in special education meetings and services that her daughter required, are not compensable under the IDEA. (Dkt. No. 33 at 14.) The Court disagrees.

DOE points to four occasions — September 5, 2018, September 6, 2018, February 26, 2019, and February 28, 2019 — as instances in which Mendillo conferred with Plaintiff on matters unrelated to the administrative proceedings. (*Id.*) But these meetings, such as the one on September 5, 2018, which related to an independent education evaluation, are reasonably related to the administrative action and the ultimate relief requested by Plaintiff. *See, e.g.*, *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *4 (concluding that communications with Plaintiff were not unrelated to preparation of the DPC).

Third, DOE argues that the amount of time billed for the hearing preparation — 28.5 hours — is excessive. (Dkt. No. 33 at 15.) It suggests that that the Court should reduce the number of hours to align with the "preparation-to-proceeding" ratio of between 5:1 and 6:1 in similar cases. (*Id.*) The Court agrees. In accordance with similar cases in this district, the Court reduces the hours billed in preparation for the hearing by fifty percent. *See, e.g.*, *C.B*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *10. The Court declines to reduce it even further, however, because as noted above, DOE failed to inform Mendillo that it would not be appearing at the hearing until shortly before the actual hearing date.

Similarly, the Court concludes that the 21.8 hours spent by Mendillo on the closing statement (*see* Dkt. No. 26-1 at 22-23) is excessive. The IHO requested a "short closing position statement" (*see* Dkt. No. 34-1 at 2), but Mendillo submitted a twenty-two-page closing brief (Dkt.

No. 28-3). Given the IHO's directives, the limited number of witnesses and exhibits presented at the two-hour hearing, and the fact that the hearing was uncontested, the Court concludes that the amount of time Mendillo spent on the closing statement was unnecessary. *See R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *4 (reducing the number of hours spent on the closing brief from 24.5 hours to 19 hours). The Court therefore reduces the time Mendillo spent on the brief to fifteen hours.

Fourth, DOE argues that Mendillo's billing time for travel to and from Auburn, New York should be reduced. The Court agrees and reduces the travel time to one and a half hours each way, consistent with other decisions by courts in this district. *See, e.g.*, *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *10 ("The Court's judgment is that the properly reimbursable travel time here is one hour in each direction. This gives due deference to a parent's desire to hire expert IDEA counsel . . . and to the inevitability of some travel time to the site of the hearing.").

Fifth, DOE contends that Plaintiff's billing for the instant federal action is excessive and requests a fifty percent reduction of the hours expended. (Dkt. No. 33 at 17.) Plaintiff's counsel spent 60.9 hours on the federal action, resulting in a fee of $27,562.50. (Dkt. No. 26-2 at 1.) The Court agrees that the hours billed must be reduced. In reviewing the attorney's fees submitted by Plaintiff that are related to the fee action, the Court notes that several of the entries are primarily related to the implementation of relief awarded by the IHO (*see, e.g.*, Dkt. No. 26-2 at

4, 5), and many are related to reviewing the ECF docket for an update on the status of the action and for minor notifications by the Court (*see, e.g.*, Dkt. No. 26-2 at 2, 7, 8). Furthermore, as DOE points out, Plaintiff's summary judgment motion in this case is substantially the same to the many others it is has filed in recent cases in this district. (Dkt. No. 33 at 18.) The Court therefore concludes that the hours spent on this federal action should be reduced to 30 hours.

Finally, DOE argues that the expenses sought by Plaintiff, in the amount of $1,859.17, should be reduced. The Court agrees and hereby reduces the expenses as follows: (1) reducing photocopying expenses to $.10 per page for a total of $170.60, *see S.J.*, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *5; (2) deducting Mendillo's lodging, parking, and meal costs related to his trip to Brooklyn for the hearing, *see R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *6; (3) reducing Mendillo's mileage and toll fees to $60, *see id.*; and (4) deducting Plaintiff's request for reimbursement of fax expenses, *see id.*

C. Summary of Award

Based on the foregoing, the Court awards Plaintiff's counsel a total of $32,200, inclusive of all fees and costs, and taking into account Plaintiff's discretionary reduction of its time. The revised rates, hours, and expenses are summarized below:

Appendix H

Name	Adjusted Rate	Adjusted Hours (Hearing)	Adjusted Hours (Fee Application)	Total Adjusted Fees
Cuddy	$360	2.4	1.6	$1,440
Sterne	$360	1.2	N/A	$432
Mendillo	$300	65.95	27.3	$27,975
Mendillo Travel	$150	3	N/A	$450
Kopp	$200	5	N/A	$1,000
Paralegals	$100	12	1.1	$1,310
			Subtotal	$32,607
			Hearing Expenses	$232.49
			Fee Application Expenses	$400.00
			Total	**$33,239.49**

III. Conclusion

For the foregoing reasons, Plaintiff's motion is GRANTED in part and DENIED in part. Plaintiff is awarded a total of $33,239.49 in attorney's fees and costs. The Clerk of Court is respectfully directed to close the motion at Docket Number 25 and close this case.

SO ORDERED.

Dated: February 9, 2022
New York, New York

/s/ J. Paul Oetken
J. PAUL OETKEN
United States District Judge

APPENDIX I — V.W. ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED FEBRUARY 4, 2022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 20-CV-2376 (RA)

V.W., INDIVIDUALLY AND ON BEHALF OF A.H., A CHILD WITH A DISABILITY,

Plaintiff,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant.

ORDER

RONNIE ABRAMS, United States District Judge:

On January 4, 2022, the Court granted Plaintiff's motion for attorneys' fees and costs under the Individual with Disabilities Education Act, albeit with modifications. In that order, the Court addressed only the fees that had been requested by Plaintiff in its June 14, 2021 summary judgment motion and accompanying declarations. The Court stated that, if Plaintiff wished to seek additional fees for work it performed in this case after June 14, 2021, it should make that application by separate letter motion. Plaintiff has done so, and the DOE has opposed the motion.

Appendix I

As documented in the reply declaration of Andrew Cuddy, CLF added fifteen entries to its federal billing statement for work that it performed after June 14, 2021. *See* Cuddy Reply Dec. Ex. 2 at 10-11. CLF requests approximately $8,000 for this additional work.

Of these 15 entries, the first three appear to be duplicative with entries that were made on or before June 14, 2021 that were already reflected in CLF's prior fee request, so the Court will discount them. *Compare id.* at 10, *with id.* at 8; *see Quaratino v. Tiffany & Co.*, 166 F.3d 422, 425 (2d Cir. 1999) (explaining that courts should exclude "excessive, redundant or otherwise unnecessary hours" from attorneys' fees). By contrast, entries four, five, six, fourteen, and fifteen appear reasonable, as they document a modest number of hours spent on correspondence, administrative work, or final review by senior partners. Accordingly, the Court will allow CLF to bill for these entries, albeit at the reduced rates the Court assigned in its prior order (that is, $400 an hour for Andrew Cuddy, $300 an hour for Justin Coretti, $125 an hour for Shobna Cuddy, and $100 an hour for less experienced legal assistants). This results in a total of $370 for those entries.

Entries seven through thirteen document a total of 11.6 hours that Justin Coretti spent preparing Plaintiff's reply in support of her summary judgment motion, including researching caselaw, drafting the reply brief and related documents, and reviewing the DOE's opposition. The Court finds this number of hours to be excessive, given the brevity of Plaintiff's reply and its similarity to

Plaintiff's opening brief. *See, e.g., K.L. v. Warwick Valley Cent. Sch. Dist.*, No. 12-cv-6313 (DLC), 2013 U.S. Dist. LEXIS 126933, 2013 WL 4766339, at *13 (S.D.N.Y. Sept. 5, 2013) (finding requested hours that included five hours spent preparing a four-page reply brief to be excessive). Accordingly, the Court reduces Coretti's hours spent on the summary judgment reply by 50%. *See M.D. v. New York Dep't of Educ.*, No. 20-cv-6060 (LGS), 2021 U.S. Dist. LEXIS 132930, 2021 WL 3030053, at *6 (S.D.N.Y. July 16, 2021) (reducing CLF's federal hours billed by 50% given the straightforward nature of the case). This results in a billable total of 5.8 hours for this work, which, at Coretti's adjusted hourly rate of $300, leads to a total of $1,740.

Therefore, the Court awards CLF a total of $2,110 in fees for work performed after June 14, 2021. This award is reflected in the Court's judgment of February 4, 2022.

SO ORDERED.

Dated: February 4, 2022
New York, New York

/s/ Ronnie Abrams
Hon. Ronnie Abrams
United States District Judge

APPENDIX J — S.H. OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED JANUARY 26, 2022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

21-cv-4967 (LJL)

S.H., INDIVIDUALLY, AND S.H., ON BEHALF OF K.H., A CHILD WITH A DISABILITY,

Plaintiffs,

-v-

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant.

OPINION AND ORDER

LEWIS J. LIMAN, United States District Judge:

Plaintiff S.H. ("Plaintiff"), individually and on behalf of K.H., a child with a disability, moves for summary judgment on its complaint seeking attorneys' fees against defendant New York City Department of Education ("Defendant"). Dkt. No. 13.

For the following reasons, the motion for summary judgment is granted in part and denied in part.

Appendix J

BACKGROUND

The following facts, gleaned from the parties' Rule 56.1 statements and the administrative record in this case, are undisputed for purposes of this motion.

K.H. is a child with a disability under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1401(3)(A). *See* Dkt. No. 24 ¶ 3. S.H. is the parent of K.H., as defined by the IDEA, 20 U.S.C. § 1401(23). *See* Dkt. No. 24 ¶ 4.

Plaintiff filed a due process complaint ("DPC") on or about September 17, 2018 and demanded a due process hearing pursuant to 20 U.S.C. § 1415(f)(1). *See* Dkt. No. 24 ¶ 8. The DPC sought a finding that Defendant did not provide K.H. with a free appropriate public education pursuant to the IDEA during the school years 2016-2017, 2017-2018, and 2018-2019 and, as relief, demanded an independent neuropsychological evaluation, compensatory related and educational services, and that the Defendant convene the Committee on Special Education ("CSE") to review the independent neuropsychological examination and develop an appropriate individualized education program ("IEP") for K.H. *Id.* ¶¶ 10-11; Dkt. No. 16-1 at 5-6. The parties entered into a partial resolution agreement that was fully executed on December 27, 2018. Dkt. No. 24 ¶ 12. Defendant agreed to fund the independent neuropsychological evaluation at a rate not to exceed $4,500, and to issue a related services authorization for the compensatory speech-language services for a total of eighty-three sessions. Dkt. No. 15 ¶ 51.

Appendix J

From April 2019 through July 2019, K.H. underwent a neuropsychological evaluation pursuant to the partial resolution agreement. Dkt. No. 16 ¶ 38.

After the conclusion of the neuropsychological evaluation, Plaintiff's counsel prepared affidavits to be introduced in lieu of examination for the doctor performing the evaluation as well as for Lisa LaFata ("LaFata") of Kid Success, Inc., which had previously provided tutoring services to K.H. and made recommendations for compensatory services; counsel provided the affidavits in draft form to Defendant. Dkt. No. 16 ¶¶ 39-40. Both witnesses provided testimony regarding the compensatory services needed for K.H. based on the neuropsychological evaluation. Dkt. No. 16-7 at 23. Thereafter, Defendant indicated that it did not wish to conduct an examination of the doctor but only of LaFata. Dkt. No. 16 ¶ 41.

On March 20, 2020, the impartial hearing officer ("IHO") scheduled a hearing date for April 21, 2020, but Plaintiff moved for summary judgment for the matter to be resolved without need for a hearing. *Id.* ¶¶ 42-43. There followed summary judgment briefing from April to May 2020 before the IHO. *Id.* ¶¶ 44-45; Dkt. Nos. 16-4, 16-5. On June 19, 2020, the IHO denied the cross-motions for summary judgment by each of Plaintiff and Defendant. Dkt. No. 16 ¶ 46; Dkt. No. 16-6. The IHO found that there were issues of fact related to the Defendant's argument that Plaintiff's claim for the 2016-2017 school year was time-barred and that the relief requested by the parent was "disputed by the District who has raised significant issues of fact that cannot be resolved on the Parent's motion." Dkt. No. 16-6 at 4.

Appendix J

On July 8, 2020, after Defendant had indicated an intent to litigate the issue of requested compensatory educational services and to present a witness on the issue, the IHO held a due process hearing which was followed by submission of closing briefs. Dkt. No. 16 ¶¶ 47, 49, 52; Dkt. Nos. 16-7, 16-8. Plaintiff entered seventeen documentary exhibits into evidence, including the two affidavits. Dkt. No. 16 ¶ 51. Defendant entered fourteen documentary exhibits into evidence and called one witness to testify regarding the appropriateness of the amount of compensatory educational services and conducted a cross-examination of Plaintiff's witness, LaFata. *Id.* A direct examination, cross-examination, redirect examination, and recross examination were conducted of Defendant's witness. *Id.* At the hearing, Defendant conceded that it denied K.H. a free appropriate public education for all three school years in question and that K.H. was entitled to compensatory educational services for the 2017-2018 and 2018-2019 school years. *Id.* ¶ 50. However, Defendant also claimed that all relief for the 2016-2017 school year was time-barred by the applicable statute of limitations and contested the amount of compensatory academic services requested by Plaintiff. *Id.* Plaintiff submitted a 33-page closing brief. Dkt. No. 16-7. Defendant submitted a 15-page closing brief. Dkt. No. 16-8.

On September 8, 2020, the IHO issued a findings of fact and decision ("FOFD"). Dkt. No. 16 ¶ 53; Dkt. No. 16-9. The IHO found that Plaintiff's claims with respect to the 2016-2017 school year were timely made and not barred by the statute of limitations. Dkt. No. 16 ¶ 54; Dkt. No. 16-9 at 10. The IHO also ordered Defendant to fund

a total of 1,650 hours of compensatory academic services broken down into 600 hours for reading, 450 hours for math, and 600 hours for writing, as well as 150 hours of compensatory counseling services. Dkt. No. 16 ¶ 55; Dkt. No. 16-9 at 12. The IHO found, "the Parent sustained their burden of proof on the issue of compensatory services." Dkt. No. 16-9 at 12. In total, Plaintiff's counsel secured over $208,550 worth of relief for Plaintiff, comprised of $181,500 for compensatory academic services and $22,500 for compensatory counseling services, and also obtained a change of placement to an appropriate nonpublic school. Dkt. No. 15 ¶¶ 53-55.

Kenneth Bush of the Cuddy Law Firm PLLC ("CLF") was lead counsel for Plaintiff from September 2017 through December 2018. Dkt. No. 15 ¶ 116. Upon counsel Bush's departure from CLF in January 2019, Michael Cuddy and Jason Sterne served as interim lead attorney until Benjamin Kopp was assigned the matter in April 2019. *Id.* ¶ 117. Counsel Kopp remained lead attorney for the remainder of the administrative matter, including conducting the hearing. *Id.*

Following the issuance of the FOFD, Mr. Kopp delegated tasks regarding implementation of the FOFD to a paralegal at CLF who acted under his supervision. Dkt. No. 16 ¶ 56.

Appendix J

DISCUSSION

The only issue that remains in this case is Plaintiff's request for attorneys' fees and costs.[1] Both parties agree the matter can be resolved by summary judgment.

I. The Relevant Standards

The standards are well-established.

Under Federal Rule of Civil Procedure 56(a), a court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). "A genuine issue of material fact exists if 'the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Nick's Garage, Inc. v. Progressive Cas. Ins. Co.*, 875 F.3d 107, 113-14 (2d Cir. 2017) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)). "The movant bears the burden of 'demonstrat[ing] the absence of a genuine issue of material fact.'" *Id.* at 114 (quoting *Celotex*, 477 U.S. at 323). In deciding a motion for summary judgment, the Court must "construe the evidence in the light most favorable to the non-moving party, and draw all reasonable inferences in its favor." *Gilman v. Marsh & McLennan Cos., Inc.*, 826 F.3d 69, 73 (2d Cir. 2016).

---

1. Plaintiff withdraws the causes of action for violations of 42 U.S.C. § 1983 and 20 U.S.C. § 1415(b)(6) related to the failure to implement the FOFD. Dkt. No. 20 at 1.

If the movant meets its burden, "the nonmoving party must come forward with admissible evidence sufficient to raise a genuine issue of fact for trial in order to avoid summary judgment." *Jaramillo v. Weyerhaeuser Co.*, 536 F.3d 140, 145 (2d Cir. 2008). It may not rely on "mere speculation or conjecture as to the true nature of the facts," *Hicks v. Baines*, 593 F.3d 159, 166 (2d Cir. 2010) (citation omitted), or "on the allegations in [its] pleading, or on conclusory statements, or on mere assertions that affidavits supporting the motion are not credible," *Gottlieb v. Cnty. of Orange*, 84 F.3d 511, 518 (2d Cir. 1996) (internal citation omitted). Rather, to survive a summary judgment motion, the opposing party must establish a genuine issue of fact by "citing to particular parts of materials in the record," Fed. R. Civ. P. 56(c)(1)(A), and demonstrating more than "some metaphysical doubt as to the material facts," *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986); *see also Wright v. Goord*, 554 F.3d 255, 266 (2d Cir. 2009). If "the party opposing summary judgment propounds a reasonable conflicting interpretation of a material disputed fact," summary judgment must be denied. *Schering Corp. v. Home Ins. Co.*, 712 F.2d 4, 9-10 (2d Cir. 1983).

"The IDEA aims 'to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs.'" *A.R. ex rel. R.V. v. N.Y.C. Dep't of Educ.*, 407 F.3d 65, 72 (2d Cir. 2005) (quoting 20 U.S.C. § 1400(d)(1)(A)). To that end, the statute provides that "the court, in its

discretion, may award reasonable attorneys' fees as part of the costs to a prevailing party who is the parent of a child with a disability." 20 U.S.C. § 1415(i)(3)(B)(i), (i)(I). The statute mandates the fees awarded "shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded . . . ." *Id.* § 1415(i)(3)(C). The award thus must be "reasonable" and may not be based on rates exceeding those "prevailing in the community."[2]

The IDEA's definition of a "reasonable attorney's fee" is interpreted consistently with other civil rights fee-shifting statutes. *A.R. ex rel. R.V*, 407 F.3d at 75 ("[W]e 'interpret the IDEA fee provisions in consonance with those of other fee-shifting statutes.'" (quoting *I.B. ex rel. Z.B. v. N.Y.C. Dep't of Educ.*, 336 F.3d 79, 80, 63 Fed. Appx. 21 (2d Cir. 2003) (per curiam))); *see also S.N. ex rel. J.N. v. Pittsford Cent. Sch. Dist.*, 448 F.3d 601, 604 (2d Cir. 2006). The purpose of allowing attorneys' fees in a civil rights action "is to ensure effective access to the judicial process for persons with civil rights grievances." *Hensley v. Eckerhart*, 461 U.S. 424, 429, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983). "When a plaintiff succeeds in remedying a civil rights violation, . . . he serves 'as a "private attorney general," vindicating a policy that Congress considered of the highest priority.'" *Fox v. Vice*, 563 U.S. 826, 833, 131 S. Ct. 2205, 180 L. Ed. 2d 45 (2011) (quoting *Newman v. Piggie Park Enterps., Inc.*, 390 U.S. 400, 402, 88 S. Ct.

2. As a threshold matter, Defendant does not dispute that Plaintiff is entitled to an award of attorneys' fees. Rather, Defendant disputes the amount of the award. *See, e.g.*, Dkt. No. 23 at 21.

964, 19 L. Ed. 2d 1263 (1968) (per curiam)). "[T]he fee-shifting feature of the IDEA — including the authority to award reasonable fees for the fee application itself — plays an important role in 'attract[ing] competent counsel' to a field where many plaintiffs with meritorious cases could not afford to pay such counsel themselves." *G.T. v. N.Y.C. Dep't of Educ.*, 2020 U.S. Dist. LEXIS 25557, 2020 WL 1516403, at *10 (S.D.N.Y. Feb. 12, 2020) (quoting *Simmons v. N.Y.C. Transit Auth.*, 575 F.3d 170, 176 (2d Cir. 2009)).

In determining a reasonable fee, "[t]he district court must ascertain 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.'" *Chambless v. Masters, Mates & Pilots Pension Plan*, 885 F.2d 1053, 1058-59 (2d Cir. 1989) (quoting *Blum v. Stenson*, 465 U.S. 886, 896 n.11, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984)). "The reasonable hourly rate is the rate a paying client would be willing to pay . . . bear[ing] in mind that a reasonable, paying client wishes to spend the minimum necessary to litigate the case effectively." *Ortiz v. City of New York*, 843 F. App'x 355, 359 (2d Cir. 2021) (quoting *Lilly v. City of N.Y.*, 934 F.3d 222, 231 (2d Cir. 2019)). The Court also considers the *Johnson* 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.

Lilly, 934 F.3d at 228. "A district court need not recite and make separate findings as to all twelve *Johnson* factors, provided that it takes each into account in setting the attorneys' fee award." *C.D. v. Minisink Valley Cent. Sch. Dist.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *4 (S.D.N.Y. Aug. 9, 2018) (quoting *E.F. ex rel. N.R. v. N.Y.C. Dep't of Educ.*, 2014 U.S. Dist. LEXIS 34606, 2014 WL 1092847, at * 3 (S.D.N.Y. Mar. 17, 2014)); *see also C.B. v. N.Y.C. Dep't of Educ.*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *5 (S.D.N.Y. July 2, 2019) (same).

After determining a reasonable hourly rate, the Court multiplies "that rate by the number of hours reasonably expended to determine the presumptively reasonable fee." *Lilly*, 934 F.3d at 230. "To calculate . . . attorneys' fees, 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.*, 407 F.3d at 79 (internal quotation marks omitted) (quoting *G.M. v. New Britain Bd. of Educ.*, 173 F.3d 77, 84 (2d Cir. 1999)). "[T]here is . . . a strong presumption that the lodestar figure represents a reasonable fee." *Id.* (internal quotation marks omitted)

(quoting *G.M.*, 173 F.3d at 84); *accord I.B. ex rel. Z.B.*, 336 F.3d at 80.

The Second Circuit has stated:

> In *Arbor Hill* [522 F.3d 182 (2d Cir. 2008)], we attempted to . . . clarify our circuit's fee-setting jurisprudence. We instructed district courts to calculate a presumptively reasonable fee by determining the appropriate billable hours expended and setting a reasonable hourly rate, taking account of all case-specific variables. We explained with respect to the latter:
>
> [T]he district court, in exercising its considerable discretion, [should] bear in mind all of the case-specific variables that we and other courts have identified as relevant to the reasonableness of attorney's fees in setting a reasonable hourly rate. The reasonable hourly rate is the rate a paying client would be willing to pay. In determining what rate a paying client would be willing to pay, the district court should consider, among others, the *Johnson* [488 F.2d 714 (5th Cir. 1974)] factors; it should also bear in mind that a reasonable, paying client wishes to spend the minimum necessary to litigate the case effectively. The district court should also consider that such an individual might be able to negotiate with his or her attorneys, using their desire to obtain the reputational benefits that might accrue from being associated with

> the case. The district court should then use that reasonable hourly rate to calculate what can properly be termed the "presumptively reasonable fee."
>
> In the wake of *Arbor Hill*, we have consistently applied this method of determining a reasonable hourly rate by considering all pertinent factors, including the *Johnson* factors, and then multiplying that rate by the number of hours reasonably expended to determine the presumptively reasonable fee. It is only after this initial calculation of the presumptively reasonable fee is performed that a district court may, in extraordinary circumstances, adjust the presumptively reasonable fee when it does not adequately take into account a factor that may properly be considered in determining a reasonable fee.

Lilly, 934 F.3d at 229-30 (internal quotation marks and citations omitted).

The Court's task is to make "a conscientious and detailed inquiry into the validity of the representations that a certain number of hours were usefully and reasonably expended." *Lunday v. City of Albany*, 42 F.3d 131, 134 (2d Cir. 1994). At the same time, however, in reviewing a fee application, "trial courts need not, and indeed should not, become green-eyeshade accountants." *Fox*, 563 U.S. at 838. "The essential goal in shifting fees (to either party) is to do rough justice, not to achieve auditing

perfection." *Id.* "[T]he fee applicant bears the burden of establishing entitlement to an award, and documenting the appropriate hours expended and hourly rates." *Hensley*, 461 U.S. at 437; *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *7. The fee applicant must "establish his hourly rate with satisfactory evidence—in addition to the attorney's own affidavits." *Chambless*, 885 F.2d at 1059 (internal quotation marks and citation omitted). Where the fee applicant presents no evidence to support the timekeeper's relevant qualifications, "courts typically award fees at the bottom of the customary fee range." *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *7 (citing cases).

II. Application of the Standards

Plaintiff seeks attorneys' fees of $63,720 consisting of $45,312.50 for the administrative phase of the matter and $18,407.50 for the federal component of the matter. Dkt. No. 15 ¶ 132. It arrives at those figures by asking the court to calculate a reasonable attorneys fee for Andrew Cuddy, Jason Sterne, Michael Cuddy, and Nina Aasen of $550 an hour, Kevin Mendillo at $450 an hour, Justin Coretti and Kenneth Bush at $425 an hour, Benjamin Kopp at $400 an hour, Erin Murray at $375 an hour, and the paralegals at $225 an hour. *Id.* It claims 115.8 hours of work on the administrative phase, with 96.8 of those hours billed by attorneys. *Id.* It claims 50.6 hours at the federal court level, with 43.2 of those hours billed by attorneys. *Id.* Plaintiff claims a total of costs of $876.95. *Id.*

Defendant argues that the reasonable hourly rates for Nina Aasen, Andrew Cuddy, Michael Cuddy, and Jason

Sterne is no more than $360 an hour, Dkt. No. 23 at 10; the reasonable hourly rate for Justin Coretti, Benjamin Kopp, Kenneth Bush, Kevin Mendillo, and Erin Murray is no more than $200 an hour, *id.* at 11; and the reasonable hourly rate for the paralegal staff is no more than $100 an hour for less experienced paralegals and between $125 an hour and $150 an hour for more experienced paralegals, *id.* at 11-12. It also argues that the hours for the administrative hearing phase of 115 hours of work (with 96 hours billed by attorneys) is excessive and the hours billed for the federal action should be reduced by 50%, *id.* at 19.

Andrew Cuddy has been employed in CLF's law firm since 1996, Michael J. Cuddy since 2009, Kevin Mendillo since 2014, Justin Coretti since 2015, Benjamin Kopp since 2018, Erin Murray since 2020, and Kenneth L. Bush was employed from February 2016 through January 2019. Dkt. No. 15 ¶¶ 100, 102. Benjamin Kopp is currently a fifth-year associate, having been admitted to the practice of law in the State of New York in 2016 and having practiced for two years at a general litigation firm for two years prior to joining CLF. Dkt. No. 16 ¶¶ 28-29. Erin Murray is a 2019 law school graduate who was admitted to the practice of law in New York in 2020 and who had experience advocating for children and children's education needs while working for the Children's Home Society of Florida prior to entering law school. Dkt No. 17 ¶¶ 20-24.

The Court has reviewed the billing records for the administrative phase in detail. It concludes that Andrew Cuddy and Nina Aasen's time should be billed at $420 an hour, Jason Sterne and Michael Cuddy's time at $400 an

hour, Justin Coretti's time at $300 an hour, and Benjamin Kopp and Kenneth Bush's time at $250 an hour. With respect to the paralegals, and consistent with the Court's prior opinions, it will award fees to counsel at a rate of $125 an hour for the time of Shobna Cuddy and Sarah Woodard and $100 an hour for the other paralegals. The Court also concludes that Kenneth Bush's time should be reduced by one-quarter because he billed more than a reasonable number of hours to the case. Even crediting that review of the records and the law would have been required prior to finalizing that document, the number of hours is excessive and should be reduced by one-quarter. The time billed by the other paralegals and attorneys is reasonable.

Accordingly, for the administrative phase, the Court will award $24,455 for attorney time and $1,995 for the time of the paralegals for a total of $26,450 in fees. The Court will also award $474.95 for costs.[3] The total award for the administrative phase is $26,924.95.

For the federal litigation component, the Court will use the same billing rate for Andrew Cuddy, Benjamin Kopp, and Shobna Cuddy. For Kevin Mendillo, the appropriate billing rate is $300 an hour and, for Erin Murray, it is $225 an hour. For the paralegals other than Shobna Cuddy, the appropriate rate is $100 an hour. The Court will reduce the total fees for the federal litigation component by one-quarter to reflect work done on implementation by

3. A district court may award reasonable costs to the prevailing party in IDEA cases. *See* 20 U.S.C. § 1415(i)(3)(B).

attorneys that, from the billing records, could have been done by paralegals, and for excessive time reviewing the file. Before any percentage reduction, the award for attorney time would be $10,316.50. The award for paralegal time would be $777.50. Before reduction, the total fees are $11,094. With the reduction by one-quarter, Plaintiff is entitled to fees of $8,320.50 for the federal component. Plaintiff is also entitled to the $402 for costs for a total of $8,722.50. The total award is $35,647.45.

The Court's calculation of a reasonable attorneys' fee is consistent with that which the Court has calculated in prior litigation but also takes into account the *Johnson* factors and the time value of money (or, more precisely, awards fees at current rates). In *M.H. v. N.Y.C. Dep't of Educ.*, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *13-15 (S.D.N.Y. Oct. 13, 2021), the Court concluded that fees should be calculated at the following rates for work done during the approximate time period 2017-2018: $420 an hour for Nina Aasen, Andrew Cuddy, and Jason Sterne, $280 an hour for Justin Coretti and Kevin Mendillo, $200 an hour for Benjamin Kopp, $125 an hour for experienced paralegals, and $100 an hour for paralegals without extensive experience. In *A.G. v. N.Y.C. Dep't of Educ.*, 2021 U.S. Dist. LEXIS 201748, 2021 WL 4896227, at *6 (S.D.N.Y. Oct. 19, 2021), the Court considered work done in the 2018-2019 time period. The Court awarded $420 for Andrew Cuddy, $400 for Jason Sterne, $300 for Justin Coretti and Kevin Mendillo, $200 for a junior attorney, $125 for experienced paralegals, and $100 for other paralegals and non-lawyers. *Id.* 2021 U.S. Dist. LEXIS 201748, [WL] at *7-8.

The Court recognizes that the rate it is using for Benjamin Kopp and Kenneth Bush is higher than the $200 an hour it used for Benjamin Kopp in *M.H.* The increase reflects the greater experience the lawyers had by the time they performed the work in this case, the fact that—especially for the work of Benjamin Kopp—the work was of greater complexity involving a complicated statute-of-limitations issue and disputed issues regarding compensatory relief, and that Plaintiff achieved substantial success. Those factors also justify the greater rate for Kenneth Bush than that used for Benjamin Kopp in the *M.H.* case. As to Erin Murray, the award recognizes both the success in this case and that she had substantial experience advocating for children before entering law school.

The rates also reflect consideration of the *Johnson* factors. The rates are lower than the rates charged by CLF to paying clients but, taking into account the matriculation of counsel (as counsel becomes more senior) and the date of the award, it is comparable to awards in similar cases. The time and labor required was modest as was the novelty and difficulty of the questions (save, perhaps, for the statute-of-limitations question addressed by attorney Benjamin Kopp). The case involved a short, single-day hearing with two witnesses where counsel examined live only one witness. Moreover, Defendant conceded liability at the due process hearing. In that respect, the case is comparable to *M.D. v. N.Y.C. Dep't of Educ.*, 2018 U.S. Dist. LEXIS 156923, 2018 WL 4386086, at *3 (S.D.N.Y. Sept. 14, 2018), where liability was "essentially uncontested." Higher rates might be appropriate in a case of greater complexity or

difficulty or where more time was required and thus more risk taken on. There is nothing about the other *Johnson* factors that makes this case exceptional.

The award does not accept in full the argument of either side. Plaintiff seeks a far larger award; Defendant asks the Court to grant far less in fees. The Court does not accept the arguments of either side.

Plaintiff submits an expert report of Steven Tasher ("Tasher") that finds the hours billed are reasonable in light of the skills required to litigate the cases, the importance of the rights being enforced, the required workload, and the results obtained. Dkt. No. 19 ¶ 30. The report also relies on fifteen engagement letters and corresponding invoices CLF has entered into with private clients from 2015 to 2021. It also relies on rates charged by three law firms—Milbank, LLP (which was counsel in *LV v N.Y.C. Dep't of Educ.*, 700 F. Supp. 2d 510, 519 (S.D.N.Y. 2010)), Shipman & Goodwin (which represents school districts), and Riker Danzig Scherer Hyland & Perretti LLP (which has represented boards of education). Tasher also relies on an engagement letter that the New York City Law Department entered with counsel to handle certain Department of Education cases that provides rates of $400 per hour for partner and $300 per hour for associates, as well as on the Laffey matrix used in the District Court for the District of Columbia to calculate fees for complex federal litigation. Dkt. No. 19 ¶¶ 119, 125-134.

Plaintiff's arguments are of limited weight. Tasher's conclusion that the rates proposed by CLF are reasonable

offers advice on an ultimate issue before the Court and thus is not admissible. *See Hygh v. Jacobs*, 961 F.2d 359, 363-64 (2d Cir. 1992). Moreover, to the extent that Tasher's declaration does more than put factual evidence of fees charged before the Court and purport to express an opinion either on the reasonableness of rates or the reasonableness of hours, Tasher has not demonstrated he has any particular expertise on the issue of IDEA litigation and that opinion would be of limited weight. The underlying facts Tasher relies on do not support that CLF's requested rates are reasonable. CLF's engagement letters are relevant to the *Johnson* factor regarding the firm's customary rate, but—assuming that they established a customary rate—that is only one of the *Johnson* factors. The question before the Court is not whether CLF has been able to extract higher fees from paying clients than that which the Court has approved here but whether the fees it charges are the prevailing rates in the community. *See M.H.*, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *7. "The reasonable hourly rate is the rate a paying client would be willing to pay 'bearing in mind that a reasonable, paying client wishes to spend the minimum necessary to litigate the case effectively.'" *Ortiz*, 843 F. App'x at 359 (quoting *Lilly*, 934 F.3d at 228). The fact that certain clients might have agreed at a point in the past that CLF should be paid at a particular rate does not establish that rate is reasonable. *M.H.*, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *11. "On a fee-shifting application . . ., the governing test of reasonableness is objective; it is not dictated by a particular client's subjective desires or tolerance for spending." *Beastie Boys v. Monster Energy Co.*, 112 F.

Supp. 3d 31, 52 (S.D.N.Y. 2015). As to the three law firms Tasher mentions, the evidence before the Court fails to establish the work that they did was comparable to the work CLF was required to do in this case.

Finally, the evidence of fees sought in other cases is of limited weight "because the . . . evidence either does not substantiate such rates were actually paid (versus claimed), or where rates are asserted to have been actually paid, does not provide relevant context for such rates billed." *S.J. v. N.Y.C. Dep't of Educ.*, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *3 (S.D.N.Y. Jan. 12, 2021); *see also C.B.*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *5 (explaining that district courts "have decided not to rely too heavily [on such] affidavits, since they may only provide isolated examples of billing rates of a few lawyers, may leave out context that rationalizes the rates billed, and may even list rates that are not in practice ever paid by reasonable, paying clients"). Plaintiff asserts that the range found with the filed declarations supports a rate for support staff of $140 to $300 per hour, for junior associate a range of $285 to $600 per hour, for senior associates a range of $375 to $450 an hour, and for firm owners and partners a range of $500 to $1400 per hour. Dkt. No. 20 at 13-14. But the fact that counsel might seek an award at those rates and might also state that it believes the rates to be reasonable does not establish the rates are those that prevail in the community or are reasonable given the facts and risks involved in this case.

For its part, Defendant relies exclusively on fees awarded in other IDEA cases. That approach too is

unacceptable. It suffers from the flaw of circularity: if the only factor a court considered in determining whether a rate was reasonable was whether another court considered that rate to be reasonable then no court would ever have to ask what the reasonable rate was in the community. The only rate that would be reasonable would be one that was approved in the past, no matter how removed and distant that rate was from the rate able to be commanded by a lawyer performing comparable work in the community. The Defendant's approach impermissibly relies on only one *Johnson* factor—"awards in similar cases"—to the exclusion of the eleven other *Johnson* factors. The approach of "[r]ecycling rates awarded in prior cases without considering whether they continue to prevail may create disparity between compensation available under the fee-shifting statute and compensation available in the marketplace." *Farbotko v. Clinton Cty. of New York*, 433 F.3d 204, 209 (2d Cir. 2005). The approach defeats the objective of the fee-shifting feature of the IDEA to "'attract competent counsel' to a field where many plaintiffs with meritorious cases could not afford to pay such counsel themselves." *G.T.*, 2020 U.S. Dist. LEXIS 25557, 2020 WL 1516403, at *10 (quoting *Simmons*, 575 F.3d at 176). It also "runs the risk of freezing fee awards in place," *M.H.*, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *12, preventing courts from ever increasing the fee award based on marketplace changes for the simple, and improper, reason that the increased rate is different from an earlier rate.

Thus, the Court will apply a case-specific approach to this case, consulting awards in similar cases but not

following them blindly. The length and risk of the case, its complexity, the time when the work was performed and the seniority of the lawyers performing the work, the rates prevailing today, and the other *Johnson* factors also are relevant.

Plaintiff next argues that no reduction of fees is appropriate because Defendant protected the litigation and acted unreasonably in all proceedings. Dkt. No. 20 at 7-8. Plaintiff points, in particular, to the fact that Defendant chose to cross-examine Plaintiff witness LaFata rather than indicate in advance to Plaintiff the topics of the cross-examination so that LaFata's presumed answers could be included in an affidavit and a hearing avoided. *Id.* As a result of Defendant's choice to examine LaFata in person and of LaFata's unavailability on the date originally scheduled for the hearing, a second day had to be scheduled. *Id.*

The evidence fails to establish that Defendant unreasonably protracted the proceedings. Any party in a due process hearing has the right to present its own witnesses and to examine the witnesses for the other side. *See* 20 U.S.C. § 1415(h), (h)(2) (providing that "[a]ny party to a [due process] hearing . . . shall be accorded . . . the right to present evidence and confront, cross-examine, and compel the attendance of witnesses"). LaFata's testimony went to one of the central issues; the availability and amount of compensatory education. Defendant was not required to waive its rights to a cross-examination or to forecast its examination to Plaintiff in advance. Any "protraction" of the proceedings, moreover, was as

a result of LaFata's unavailability and not as a result of any unreasonable actions by Defendant. *See A.G.*, 2021 U.S. Dist. LEXIS 201748, 2021 WL 4896227, at *10 (evidence does not establish that Defendant engaged in unreasonable protraction); *M.H.*, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *25 (expressing doubt that Department's actions prolonged the proceedings); *S.J.*, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *5 (finding that Department did not unreasonably protract the proceedings).

In any event, even if the State or a local educational agency unreasonably protracted the final resolution of the matter, Plaintiff would not be entitled to more than its reasonable attorneys' fees. *A.G.*, 2021 U.S. Dist. LEXIS 201748, 2021 WL 4896227, at *10; *M.H.*, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *25 (citing cases). The defendant's delay might inform whether particular hours were reasonably necessary. It would not, however, entitle counsel to be paid at a rate exceeding that prevailing in the community.

Finally, Plaintiff is not entitled to pre-judgment interest, *see M.H.*, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *30-31, but is entitled to post-judgment interest, *see A.G.*, 2021 U.S. Dist. LEXIS 201748, 2021 WL 4896227, at *11.

Appendix J

CONCLUSION

For the reasons stated, Plaintiff's motion is GRANTED IN PART and DENIED IN PART, and Plaintiff is awarded $35,647.45 in attorneys' fees and costs, plus post-judgment interest at the applicable statutory rate.

The Clerk of Court is respectfully directed to close Dkt. No. 13 and to close the case.

SO ORDERED.

Dated: January 26, 2022
New York, New York

/s/ Lewis J. Liman
LEWIS J. LIMAN
United States District Judge

APPENDIX K — D.P. OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED JANUARY 10, 2022

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

21 Civ. 27 (KPF)

D.P., INDIVIDUALLY AND ON BEHALF OF S.P., A CHILD WITH A DISABILITY,

Plaintiff,

-v.-

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant.

January 10, 2022, Decided;
January 10, 2022, Filed

OPINION AND ORDER

KATHERINE POLK FAILLA, District Judge:

Plaintiff D.P., individually and on behalf of S.P., a child with a disability, brings this action pursuant to a provision of the Individuals with Disabilities Education Act (the "IDEA") that allows courts to award attorneys' fees and costs, and pursuant to 42 U.S.C. § 1983, seeking equitable relief. Pending before the Court now is Plaintiff's motion for summary judgment, seeking attorneys' fees and costs

for work performed by Plaintiff's counsel, the Cuddy Law Firm ("CLF"). As set forth in the remainder of this Opinion, Plaintiff's motion is granted in part and denied in part.

BACKGROUND [1]

A. The Parties and the Administrative Proceedings

S.P. is a child with a disability as defined by the IDEA, 20 U.S.C. § 1401(3)(A) (Pl. 56.1 ¶¶ 4, 8), and D.P. is S.P.'s

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1. The facts set forth in this Opinion are drawn from the parties' submissions in connection with Plaintiff's summary judgment motion, including Plaintiff's statement of undisputed material facts pursuant to S.D.N.Y. Local Civil Rule 56.1 ("Pl. 56.1" (Dkt. #14)), and Defendant's Rule 56.1 counterstatement ("Def. 56.1" (Dkt. #21)). The Court also draws from various declarations submitted by the parties and their exhibits, which declarations are cited using the convention "[Name] Decl." or "[Name] Reply Decl."

> Citations to a party's Rule 56.1 statement incorporate by reference the documents cited therein. *See* Local Civil Rule 56.1(d).
>
> For ease of reference, the Court refers to Plaintiff's opening brief as "Pl. Br." (Dkt. #18); Defendant's opposition brief as "Def. Opp." (Dkt. #20); and Plaintiff's reply brief as "Def. Reply" (Dkt. #22).
>
> The Court pauses here to observe that Plaintiff offers extensive legal and factual arguments (and not merely exhibits) in the declarations of her attorneys. (*See, e.g.*, Dkt. #15 (Cuddy Decl.), 16 (Kopp Decl.), 17 (Murray Decl.), 23 (Cuddy Reply Decl.)). The Court sees these documents for what they are, *i.e.*, poorly-disguised efforts to circumvent the page limits set by the Federal Rules of Civil Procedure. Plaintiff's counsel is warned that the Court will not countenance similar gamesmanship in future cases.

parent (*id.* at ¶ 5). Defendant New York City Department of Education ("Defendant" or "DOE") is a local educational agency as defined by the IDEA, 20 U.S.C. § 1401(19). (*Id.* at ¶ 6).

The timeline of the administrative proceedings is detailed in Plaintiff's opening memorandum (*see* Pl. Br. 2-5), and is generally not disputed by Defendant. In or about August 2018, Plaintiff consulted with, and subsequently retained, CLF to represent her regarding the educational needs of S.P. (Cuddy Decl., Ex. A). On January 29, 2019, CLF filed an 11-page due process complaint on Plaintiff's behalf, alleging a denial by Defendant of a free appropriate public education ("FAPE") to S.P. during the 2017-2018 and 2018-2019 school years and alleging numerous IDEA violations by Defendant that contributed to that denial. (*Id.* at ¶¶ 158-159 & Ex. I). After abortive settlement efforts (*see id.* at ¶¶ 164-167), the parties participated in a due process hearing before an impartial hearing officer (the "IHO") on October 9, 2019, during which Plaintiff introduced 28 exhibits and presented testimony from three witnesses, and Defendant introduced 14 exhibits and called no witnesses (*id.* at ¶¶ 172-176). The IHO described the respective positions of the parties as follows:

> At the hearing table ... [Plaintiff] withdrew their claims with respect to compensatory remedy for the 2017-18 year, and they presented no witnesses and made no argument in support of such a claim (and so, the record would not support recovery against such a claim). The district acknowledges that the student did not receive a program or services pursuant to its

> June 11, 2018 [program]. As a result, it makes no challenge to the related services claim for the summer 2018 that was not received mandate [*sic*] (as well as the first four weeks of 2018-19's 10-month school year during which the student was not receiving services and was not in school)[.]

(*Id.*, Ex. A at 60).

On October 10, 2019, the IHO issued a 41-page Findings of Fact and Decision ("FOFD"), concluding that Defendant had denied S.P. a FAPE for the 2018-2019 school year and awarding relief that included placement of S.P. at the private school identified unilaterally by D.P.; reimbursement of D.P. for any out-of-pocket expenses for that placement; direct payment by Defendant of the remaining school and service expenses for S.P.; and compensatory services to include counseling, occupational therapy, and speech-language therapy. (*Id.* at ¶¶ 50-54, 177-179; *see generally* Cuddy Decl., Ex. A at 58-99). The first 36 or so pages of the IHO's decision addressed general IDEA principles not specific to the facts of this case. However, when the IHO did turn to the procedural history of this case, he criticized DOE for the position taken at the due process hearing: "The district has failed to make an affirmative showing of any sort with respect to its burden for the challenged year, without conceding the case as a whole, a notion that is, at best, problematic." (*Id.* at 93).[2]

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2. The IHO further observed that:

> The scales of justice can't be balanced when the decision-maker is presented with only one pan. The district does itself a disservice when it concedes ["]Prong 1" [*i.e.*,

Defendant did not appeal from the IHO's decision. (Cuddy Decl. ¶ 55). However, there remained the issue of implementation of the IHO's decision. According to Plaintiff's counsel, counsel was deeply involved in these efforts, which spanned the time frame of the decision's issuance on October 10, 2019, through July 2021. (*Id.* at ¶ 181).

B. The Federal Proceedings

On July 21, 2020, Plaintiff, through counsel, submitted a demand for attorneys' fees to Defendant's Office of Legal Services. (Pl. 56.1 ¶ 16; Cuddy Decl. ¶¶ 84-87). When no substantive response was received, Plaintiff filed the instant action, seeking attorneys' fees and costs, as well as

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> whether the student's individualized education program, or "IEP," was developed according to IDEA's procedural and substantive requirements] because it renders the decision-maker unable to assess the reasonableness of the family's decision to reject the district's offer and seek self-help instead. The failure to offer free appropriate public education in the least restrictive environment is not an on/off switch, amenable to only two positions. It is, rather, a variable continuum of falling short, ranging from a near[-]miss all the way down to no offer at all. Because these cases are not about reimbursement as an end in itself, but about the parties' capacity to work together in a manner contemplated by the law that has created the entitlements to free appropriate public education and least restrictive environment, when the district concedes Prong 1 and declines to present any case at all about its efforts to serve the child, it forces the decisionmaker to view those efforts in the starkest possible terms: as though they simply did not exist.

(Cuddy Decl., Ex. A at 95)

reimbursement of $500 in out-of-pocket tuition expenses incurred by Plaintiff. (Dkt. #1; Cuddy Decl. ¶ 86).

Plaintiff consented to an extension of time for Defendant to respond, and provided information relevant to the fee demand. (Murray Decl. ¶¶ 7-10). The parties then agreed that additional discovery would not be necessary and, when no settlement offer emerged from Defendant, proceeded to motion practice on Plaintiff's request for attorneys' fees and costs. (*Id.* at ¶¶ 11-16). Plaintiff's opening memorandum and supporting declarations and materials were filed on July 30, 2021. (Dkt. #13-18).[3] Defendant's submissions in opposition were filed on August 20, 2021. (Dkt. #20-21). Plaintiff's reply submissions were filed on August 30, 2021. (Dkt. #22-23).

APPLICABLE LAW

A. Applicable Law

1. Motions for Summary Judgment Under Fed. R. Civ. P. 56

Pursuant to Federal Rule of Civil Procedure 56, "[a] party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense

3. By letter dated August 6, 2021, Plaintiff's counsel advised the Court that the one remaining issue concerning the implementation of the IHO's decision — the reimbursement of $500 in tuition expenses incurred by D.P. — had been resolved. (Dkt. #19 ("Therefore, Plaintiff's claim for implementation of relief awarded to Plaintiff as a result of the administrative proceeding is resolved and Plaintiff is solely seeking attorneys' fees incurred in the administrative proceeding as well as this instant federal action.")).

— on which summary judgment is sought." Fed. R. Civ. P. 56(a). A "court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Id.; see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).[4] A genuine dispute exists where "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Fireman's Fund Ins. Co. v. Great Am. Ins. Co. of N.Y.*, 822 F.3d 620, 631 n.12 (2d Cir. 2016) (internal quotation marks and citation omitted). A fact is "material" if it "might affect the outcome of the suit under the governing law[.]" *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

While the moving party "bears the initial burden of demonstrating 'the absence of a genuine issue of material fact,'" *ICC Chem. Corp. v. Nordic Tankers Trading a/s*, 186 F. Supp. 3d 296, 301 (S.D.N.Y. 2016) (quoting *Celotex*, 477 U.S. at 323), the party opposing summary judgment "must do more than simply show that there is some metaphysical doubt as to the material facts," *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574,

4. The 2010 Amendments to the Federal Rules of Civil Procedure revised the summary judgment standard from a genuine "issue" of material fact to a genuine "dispute" of material fact. *See* Fed. R. Civ. P. 56, advisory comm. notes (2010 Amendments) (noting that the amendment to "[s]ubdivision (a) ... chang[es] only one word — genuine 'issue' becomes genuine 'dispute.' 'Dispute' better reflects the focus of a summary-judgment determination."). The Court uses the post-amendment standard, but continues to be guided by pre-amendment Supreme Court and Second Circuit precedent that refer to "genuine issues of material fact."

586, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986); *accord Brown v. Henderson*, 257 F.3d 246, 252 (2d Cir. 2001). Rather, the non-moving party "must set forth specific facts showing that there is a genuine issue for trial." *Parks Real Est. Purchasing Grp. v. St. Paul Fire & Marine Ins. Co.*, 472 F.3d 33, 41 (2d Cir. 2006) (quoting Fed. R. Civ. P. 56(e)).

2. Attorneys' Fees Under the IDEA [5]

a. The Purpose of the Fee-Shifting Provision

"The IDEA aims 'to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs.'" *A.R. ex rel. R.V. v. N.Y.C. Dep't of Educ.*, 407 F.3d 65, 72 (2d Cir. 2005) (quoting 20 U.S.C. § 1400(d)(1)(A)). To that

5. This Court is indebted to its colleagues for recent analyses in this area undertaken by Judge Lewis J. Liman in *A.G. v. N.Y.C. Dep't of Educ.*, No. 20 Civ. 7577 (LJL), 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031 (S.D.N.Y. Oct. 13, 2021), and *M.H. v. N.Y.C. Dep't of Educ.*, No. 20 Civ. 1923 (LJL), 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031 (S.D.N.Y. Oct. 13, 2021); Judge Ronnie Abrams in *V.W. v. N.Y.C. Dep't of Educ.*, No. 20 Civ. 2376 (RA), 2022 U.S. Dist. LEXIS 1289, 2022 WL 37052 (S.D.N.Y. Jan. 4, 2022), and *J.R. v. N.Y.C. Dep't of Educ.*, No. 19 Civ. 11783 (RA), 2021 U.S. Dist. LEXIS 146057, 2021 WL 3406370 (S.D.N.Y. Aug. 4, 2021); Judge Lorna G. Schofield in *M.D. v. N.Y. Dep't of Educ.*, No. 20 Civ. 6060 (LGS), 2021 U.S. Dist. LEXIS 132930, 2021 WL 3030053, at *3 (S.D.N.Y. July 16, 2021); Judge James L. Cott in *H.C. v. N.Y.C. Dep't of Educ.*, No. 20 Civ. 844 (JLC), 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195 (S.D.N.Y. June 17, 2021); and Judge Stewart D. Aaron in *A.B. v. N.Y.C. Dep't of Educ.*, No. 20 Civ. 3129 (SDA), 2021 U.S. Dist. LEXIS 47573, 2021 WL 951928 (S.D.N.Y. Mar. 13, 2021).

end, the statute provides that "the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing party who is the parent of a child with a disability." 20 U.S.C. § 1415(i)(3)(B)(i). The fees awarded "shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded[.]" *Id.* § 1415(i)(3)(C).

The construct of a "reasonable attorney's fee" has been developed across multiple civil rights fee-shifting statutes. *See A.R.*, 407 F.3d at 75 ("[W]e 'interpret the IDEA fee provisions in consonance with those of other fee-shifting statutes.'" (quoting *I.B. ex rel. Z.B. v. N.Y.C. Dep't of Educ.*, 336 F.3d 79, 80, 63 Fed. Appx. 21 (2d Cir. 2003) (per curiam))); *see also S.N. ex rel. J.N. v. Pittsford Cent. Sch. Dist.*, 448 F.3d 601, 604 (2d Cir. 2006); *see generally Lilly v. City of New York*, 934 F.3d 222, 227-32 (2d Cir. 2019) (discussing the history of fee-shifting jurisprudence). At its core, allowing attorneys' fees in a civil rights action "ensure[s] effective access to the judicial process for persons with civil rights grievances." *Hensley v. Eckerhart*, 461 U.S. 424, 429, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983). "When a plaintiff succeeds in remedying a civil rights violation, ... he serves 'as a "private attorney general," vindicating a policy that Congress considered of the highest priority.'" *Fox v. Vice*, 563 U.S. 826, 833, 131 S. Ct. 2205, 180 L. Ed. 2d 45 (2011) (quoting *Newman v. Piggie Park Enterps., Inc.*, 390 U.S. 400, 402, 88 S. Ct. 964, 19 L. Ed. 2d 1263 (1968) (per curiam)). "[T]he fee-shifting feature of the IDEA — including the authority to award

reasonable fees for the fee application itself — plays an important role in 'attract[ing] competent counsel' to a field where many plaintiffs with meritorious cases could not afford to pay such counsel themselves." *G.T. v. N.Y.C. Dep't of Educ.*, No. 18 Civ. 11262 (GBD) (BCM), 2020 U.S. Dist. LEXIS 25557, 2020 WL 1516403, at *10 (S.D.N.Y. Feb. 12, 2020) (quoting *Simmons v. N.Y.C. Transit Auth.*, 575 F.3d 170, 176 (2d Cir. 2009)), *report and recommendation adopted*, No. 18 Civ. 11262 (GBD) (BCM), 2020 U.S. Dist. LEXIS 55420, 2020 WL 1503508 (S.D.N.Y. Mar. 30, 2020).

b. Determining a "Presumptively Reasonable Fee"

Attorneys' fees are typically awarded by determining the "'presumptively reasonable fee,'" often (if imprecisely) referred to as the "lodestar." *Millea v. Metro-North R.R. Co.*, 658 F.3d 154, 166 (2d Cir. 2011) (quoting *Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cnty. of Albany*, 522 F.3d 182, 183 (2d Cir. 2008)); *see also Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552-53, 130 S. Ct. 1662, 176 L. Ed. 2d 494 (2010). This fee is calculated by multiplying the "reasonable hourly rate and the reasonable number of hours required by the case." *Millea*, 658 F.3d at 166. Courts may, only after the initial calculation of the presumptively reasonable fee, adjust the total when it "does not adequately take into account a factor that may properly be considered in determining a reasonable fee." *Lilly*, 934 F.3d at 230 (quoting *Millea*, 658 F.3d at 167). A district court possesses considerable discretion in awarding attorneys' fees. *See Millea*, 658 F.3d at 166; *see also Arbor Hill*, 522 F.3d at 190.

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The Second Circuit clarified the process by which a district court determines the reasonable hourly rate in *Lilly v. City of New York*, a case involving a fee-shifting statute:

> [T]he district court, in exercising its considerable discretion, [should] bear in mind *all* of the case-specific variables that we and other courts have identified as relevant to the reasonableness of attorney's fees in setting a reasonable hourly rate. The reasonable hourly rate is the rate a paying client would be willing to pay. In determining what rate a paying client would be willing to pay, the district court should consider, among others, the *Johnson* factors; it should also bear in mind that a reasonable, paying client wishes to spend the minimum necessary to litigate the case effectively. The district court should also consider that such an individual might be able to negotiate with his or her attorneys, using their desire to obtain the reputational benefits that might accrue from being associated with the case. The district court should then use that reasonable hourly rate to calculate what can properly be termed the "presumptively reasonable fee."

Lilly, 934 F.3d at 230 (quoting *Arbor Hill*, 522 F.3d at 190).[6] In this setting, "the district court does not play

6. The twelve factors enumerated in *Johnson* are: (i) the time and labor required; (ii) the novelty and difficulty of the questions; (iii) the level of skill required to perform the legal service properly; (iv)

the role of an uninformed arbiter but may look to its own familiarity with the case and its experience generally as well as to the evidentiary submissions and arguments of the parties." *Bliven v. Hunt*, 579 F.3d 204, 213 (2d Cir. 2009) (quoting *DiFilippo v. Morizio*, 759 F.2d 231, 236 (2d Cir. 1985)).

"To determine the reasonable hourly rate for each attorney, courts must look to the market rates 'prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.'" *Heng Chan v. Sung Yue Tung Corp.*, No. 03 Civ. 6048 (GEL), 2007 U.S. Dist. LEXIS 33883, 2007 WL 1373118, at *2 (S.D.N.Y. May 8, 2007) (quoting *Gierlinger v. Gleason*, 160 F.3d 858, 882 (2d Cir. 1998)). The Second Circuit's "forum rule" requires courts to "generally use 'the hourly rates employed in the district in which the reviewing court sits' in calculating the presumptively reasonable fee." *Simmons*, 575 F.3d at 174 (quoting *Arbor Hill*, 493 F.3d at 119).

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the preclusion of employment by the attorney due to acceptance of the case; (v) the attorney's customary hourly rate; (vi) whether the fee is fixed or contingent; (vii) the time limitations imposed by the client or the circumstances; (viii) the amount involved in the case and results obtained; (ix) the experience, reputation, and ability of the attorneys; (x) the "undesirability" of the case; (xi) the nature and length of the professional relationship with the client; and (xii) awards in similar cases. *See Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cnty. of Albany*, 522 F.3d 182, 186 n.3 (2d Cir. 2008) (citing *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), *abrogated on other grounds by Blanchard v. Bergeron*, 489 U.S. 87, 109 S. Ct. 939, 103 L. Ed. 2d 67 (1989)).

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When determining the reasonable number of hours, a court must make "a conscientious and detailed inquiry into the validity of the representations that a certain number of hours were usefully and reasonably expended." *Haley* v. *Pataki*, 106 F.3d 478, 484 (2d Cir. 1997) (internal quotation marks and citation omitted). In addition, a court should examine the hours expended by counsel with a view to the value of the work product to the client's case. *See Lunday v. City of Albany*, 42 F.3d 131, 133-34 (2d Cir. 1994) (per curiam). The Court is to exclude "excessive, redundant[,] or otherwise unnecessary hours, as well as hours dedicated to severable unsuccessful claims." *Quaratino v. Tiffany & Co.*, 166 F.3d 422, 425 (2d Cir. 1999).

In determining whether hours are excessive, "the critical inquiry is 'whether, at the time the work was performed, a reasonable attorney would have engaged in similar time expenditures.'" *Samms v. Abrams*, 198 F. Supp. 3d 311, 322 (S.D.N.Y. 2016) (quoting *Grant v. Martinez*, 973 F.2d 96, 99 (2d Cir. 1992)). And where "the billing records are voluminous, it is less important that judges attain exactitude, than that they use their experience with the case, as well as their experience with the practice of law, to assess the reasonableness of the hours spent." *Yea Kim v. 167 Nail Plaza, Inc.*, No. 05 Civ. 8560 (GBD) (GWG), 2009 U.S. Dist. LEXIS 1992, 2009 WL 77876, at *4 (S.D.N.Y. Jan. 12, 2009) (internal quotation marks and citation omitted). A court also retains the discretion to make across-the-board percentage reductions to exclude unreasonable hours, colloquially referred to as "trimming the fat." *See In re*

"Agent Orange" Prod. Liability Litig., 818 F.2d 226, 237 (2d Cir. 1987).

B. Analysis

1. Overview of the Parties' Arguments

The award of attorneys' fees in a fee-shifting case has significance at both the micro and macro levels. The reviewing court makes determinations regarding reasonable hourly rates and reasonable hours expended based on the specific facts of the case before it. However, in making those determinations, the court is informed by analogous decisions from similar cases over which it has presided and from sister courts in the relevant district. Conversely, the resulting award becomes part of a universe of comparable (or distinguishable) decisions to be considered in future cases.

The instant fee petition is significant for other reasons. It exists not merely because of a failure of settlement efforts (which is not uncommon and is not itself a cause for concern by the Court), but because each side has adopted a Manichean view of the IDEA administrative process that all but forecloses the possibility of settlement in most cases. According to Plaintiff's counsel, the blame can be laid squarely at Defendant's door; in or about 2018, DOE simply "began retreating from making reasonable (or, in some instances, any) offers, leaving more and more fee claims unsettled and in need of being first sued and now litigated." (Cuddy Decl. ¶ 31; *see also id.* at ¶¶ 84-97 (outlining unsuccessful efforts at settlement); Pl. Br. 1 n.1

(citing court admonition to DOE in *H.C. v. N.Y.C. Dep't of Educ.*, No. 20 Civ. 844 (JLC), 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at 8 n.8 (S.D.N.Y. June 17, 2021)). Defendant counters that the problem is one of Plaintiff's counsel's making: "[A]s has been found time and again in this District in similar proceedings brought by these and other lawyers in this field, not only are the rates and hours billed by CLF for work on the hearing markedly excessive, but the billing for this federal action is also excessive and should be pared back extensively." (Def. Opp. 1).

The Court has carefully considered both sides' arguments in making its fee determinations, and the fact that this Opinion will satisfy neither side is a sure sign of its correctness. However, the Court observes that there is little utility in the current stalemate between the parties. The continued adherence by Plaintiff's counsel to aspirational hourly rates that no court has awarded will lead only to further opinions significantly discounting those rates. And on that point, this Court has reviewed scores of fee petition decisions from sister courts in this District, including fee petitions in IDEA cases, and it remains unpersuaded by Plaintiff's counsel's claims of fundamental flaws in their analyses. Conversely, DOE can continue playing hardball by refusing to settle attorneys' fee demands from counsel in IDEA cases; however, the fact that courts frequently award attorneys' fees incurred in the resulting fee litigation (*i.e.*, "fees on fees") means, as a practical matter, that the difference between the initial fee demand and the reviewing court's ultimate fee award grows ever smaller once litigation is filed.

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This Court echoes the sentiments of the IHO in this case:

> Over the course of the past several years, however, these hearings have increasingly gotten lawyered-up, and increasingly have focused on technicalities and procedure and legal argument. They have come to be so routinely centered around issues of reimbursement for private school expenditures that both sides now often come to the table believing that the hearing is about money, not a child, about outwitting, rather than working with, the[ ] other side.
>
> One result has been that these decisions have also become far more legalistic — which is fine, even essential, as the law has gotten more complicated and detailed. The problem is not that the parties cannot hope to understand the technical legal jargon and reasoning that have become the driving force of these cases. The problem, rather, is that the voice of the law makes it easy to forget the cry of the child. For all of us participating in this enterprise, even the parents, even, perhaps especially, those who sit in judgment, legalisms undercut collaboration, money trumps education, each side increasingly feels distanced from, rather than drawn back towards, the capacity to work with the other.

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> I ask that we all pause and return our attention to where it most assuredly belongs. This case, then, is *not* about the past. It is *not* about money. It *is* about a child to whom each side in this dispute owes a profound duty of care, and it is about seeking ways to move forward in a manner that assists both sides to exercise that duty, making progress, working together.

(Cuddy Decl., Ex. A at 61-62 (emphases in original)).

2. The Court Awards Reasonable Attorneys' Fees

a. Determining Reasonable Hourly Rates

As presaged by the preceding section, the parties sharply disagree as to the reasonable hourly rates to be applied in this case. In Plaintiff's counsel's briefing, they seek fees for the following legal professionals:

- Nina Aasen, referred to as "lead counsel" in this case, has been licensed to practice law since 1994. CLF seeks an hourly rate of $550 for Ms. Aasen. (Pl. Br. 12).

- Raul Velez, also referred to as "lead counsel," was admitted to the New York Bar in 2019. CLF seeks an hourly rate of $375 for Mr. Velez. (*Id.* at 12).

- Andrew Cuddy, CLF's managing attorney, has litigated hundreds of special education cases over the preceding 20 years. Plaintiff explains that Mr.

Cuddy "contributed significantly to the oversight of billing, negotiations, development of litigation strategy, and the federal component of the case." (*Id.* at 15). CLF seeks an hourly rate of $550 for Mr. Cuddy. (*Id.*).

- Erin Murray, a CLF associate who was admitted to the New York Bar only in 2020, is described as having responsibility for "all aspects of the special education litigation process, including complaints, and negotiations and federal court litigation to implement FOFDs and recover related fees and costs." (*Id.* at 15-16). CLF seeks an hourly rate of $375 for Ms. Murray. (*Id.* at 16).

- CLF also seeks hourly rates of $225 for paralegals Amanda Pinchak, Shobna Cuddy, Burhan Meghezzi, and Cailin O'Donnell. (*Id.* at 15).

Mr. Cuddy's supporting declaration includes additional information regarding the legal experience of these professionals. (*See* Cuddy Decl., Ex. A at 41, 46-49, 52-53, 56; Ex. H). It also includes the billing rates for all of the professionals in CLF's Auburn office (*id.*, Ex. A at 10); the dates of hire and certain background information for professionals in all five of CLF's offices (*id.*, Ex. A at 17-21); and additional background information concerning Ms. Aasen (*id.*, Ex. A at 21-23).

Mr. Cuddy's description of the IHO hearing in his declaration references work performed by Attorneys Aasen and Velez, with assistance from Paralegals

Pinchak, O'Donnell, and Meghezzi. (Cuddy Decl., Ex. A at 23-27). However, Mr. Cuddy's charts of legal professionals who performed work on the administrative and federal components of this case — as well as the corresponding CLF billing records — identify numerous individuals *not* mentioned in the briefing; these individuals (and the hourly rates they seek) include attorneys Benjamin Kopp ($400), Justin Coretti ($425), and Jason Sterne ($550); and paralegals Allison Bunnell, Allyson Green, and Sarah Woodard (all $225). (*Id.*, Ex. A at 28-29).[7]

Unsurprisingly, Defendant DOE mounts a vigorous challenge to the rates sought. Among other things, Defendant argues that: (i) "the hourly rates sought here exceed the rates awarded other attorneys in IDEA fee cases, including fees cases brought by attorneys and firms specializing in this specific practice area" (Def. Opp. 6; *see also id.* at 9); (ii) the work undertaken in this case does not justify the rates sought (*id.* at 7-8); and (iii) CLF's submission of information regarding fee demands in other cases, rates sought by other IDEA attorneys, and responses to Freedom of Information Law ("FOIL") requests is "largely irrelevant" to the Court's inquiry (*id.* at 6 n.3; *see also id.* at 12-13). Defendant argues for hourly rates no greater than $360 for CLF's senior attorneys; $150-200 for CLF's junior attorneys; and $100 for CLF's paralegals. (*Id.* at 10-12).

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7. With Plaintiff's reply memorandum, Mr. Cuddy filed a reply declaration that included updated figures for the federal litigation, and added a new legal professional, ChinaAnn Reeve, about whom no information was provided. (*See* Cuddy Reply Decl., Ex. J). Ms. Reeve's time will not be reimbursed.

Both sides offer impassioned arguments under the *Johnson* factors. (*See, e.g.*, Pl. Br. 11-21; Def. Opp. 6-16). The Court has carefully considered all of these arguments and the *Johnson* factors, and offers several observations. To begin, the Court recognizes that Plaintiff's counsel achieved success for Plaintiff in obtaining the placement of S.P. in a private school for the 2018-2019 school year at Defendant's expense and compensatory related services. (Cuddy Decl., Ex. A at 97-98). No less an authority than the Supreme Court has opined that "[t]he most critical factor in determining a fee award's reasonableness is the degree of success obtained." *Farrar v. Hobby*, 506 U.S. 103, 103, 113 S. Ct. 566, 121 L. Ed. 2d 494 (1992).[8]

The Court also takes seriously the arguments of Plaintiff's counsel concerning the size of the IDEA bar and the attendant stresses on that bar occasioned by fee-shifting litigation. (*See, e.g.*, Pl. Br. 14 ("These difficulties of the smaller special education bar and its attempt to attract newer competent counsel to assist in taking on the number of underserved families, are exacerbated by disparities between rates of counsel with decades of experience — which the bar consistently testifies to already being too low — and counsel who, regardless of their skill level or hours-worked-per-day, have worked for fewer chronological years.")). In consequence, the Court has paid attention to the vintage of other IDEA fee decisions in this District, to ensure that the rates awarded are not out-of-date. That said, having reviewed

8. That portion of relief sought by Plaintiff in the due process complaint but abandoned at the IHO hearing will be addressed by the Court in determining the number of hours reasonably expended.

the materials concerning rates nominally sought by CLF and other law firms in this area (*see generally* Kopp Decl.), this Court agrees with other courts that have ascribed little to no significance to such information. *See, e.g.*, *M.H. v. N.Y.C. Dep't of Educ.*, No. 20 Civ. 1923 (LJL), 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *11 (S.D.N.Y. Oct. 13, 2021) ("The declaration by another attorney in the IDEA area also is of some, albeit limited, value. Accepting the claims in the declaration as true because they are undisputed, at most they show the rates that one attorney believes are reasonable. They do not indicate which, if any, clients 'actually paid the rates they claim to charge' or provide details of any of the cases." (collecting cases)); *S.J. v. N.Y.C. Dep't of Educ.*, No. 20 Civ. 1922 (LGS), 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *3 (S.D.N.Y. Jan. 12, 2021) ("The Court declines to rely on the asserted rates as a starting point in the analysis of a reasonable hourly rate, because the submitted evidence either does not substantiate such rates were actually paid (versus claimed), or where rates are asserted to have been actually paid, does not provide relevant context for such rates billed."), *modified on other grounds*, No. 20 Civ. 1922 (LGS), 2021 U.S. Dist. LEXIS 13366, 2021 WL 536080 (S.D.N.Y. Jan. 25, 2021); *C.D. v. Minisink Valley Cent. Sch. Dist.*, No. 17 Civ. 7632 (PAE), 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *6 (S.D.N.Y. Aug. 9, 2018) ("C.D. has not offered context as to that litigation that enables the Court meaningfully to assess whether the work there was fairly analogous to that here, or whether the rates those attorneys 'bill at' reflect fees actually paid by clients.").[9]

9. The Court also obtained little guidance from the FOIL materials submitted by Plaintiff's counsel. *Cf. M.H.*, 2021 U.S. Dist.

Defendant's arguments are similarly not immune from criticism. For starters, DOE's fixation on prior decisions runs the risk of undermining fee-shifting statutes, a concern noted by the Second Circuit:

> Thus, "a reasonable hourly rate" is not ordinarily ascertained simply by reference to rates awarded in prior cases. ... Recycling rates awarded in prior cases without considering whether they continue to prevail may create disparity between compensation available under § 1988(b) and compensation available in the marketplace. This undermines § 1988(b)'s central purpose of attracting competent counsel to public interest litigation. ... Instead, the equation in the caselaw of a "reasonable hourly fee" with the "prevailing market rate" contemplates a case-specific inquiry into the prevailing market rates for counsel of similar experience and skill to the fee applicant's counsel.

Farbotko v. Clinton Cty. of New York, 433 F.3d 204, 208 (2d Cir. 2005) (internal citations omitted).

Separately, the Court finds that Defendant's repeated claims of a "lightly contested hearing" (*see, e.g.*, Def. Opp.

LEXIS 190419, 2021 WL 4804031, at *11 ("The FOIL requests, which reflect the rates paid to a number of differing attorneys of varying experience lack sufficient context to provide an adequate basis for the Court to make a finding about the proper hourly rate for the attorneys who litigated M.H.'s case.").

1, 8, 10) are not dispositive. In this regard, the Court credits the representations of Plaintiff's counsel that it was unaware of the degree or the details of Defendant's opposition until the IHO hearing itself, and thus had to prepare for what it understood to be a contested proceeding. (Pl. Br. 2-4, 7-8, 13-14; *see generally id.* at 19 ("Judge Aaron's analysis amounts to retrospective reduction of fees based on considerations (e.g. Defendant's decision to present a case at hearing) that are unknown to the plaintiffs at the time the attorney-client relationship is established, and remain unknown until at least after a case is initiated and during the preparation for hearing, [and that] do not change the amount skill necessary to achieve a desirable outcome.")).[10] Even at the hearing, Defendant did not stipulate to any issues, but rather introduced several exhibits into evidence. (Def. Opp. 8). Having not advised Plaintiff's counsel of the precise nature of its opposition, and having refused to stipulate to any issues prior to the hearing — even after the matter was adjourned for six weeks because of a last-minute recusal of the IHO — Defendant is on the hook for the reasonable costs of preparing for that hearing. *See, e.g.*, *H.C.*, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *6 (awarding top rate of $360 to CLF senior attorneys, in part because "[h]owever (and notwithstanding the DOE's non-committal stance on whether and to what extent it would defend the case), the proceedings were ultimately minimally contested, with the DOE objecting only to

10. The Court also accepts Plaintiff's argument that S.P.'s Fragile X syndrome "ma[de] determining the appropriateness of a special education program for her particularly challenging given how unique her needs are in relation to this condition." (Pl. Reply 7).

one exhibit and declining to offer testimony"); *cf. C.B. v. N.Y.C. Dep't of Educ.*, No. 18 Civ. 7337 (CM), 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *8 (S.D.N.Y. July 2, 2019) ("While the DOE may not have put on the most vigorous defense, and while the case may have been 'relatively straightforward,' 'straightforward' is not a synonym for 'uncontested.'" (internal citation omitted)). That said, the Court recognizes that work performed by Plaintiff's counsel was less (and less complex) than that performed in other cases in this District. *Compare M.H.*, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *2 ("The due process hearing was ultimately held over four separate days from August 7, 2017 to April 18, 2018. Over the course of the hearings, Plaintiff introduced 59 exhibits into evidence and Defendant introduced an additional three exhibits. Defendant presented two witnesses while Plaintiff presented the testimony of five witnesses, including that of M.H."), *with H.C.*, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *1 ("The hearing lasted from 10:38 a.m. until 10:46 a.m.").

The Court has considered the proffered experiences of each of the legal professionals, with a particular focus on the years practicing law in IDEA cases. As noted earlier, it has also carefully considered the evaluations of CLF fee petitions undertaken by sister courts, particularly in 2021. *See supra* n.6. The Court agrees with the analyses of hourly rates that are presented in those decisions, and it incorporates them herein by reference. *See V.W. v. N.Y.C. Dep't of Educ.*, No. 20 Civ. 2376 (RA), 2022 U.S. Dist. LEXIS 1289, 2022 WL 37052, at *3-6 (S.D.N.Y. Jan. 4, 2022); *A.G. v. N.Y.C. Dep't of Educ.*, No. 20 Civ. 7577

(LJL), 2021 U.S. Dist. LEXIS 190419, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *5, 8 (S.D.N.Y. Oct. 13, 2021); *M.H.*, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *9-15; *J.R.*, 2021 U.S. Dist. LEXIS 146057, 2021 WL 3406370, at *3-4; *M.D.*, 2021 U.S. Dist. LEXIS 132930, 2021 WL 3030053, at *2-4; *H.C.*, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *4-7; *S.J.*, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *3-4. Coupling those analyses with its own review of the *Johnson* factors, the Court has determined reasonable hourly rates of $400 for Mr. Cuddy, Mr. Sterne, and Ms. Aasen; $280 for Mr. Coretti; $250 for Mr. Kopp; $180 for Ms. Murray and Mr. Velez; $125 for Ms. Cuddy and Ms. Woodard; and $100 for Ms. Bunnell, Ms. Pinchak, Mr. Meghezzi, Ms. O'Donnell, and Mr. Velez for the brief period of time he worked on this case as a paralegal.

These rates reflect the time period during which the services were performed, but also account for the delay counsel has experienced in being paid. They are likewise consistent with "the time and labor required," "the novelty and difficulty of the questions involved," and "the level of skill required to perform the legal service properly." *Lilly*, 934 F.3d at 228 (quoting *Arbor Hill*, 522 F.3d at 186 n.3). Finally, these rates "reflect that counsel secured the relief Plaintiff requested in the underlying administrative proceeding, which is 'the most critical factor' when determining a fee award." *S.J.*, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *4 (internal citations omitted).

b. Determining Hours Reasonably Expended

The Court now proceeds to determine the reasonable number of hours expended by these legal professionals. To review, in determining a reasonable number of hours, a court "must exclude '[h]ours that are excessive, redundant, or otherwise unnecessary,' allowing only those hours that are 'reasonably expended.'" *Hernandez v. Berlin Newington Assocs., LLC*, 699 F. App'x 96, 97 (2d Cir. 2017) (summary order) (quoting *Kirsch v. Fleet St., Ltd.*, 148 F.3d 149, 172-73 (2d Cir. 1998)); *see also Wise v. Kelly*, 620 F. Supp. 2d 435, 442 (S.D.N.Y. 2008) ("If the court finds that the fee applicant's claim is excessive or insufficiently documented, or that time spent was wasteful or redundant, the court may decrease the award, either by eliminating compensation for unreasonable hours or by making across-the-board percentage cuts in the total hours for which reimbursement is sought." (internal citations omitted)).

In prior fee petitions, this Court has alternated between the use of an across-the-board percentage reduction and the disallowance of certain hours billed. *Compare Gamero v. Koodo Sushi Corp.*, 328 F. Supp. 3d 165, 175 (S.D.N.Y. 2018) (disallowing certain time entries billed), *with Marzullo v. Karmic Release Ltd.*, No. 17 Civ. 7482 (KPF), 2018 U.S. Dist. LEXIS 236626, 2018 WL 10741649, at *3 (S.D.N.Y. Apr. 24, 2018) (imposing across-the-board reduction of 15%). Both are acceptable methods of arriving at a reasonable number of hours. In this case, the Court has determined to consider separately the administrative and litigation components of this case, and impose specific reductions in the hours sought.

Appendix K

i. The Administrative Proceedings

(a) The Hours Sought and the Parties' Arguments

Plaintiff seeks reimbursement for the following hours billed by the following legal professionals to the administrative component of this case:

- Andrew Cuddy (attorney): 2.7
- Benjamin Kopp (attorney): 1.2
- Justin Coretti (attorney): 1.7
- Jason Sterne (attorney): 1.4
- Nina Aasen (lead attorney): 30.8
- Raul Velez (lead attorney): 28.5
- Raul Velez (lead attorney - travel): 10.0 (billed at half the hourly rate for work)
- Allison Bunnell (paralegal): 2.7
- Amanda Pinchak (paralegal): 8.9
- Burhan Meghezzi (paralegal): 1.8
- Cailin O'Donnell (paralegal): 3.4

- Raul Velez (as paralegal): 0.1
- Shobna Cuddy (paralegal): 2.9
- Sarah Woodard (paralegal): 1.2

(Cuddy Decl., Ex. A). In sum, Plaintiff claims 76.3 hours of attorney time and 21.0 hours of paralegal time, for a total of 97.3 hours for the administrative component. Substantiation for this request includes CLF billing records and summaries for the relevant time period. (*Id.*). Mr. Cuddy also advises that, with respect to the administrative component of the case, CLF has imposed discretionary reductions totaling 14.5 hours and $4,880.00.

Defendant argues that Plaintiff's hours should be substantially reduced because they are excessive in light of the hearing that was ultimately held. (*See* Def. Opp. 17 ("Although Plaintiff urges that counsel needed to prepare to present their case and implement the resulting victory — and surely some work was necessary — there is no indication in Plaintiff's papers that Defendant had suggested a level of opposition at any stage of the administrative proceeding making such a volume of work necessary. A more fulsome analysis only shows that the work claimed here was not necessary to achieve the results so readily obtained."). More specifically, Defendant objects to Mr. Velez billing 10 hours of travel time, even at a reduced rate. (*Id.* at 17).

Plaintiff contends that the IDEA statute itself forecloses any reductions to Plaintiff's counsel's billings.

(Pl. Br. 5-9; Pl. Reply 8-9). The IDEA provides that, with a single exception, "the court shall reduce ... the amount of the attorneys' fees awarded under this section" under any one of the following circumstances:

> (i) the parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
>
> (ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
>
> (iii) the time spent and legal services furnished were excessing considering the nature of the action or proceeding; or
>
> (iv) the attorney representing the parent did not provide to the local educational agency the appropriate information in the notice of the complaint described in subsection (b)(7)(A).

20 U.S.C. § 1415(i)(3)(F)(ii)-(iii). That exception — on which Plaintiff's argument is predicated — is that the mandatory reductions in subparagraph F "shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section." *Id.* § 1415(i)(3)(G). Plaintiff

argues that because Defendant unreasonably protracted the final resolution of the action, Section 1415(i)(3)(F) is not triggered and the Court thus should not reduce the requested fees. The Court disagrees.

To be sure, Defendant's conduct increased the work that had to be done by Plaintiff's counsel in connection with the proceedings. Among other things, Defendant failed at the administrative phase to participate in a mandatory resolution session and failed to secure Comptroller approval for the proposed settlement between the parties, thus necessitating the IHO hearing. (Cuddy Decl. ¶¶ 162-163, 167, 171). At the litigation phase, DOE counsel offered no settlement proposals, thus prompting Plaintiff to file the instant motion. (Murray Decl. ¶¶ 12-16). But on the facts of this case, the Court is not willing to say that Defendant "unreasonably protracted" either the administrative or the litigation components of this case. *See S.J.*, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *5 ("[C]onsidering both parties' arguments and their competing version of events that transpired during the administrative proceeding and subsequent federal litigation over fees, the Court does not find that the DOE 'unreasonably protracted' the final resolution of the action."); *see also H.C.*, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *8 ("As an initial matter, the Court finds that any protraction on the DOE's part did not rise to the level of being 'unreasonable.'" (collecting cases)). In any event, even a finding of unreasonable protraction would not permit this Court to jettison the "presumptively reasonable fee" analysis outlined above. *See M.H.*, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *24-25.

The Court's rejection of Plaintiff's argument is not, however, an adoption of Defendant's objections. Defendant's principal objection echoes the one made in the rate-setting context, and the Court resolves the objection similarly. Defendant suggests that Plaintiff's counsel should have foreseen that, even after DOE counsel failed to obtain approval for a settlement offer reached at an earlier stage in the proceedings, DOE would offer only a half-hearted objection to Plaintiff's claims. There is nothing in the record before this Court that would support such foresight. CLF's records indicate that Plaintiff's counsel was not advised until the day before the hearing — which itself had been adjourned six weeks earlier — that Defendant would not be presenting any witnesses. (Cuddy Decl., Ex. A at 23). Even then, "[t]he Defendant did not indicate to Plaintiff prior to the initiation of the hearing whether the Defendant would be presenting a case or conceding to any of the relief Plaintiff requested, requiring the Plaintiff to prepare for a contested hearing." (*Id.* at ¶ 171). And at the actual hearing,

> The Defendant submitted fourteen documentary exhibits into evidence and did not call any witnesses. The Defendant conceded to the denial of FAPE on the record but did not concede to the appropriateness of the unilateral placement nor relief requested by the Plaintiff. The Defendant conducted a cross examination of all Plaintiff's witnesses.

(*Id.* at ¶ 174). At base, Plaintiff's counsel had an obligation to zealously advocate for their client. In the absence of

stipulation to the issues, or earlier and more detailed notice of non-opposition from the defense, Plaintiff's counsel had a professional responsibility to prepare for the hearing.

(b) The Court's Determination of a Reasonable Number of Hours Billed for the Administrative Proceedings

The Court has reviewed CLF's billings for the administrative component of the case, including the intake of the matter; evaluations of an appropriate placement in light of S.P.'s Fragile X condition; preparation of a due process complaint; communications with DOE concerning the case, a proposed settlement, and the hearing; preparation for and attendance at the hearing; review of the IHO's FOFD; and issues of implementation. It accepts CLF's representations that clerical and similarly routine matters were handled in the main by paralegals, and that CLF has already implemented discretionary reductions to the fees it seeks. The billing statements are clear as to the tasks performed and the time allotted thereto by each legal professional. Moreover, the Court does not observe billing conventions that usually prompt across-the-board reductions, such as block-billing, imprecise entries, duplicative entries, billing by senior attorneys for work more appropriately performed by junior attorneys, or billing by attorneys for clerical and administrative tasks. As a result, instead of a percentage reduction, the Court will implement the following specific reductions:

- Mr. Velez's travel time is reduced from 10 hours to 2 hours, in line with numerous cases from this District. *See, e.g.*, *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *10 ("The Court's judgment is that the properly reimbursable travel time here is one hour in each direction."); *cf. K.F. v. N.Y.C. Dep't of Educ.*, No. 10 Civ. 5465 (PKC), 2011 U.S. Dist. LEXIS 88653, 2011 WL 3586142, at *6 (S.D.N.Y. Aug. 10, 2011) (disallowing travel time entirely: "In a hypothetical negotiation with a client who, unlike K.F., would be on the hook for attorney's fees in the event the case were lost, it is doubtful that a reasonable client would retain an Auburn or Ithaca attorney over a New York City attorney if it meant paying New York City rates and an additional five hours in billable time for each trip."), *adhered to as amended*, No. 10 Civ. 5465 (PKC), 2011 U.S. Dist. LEXIS 116665, 2011 WL 4684361 (S.D.N.Y. Oct. 5, 2011).

- Mr. Velez's attorney time is reduced by 9 hours, to account for time spent getting up to speed after he replaced Ms. Aasen; to account for issues abandoned at the IHO hearing; to address several entries of comparatively large amounts of time billed merely to "review of disclosure" in anticipation of the hearing; and, most importantly, because of the Court's concerns regarding Mr. Velez's practice of "billing a plethora of 0.1 hour services for minor tasks of minimal duration." *M.H.*, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *20.

- Mr. Kopp's time is reduced to 0.6 hours, because the research he performed could have been done by a more junior attorney.

- Ms. O'Donnell's time is reduced by 1 hour, because the records do not substantiate why the tasks she performed were performed by Mr. Meghezzi in much less time.

The Court makes no further reductions to the hours sought by Plaintiff's counsel in connection with the administrative proceedings.

ii. The Litigation Proceedings

(a) The Right to Recover "Fees on Fees"

The IDEA gives a prevailing parent the right to recover their reasonable attorneys' fees and costs incurred in a federal court action related to vindicating their rights, including their right to recover attorneys' fees. *See C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *11; *G.T.*, 2020 U.S. Dist. LEXIS 25557, 2020 WL 1516403, at *9 ("a plaintiff may seek 'fees-on-fees' under the IDEA"). "Although '[a] request for attorney's fees should not result in a second major litigation[,]' neither should the threat that counsel will not receive its reasonable fees be a bludgeon that can be used by the losing school district to coerce the parent at the administrative stage to an inadequate settlement or to a compromise of the parent's rights." *M.H.*, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *21 (internal citations omitted). Counsel may

also be entitled to reasonable fees and costs incurred in enforcing the decision of an IHO and a FOFD. *See H.C.*, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *10 (holding that where a complaint is not confined to the issue of attorneys' fees, but also sought equitable relief under 42 U.S.C. § 1983, counsel is entitled to be reasonably compensated for that work).

(b) The Hours Sought and the Parties' Arguments

Plaintiff seeks reimbursement for the following hours billed by the following legal professionals for their work on the instant litigation:

- Andrew Cuddy (attorney): 6.80
- Justin Coretti (attorney): 2.00
- Erin Murray (attorney): 64.00
- Shobna Cuddy (paralegal): 2.80
- Cailin O'Donnell (paralegal):2.60
- ChinaAnn Reeve (paralegal): 1.00

(Cuddy Reply Decl., Ex. J). In sum, Plaintiff claims 72.8 hours of attorney time and 6.40 hours of paralegal time, for a total of 79.20 hours for the litigation component.[11]

11. Mr. Cuddy advises that with respect to the litigation component of the fee petition, CLF has already undertaken discretionary reductions of 5.80 hours and $2,110.00.

Citing Defendant's conduct in both the administrative and litigation components of this case, Plaintiff argues that "Defendant should not be awarded a windfall in fee reductions for its tactics, and Plaintiff should not be penalized for its efforts to ensure S.P. was provided all relief awarded as a result of the impartial hearings." (Pl. Br. 23).

Here, too, Defendant objects. This time, Defendant argues that "[m]uch of the work in prosecuting this federal action has been done with boilerplate. This case does not reinvent the wheel. There was no discovery. Motion practice has not been complex. This is a workaday case." (Def. Opp. 19). In addition, Defendant challenges the incurrence of substantial legal fees in the service of obtaining reimbursement for a $500 outlay by Plaintiff. (*Id.* at 21).

(c) The Court's Determination of a Reasonable Number of Hours Billed for the Litigation Proceedings

Plaintiff's counsel seeks to recover $30,433.51 in attorneys' fees and costs for work in this Court to recover $39,243.19 in attorneys' fees and costs. That is not reasonable. The latitude extended to Plaintiff's counsel in claiming fees for the administrative component of the case cannot be extended to the litigation component. The instant lawsuit was a straightforward claim for attorneys' fees under the IDEA, coupled with a minimal implementation claim. The complaint was 9 pages long.

(Dkt. #1). There was no discovery. (Dkt. #9). There were no extensive settlement discussions. (Murray Decl. ¶¶ 13-16). The law in the area is clear, and the briefing raised neither complex issues nor novel claims. Indeed, much of the briefing was recycled from prior CLF submissions. (*See, e.g.*, *A.G. v. N.Y.C. Dep't of Educ.*, No. 20 Civ. 7577 (LJL), Dkt. #13; *M.D. v. N.Y. Dep't of Educ.*, No. 20 Civ. 6060 (LGS), Dkt. #15; *S.J. v. N.Y.C. Dep't of Educ.*, No. 20 Civ. 1922 (LGS), Dkt. #36; *H.C. v. N.Y.C. Dep't of Educ.*, No. 20 Civ. 844 (JLC), Dkt. #31; *J.R. v. N.Y.C. Dep't of Educ.*, No. 19 Civ. 11783 (RA), Dkt. #22). What is more, a substantial portion of Plaintiff's submissions included extraneous arguments and information that did not impact the Court's decision. A reduction in hours is warranted.

Sister courts in this District have imposed significant reductions in fees on fees sought in IDEA cases. *See, e.g.*, *M.D.*, 2021 U.S. Dist. LEXIS 132930, 2021 WL 3030053, at *6 ("In light of this case's low degree of complexity — Plaintiff filed the complaint, followed by service and summary judgment briefing on the straightforward issues of fees — a reduction of attorney hours by fifty percent achieves rough justice."); *see generally G.T.*, 2020 U.S. Dist. LEXIS 25557, 2020 WL 1516403, at *10 (observing that "most courts in this district limit awards for time spent litigating an IDEA fee application to a fraction — often a small fraction — of the time spent on the underlying administrative proceeding"; noting that some courts award fees on fees of "between 8% and 24% of the award for time spent on the case itself," while others permit awards "up to and even slightly over half of the fees awarded for time spent on the underlying administrative

proceeding" (collecting cases)). This Court will not go as far as those decisions, because it remains the case that (i) Plaintiff was compelled to litigate the attorneys' fees issue in this Court and (ii) even after the litigation was filed, Defendant did not engage in settlement discussions, thereby precipitating the instant motion practice.

Once again, instead of a percentage reduction, the Court will implement the following specific reductions:

- Ms. Murray's time is reduced by 24 hours, to account for excessive time allocated to preparing the complaint and the briefing; excessive time spent on the Cuddy Declaration, which was overrun with marginally relevant and irrelevant information; and circumvention of this Court's page limits.

- Mr. Cuddy's time is reduced by 2 hours, to account for hours allocated to including irrelevant information in his declaration and circumvention of the Court's page limits.

- Ms. Reeve's time is disallowed, because of the absence of information provided concerning her educational and employment experience.

The Court makes no further reductions to the hours sought by Plaintiff's counsel in connection with the instant litigation. *See generally B.B. v. N.Y.C. Dep't of Educ.*, No. 17 Civ. 4255 (VEC) (SDA), 2018 U.S. Dist. LEXIS 38271, 2018 WL 1229732, at *3 (S.D.N.Y. Mar. 8, 2018) (opining that counsel should not have needed more than 40 hours to litigate a standard IDEA fee petition).

c. The Attorneys' Fees Awarded

In light of the above determinations, the Court awards fees to Plaintiff's counsel for the administrative component of the case as follows:

Timekeeper	Reasonable Rate	Reasonable Hours Billed	Amount
A.Cuddy	$400.00	2.7	$1,080.00
Kopp	$250.00	0.6	$150.00
Coretti	$280.00	1.7	$476.00
Sterne	$400.00	1.4	$560.00
Aasen	$400.00	30.8	$12,320.00
Velez (attorney)	$180.00	19.5	$3,510.00
Velez (travel)	$90.00	2.0	$180.00
Bunnell	$100.00	2.7	$270.00
Pinchak	$100.00	8.9	$890.00
Meghezzi	$100.00	1.8	$180.00
O'Donnell	$100.00	2.4	$240.00
Velez (para-legal)	$100.00	0.1	$10.00
S.Cuddy	$125.00	2.9	$362.50
Woodard	$125.00	1.2	$150.00
		Total:	**$20,378.50**

Additionally, the Court awards fees to Plaintiff's counsel for the litigation component of the case as follows:

Appendix K

Timekeeper	Reasonable Rate	Reasonable Hours Billed	Amount
A.Cuddy	$400.00	4.8	$1,920.00
Murray	$180.00	40.0	$7,200.00
Coretti	$280.00	2.0	$560.00
S.Cuddy	$125.00	2.8	$350.00
O'Donnell	$100.00	2.6	$260.00
		Total:	**$10,290.00**

3. The Court Awards Reasonable Costs and Expenses

Plaintiff's counsel seeks $1,961.70 in reimbursement for costs incurred in this case, including $970.50 for copying and printing (at 50¢/page), $402.00 in filing fees, $220.44 for lodging, $292.90 for mileage, $61.46 for meals, $10.00 for faxing (at $2.00/page), $3.40 for postage, and $1.00 for tolls. (Cuddy Decl. ¶ 185 & Ex. A; Cuddy Reply Decl., Ex. J). In a footnote, Defendant acknowledges that the filing fees are recoverable, and says nothing about postage, but seeks reduced rates for the photocopying, printing, and faxing, and disallowance of lodging and travel costs. (Def. Opp. 16 n.5).

A district court may award reasonable costs to the prevailing party in IDEA cases. *See* 20 U.S.C. § 1415(i)(3)(B); *see also Arlington Cent. Sch. Dist. Bd. of Educ.* v. *Murphy*, 548 U.S. 291, 297-98, 126 S. Ct. 2455, 165 L. Ed. 2d 526 (2006) (holding "costs," as used in 20 U.S.C. § 1415(i)(3)(B), to refer to the list set out in 28 U.S.C. § 1920, the statute governing taxation of costs in federal

court); *H.C.*, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *11 ("A district court may award reasonable costs to the prevailing party in IDEA cases.") (quoting *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *12).

The Court approves without further discussion Plaintiff's request for reimbursement of filing fees and postage, totaling $405.40. As for printing and copying, courts in this District generally limit such costs to 10 to 15 cents per page, though the practice is not uniform. *See, e.g.*, *R.G. v. N.Y.C. Dep't of Educ.*, No. 18 Civ. 6851 (VEC), 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *6 (S.D.N.Y. Sept. 26, 2019). Plaintiff proffers support for the rate of 50 cents per page in Exhibit D to the Cuddy Declaration, in the form of fee schedules from the New York Public Library, this Court, and the United States Court of Appeals for the Second Circuit. (Cuddy Decl., Ex. D). Adopting the reasoning of Judge Liman in *M.H.*, this Court will award printing and copying costs at a rate of 20 cents per page, resulting in a printing and photocopying award of $388.20. *M.H.*, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *27. The Court disallows, however, Plaintiff's request for faxing costs; while accepting Plaintiff's explanation that it was Defendant who required that documents be faxed (Cuddy Decl. ¶ 59), the proffered $2.00-per-page fee charged by a retail fax service is not a proper comparable in light of CLF's in-house office equipment. *See S.J.*, 2020 U.S. Dist. LEXIS 194258, 2020 WL 6151112, at *7 ("In addition, the Court declines to award fax charges at $2 per page as such charges are not reasonable.").

That leaves travel expenses. "A prevailing party in IDEA litigation is entitled to recover for costs incurred during reasonable travel." *C.D.*, , 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *13. In *C.D.*, Judge Engelmayer determined:

> For the reasons discussed above in connection with the billing of travel time, it is not reasonable to shift most of the Cuddy Law Firm's travel costs to [defendant]. Having determined that only a one-hour — rather than three and a quarter-hour — trip to the site of the IDEA administrative proceedings is properly compensable, the Court will make a proportionate reduction in mileage costs, which appear largely to have been incurred traveling to and from the Cuddy Law Firm's offices (or the lawyers' homes) and the hearings .... The Court will thus reduce the requested mileage costs by 70%, from $1,721.54 for the administrative phase of the litigation to $516.46.

Id. For similar reasons, he reduced the costs awarded for meals by 70%. *Id.* Finally, Judge Engelmayer court awarded no costs for lodging, because "[a]n attorney who was sited within a reasonable distance of the hearing location could commute daily to the hearings, obviating any need for lodging." *Id.* Using similar logic, this Court will reduce the requested mileage costs by 70% (resulting in a mileage award of $87.87); will allow the requested toll of $1.00; will reduce the meals by 50% (resulting in a meal award of $30.73); and will disallow the requested lodging costs. As a result, the Court awards total costs of **$913.20**.

4. The Court Does Not Award Pre-Judgment Interest

Mr. Cuddy requests "prejudgment interest at the federal reserve's prime rate" in his declaration. (Cuddy Decl. ¶ 28). However, pre-judgment interest is *not* requested in either of Plaintiff's opening or reply briefs. (*See* Pl. Br. 25 ("Based upon the foregoing, this Court should grant Plaintiffs' motion for summary judgment and thereby award attorneys' fees, associated costs and *postjudgment* interest in this matter." (emphasis added)); Pl. Reply 9 ("Based on the foregoing, the Court should grant attorneys' fees and costs in favor of Plaintiff and such further relief as the Court deems just and proper.")). Presumably for this reason, Defendant's opposition submission does not address the point. (*See* Def. Opp.). It would seem, therefore, that the issue has been abandoned.

Even were the issue properly presented to it, the Court would deny the request. Caselaw on the issue of pre-judgment interest in IDEA attorneys' fees cases has not been perfectly consistent, though it would appear that this Court has discretion to render such an award. *Compare J.R.*, 2021 U.S. Dist. LEXIS 146057, 2021 WL 3406370, at *6 (granting application for pre-judgment interest without discussion), *with S.J.*, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *5 (denying pre-judgment interest), *and A. v. Hartford Bd. of Educ.*, No. 11 Civ. 1381 (GWC), 2017 U.S. Dist. LEXIS 72567, 2017 WL 1967498, at *4 (D. Conn. May 11, 2017) (denying pre-judgment interest where "[t]he court has already compensated Plaintiffs for the delay in payment of the court-awarded fees by applying Attorney

Shaw's current hourly rate"); *cf. Doe v. E. Lyme Bd. of Educ.*, 962 F.3d 649, 661-62 (2d Cir. 2020) (affirming pre-judgment interest component of award to parent in IDEA case; recognizing that courts have discretion to award pre-judgment interest "to ensure that a plaintiff is fully compensated or to meet the remedial purpose of the statute involved" (internal quotation marks and citation omitted)). A comprehensive review of the law was recently undertaken by Judge Liman in *M.H.*, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *29-31. The Court agrees with his conclusion that "in IDEA cases, as in other fee-shifting contexts, the Court should take into account 'delay' by using current rates in calculating a 'reasonable' attorneys' fee." *M.H.*, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *31. It has done so in this case.

5. The Court Awards Post-Judgment Interest

Plaintiff's request for post-judgment interest is granted. "Pursuant to 28 U.S.C. § 1961, '[t]he award of post-judgment interest is mandatory on awards in civil cases as of the date judgment is entered.'" *Tru-Art Sign Co. v. Loc. 137 Sheet Metal Workers Int'l Ass'n*, 852 F.3d 217, 223 (2d Cir. 2017) (internal citation omitted); *accord H.C.*, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *12; *S.J.*, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *5.

CONCLUSION

For the reasons set forth above, the Court GRANTS IN PART Plaintiff's motion for summary judgment on

the issue of attorneys' fees and costs as follows: It awards attorneys' fees in the aggregate amount of **$30,668.50**, and costs in the amount of **$913.20**. Accordingly, for the reasons set forth in this Order, the Court ORDERS that judgment be entered against Defendant in that amount.

The Clerk of Court is further directed to terminate all pending motions, adjourn all remaining dates, and close this case.

SO ORDERED.

Dated: January 10, 2022
New York, New York

/s/ Katherine Polk Failla
KATHERINE POLK FAILLA
United States District Judge

APPENDIX L — V.W. MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED JANUARY 4, 2022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 20-cv-2376 (RA)

V.W., INDIVIDUALLY AND ON BEHALF OF A.H., A CHILD WITH A DISABILITY,

Plaintiff,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant.

MEMORANDUM OPINION AND ORDER

RONNIE ABRAMS, United States District Judge:

This action was brought against the New York City Department of Education (the "DOE") by V.W. ("Plaintiff"), who is the mother of a disabled child, A.H. After successfully obtaining several educational accommodations for her daughter following an administrative hearing, Plaintiff filed this action for attorneys' fees under the fee-shifting provisions of the Individuals with Disabilities Education Act, 20 U.S.C. § 1415(i)(3) (the "IDEA"). Plaintiff requests $88,095.76 in fees, costs, and interest for both the underlying administrative proceeding and this action. The Court grants the request, albeit with modifications.

Appendix L

BACKGROUND

The Court draws the following facts from the declarations of the attorneys who represented Plaintiff in this action and the exhibits attached thereto.

Plaintiff's attorneys are from the Auburn, New York office of the Cuddy Law Firm, PLC ("CLF"), which is "one of the largest private special education law firms in the country." Cuddy Dec. ¶¶ 12-13. Plaintiff's counsel initiated the underlying administrative proceeding (the "administrative action") on Plaintiff's behalf on November 22, 2017 by filing a due process complaint ("DPC"). Coretti Dec. ¶ 35 & Ex. 1. The DPC alleged that the DOE had denied A.H. a free and appropriate public education ("FAPE") during the 2016-17 and 2017-18 school years. *Id.* Plaintiff sought a series of remedies for A.H. including an independent neuropsychological evaluation; an independent vocational assessment; an independent functional behavioral assessment; a speech-language evaluation; an assistive technology evaluation; a new and appropriate educational program; individual academic instruction; and attorneys' fees and expenses. *Id.*

The independent hearing officer ("IHO") assigned to the case held eight hearings on the matter (including a pre-hearing conference), which occurred between January 2018 and December 2018. *Id.* ¶ 40 & Exs. 5-8. The DOE asserts that these hearings lasted a total of 2.5 hours; while the DOE does not support this assertion with evidence, Plaintiff does not dispute it. DOE Mem. at 1. At these hearings, Plaintiff presented twenty exhibits and three witnesses. Coretti Dec. ¶¶ 41, 45-46. The DOE

did not present any testimonial or documentary evidence. While the hearings were ongoing, the IHO issued an interim order requiring the DOE to fund an independent neuropsychological evaluation of A.H. *Id.* ¶ 43 & Ex. 3. At the conclusion of the hearings, Plaintiff submitted an eight-page closing statement. *Id.* Ex. 9.

On April 8, 2019, the IHO issued his Findings of Fact and Decision ("FOFD"). *Id.* ¶ 50 & Ex. 4. The IHO found that the DOE had "failed to provide an appropriate education during the two school years in question." *Id.* Ex. 4. In the FOFD, the IHO also concluded that the DOE had failed to provide the agreed-upon evaluations during the course of the hearings and ordered the DOE to provide them. *Id.* ¶ 52 & Ex. 4. The relief granted in the FOFD included home-based therapy; academic tutoring; and several evaluations and assessments. *Id.* ¶ 53 & Ex. 4. Throughout the next three months, CLF assisted Plaintiff with implementation of the FOFD. *Id.* ¶¶ 54-55.

On October 14, 2019, CLF submitted a fee demand to the DOE. Cuddy Dec. ¶ 34. Attached to the fee demand was a billing statement with CLF's "summary sheet and expense report, copies of the relevant receipts, authorizations from V.W. to accept settlement, resumes from each person who had worked on the case up to that point, and the [IHO's] . . . FOFD." *Id.* The demand was not accepted. *Id.* ¶ 36.

On March 18, 2020, CLF commenced this action. CLF proposed settlement conferences with the DOE several times during the litigation, but these suggestions proved unfruitful. Coretti Dec. ¶¶ 69-71. The DOE sent its first

and only settlement offer on May 21, 2021. *Id.* ¶ 73. CLF made a counteroffer, *id.* ¶ 74, to which the DOE responded by proposing that the parties move forward with motion practice, *id.* ¶ 75. On June 14, 2021, CLF filed the instant motion for attorneys' fees. CLF seeks $88,095.76 in fees and costs—consisting of $65,448.26 for the administrative action and $22,647.50 for the federal action. Cuddy Dec. ¶ 59.[1] CLF also seeks post-judgment interest.

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1. Plaintiff's papers provide divergent amounts for the fees and costs requested in the administrative action. *Compare* Pl. Mem. at 3 (requesting $66,948.26 in costs and fees in the administrative action), *with* Cuddy Dec. ¶ 59 (requesting $65,448.26 in fees and costs in the administrative action). The DOE's memorandum in turn states that Plaintiff requests $89,858.26 in total fees and costs; this higher figure appears to be drawn from the amount requested by CLF in its fee demand to the DOE. *See* Cuddy Dec. Exs. 1-3 (billing statement requesting $66,918.26 in the administrative action and $22,940.00 in the federal action for a total of $89,858.26). The Court relies on the figures in paragraph 59 of the Cuddy Declaration, which are slightly lower than those in the fee demand. *See id.* ¶ 60 ("My office moves for the grand total of fees calculated in the above table [in paragraph 59] . . . our overall fees and costs through June 14, 2021 are $88,095.76.").

Plaintiff also submitted a declaration in connection with her reply brief asserting that "[a]s of July 26, 2021, the amount of fees, costs, and expenses for the current proceeding are $30,217.50," which is about $7,500 higher than the amount incurred as of June 14, 2021. Second Cuddy Dec. However, Plaintiff has not appeared to amend the fee amount for which she moves. Accordingly, the Court continues to rely on the amount requested in the Cuddy Declaration and defers decision on any additional fees incurred since. If Plaintiff seeks an award for those later-incurred fees, Plaintiff shall submit a letter motion so requesting by January 18, 2022; the DOE may respond with any objections, again by letter motion, by February 1, 2022.

The DOE does not dispute that Plaintiff, as the prevailing party in the administrative action, is entitled to attorneys' fees. However, the DOE argues that both the rate sought for CLF's attorneys and paralegals and the number of hours CLF billed are unreasonable.

LEGAL STANDARD

"The IDEA grants district courts the discretion to award reasonable attorneys' fees and costs to a 'prevailing party.'" *R.G. v. N.Y.C. Dep't of Educ.*, No. 18-cv-6851 (VEC), 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *1 (S.D.N.Y. Sept. 26, 2019) (quoting § 1415(i)(3)(B)(i)). A plaintiff "prevails when actual relief on the merits of [her] claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff." *K.L. v. Warwick Valley Cent. Sch. Dist.*, 584 Fed. App'x 17, 18 (2d Cir. 2014).[2] As stated, the DOE does not dispute that Plaintiff was the prevailing party in the administrative action.

"Reasonable attorneys' fees under the IDEA are calculated using 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." *Streck v. Bd. of Educ.*, 408 Fed. App'x 411, 415-16 (2d Cir. 2010). In determining whether an hourly rate is reasonable, courts primarily consider the prevailing market rates in the community for comparable

2. Unless otherwise noted, case quotations omit all internal quotation marks, citations, alterations, and footnotes.

legal services. *See* § 1415(i)(3)(C) (providing that attorneys' fees "shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished"). The prevailing market rate has been characterized as "the rate a paying client would be willing to pay . . . bearing in mind that a reasonable, paying client wishes to spend the minimum necessary to litigate the case effectively." *Ortiz v. City of New York*, 843 Fed. App'x 355, 359 (2d Cir. 2021). Courts also consider the twelve factors discussed in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974):

> (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.

Lilly v. City of New York, 934 F.3d 222, 228 (2d Cir. 2019). Because "the determination of fees should not result in a second major litigation," *Fox v. Vice*, 563 U.S. 826, 838, 131 S. Ct. 2205, 180 L. Ed. 2d 45 (2011), courts may consider the *Johnson* factors holistically, rather than

applying each factor individually to the facts of the case. *See Green v. City of New York*, No. 05-cv-0429 (SLT) (ETB), 2010 U.S. Dist. LEXIS 2946, 2010 WL 148128, at *10 (E.D.N.Y. Jan. 14, 2010). "[T]he fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates." *Hensley v. Eckerhart*, 461 U.S. 424, 437, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983).

The Second Circuit has observed that "[r]ecycling rates awarded in prior cases without considering whether they continue to prevail may create disparity between compensation available under [the applicable statute] and compensation available in the marketplace," which would "undermine[] [the statute's] central purpose of attracting competent counsel to public interest litigation." *Farbotko v. Clinton County*, 433 F.3d 204, 209 (2d Cir. 2005). Accordingly, while a court may consider rates awarded in prior similar cases and its "own familiarity with the rates prevailing in the district," it should also "evaluat[e] . . . [the] evidence proffered by the parties." *Id.*

ANALYSIS

Although Plaintiff was the prevailing party in the administrative action and is therefore unquestionably entitled to fees and costs, the Court concludes that certain aspects of the hourly rates sought, the hours submitted, and the costs requested are not reasonable. The Court thus grants Plaintiff's motion for attorneys' fees and costs but makes reductions both to the hourly rates and number of hours awarded.

Appendix L

I. Hourly Rates

CLF seeks an hourly rate of $550 for three senior attorneys: Andrew Cuddy, Michael Cuddy, and Jason Sterne. Cuddy Dec. ¶ 59. The DOE argues that rates of $350-360 per hour are instead warranted for these attorneys. Similarly, CLF seeks an hourly rate of $425 for two more junior attorneys, Justin Coretti and Kevin Mendillo, *id.*, which the DOE seeks to reduce to $280 and $300, respectively. Finally, CLF requests a rate of $150 per hour for the work performed by each of the five paralegals on this case, *id.* ¶¶ 58-59, which the DOE contends should be lowered to $100-125 per hour, depending on the individual paralegal's experience or formal training.

CLF's work in this action spanned from late 2017 to mid-2021. Courts have recently awarded the senior attorneys billing in this case hourly rates for work performed during this time period as low as $360 per hour, *see S.J. v. N.Y.C. Dep't of Educ.*, No. 20-cv-1922 (LGS), 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *3-4 (S.D.N.Y. Jan. 12, 2021) (Andrew and Michael Cuddy), and as high as $420 per hour, *see M.H. v. N.Y.C. Dep't of Educ.*, No. 20-cv-1923 (LJL), 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *13 (S.D.N.Y. Oct. 13, 2021) (Andrew Cuddy and Jason Sterne). These ranges are consistent with the oft-repeated observation that "[t]he prevailing market rate for experienced, special-education attorneys in the New York area *circa* 2018 [was] between $350 and $475 per hour." *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *2; *see M.D. v. N.Y.C. Dep't of Educ.*, No.

17-cv-2417 (JMF), 2018 U.S. Dist. LEXIS 156923, 2018 WL 4386086, at *3 (S.D.N.Y. Sept. 14, 2018) (describing same rate range). Judges in this District have also recognized that the passage of time may justify somewhat higher rates for the same type of work performed by the same senior attorneys. *See, e.g., M.H.*, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *12 ("The Court may consider the passage of time, [and] the increase in fees that may come with such passage of time."); *C.D. v. Minisink Valley Cent. Sch. Dist.*, No. 17-cv-7632 (PAE), 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *6 (S.D.N.Y. Aug. 9, 2018) ("In light of the passage of time and the growth of the firm, the Court's judgment is that $400 is a reasonable hourly fee, in this case, for [Andrew Cuddy and Jason Sterne]."). "For associates with three or fewer years of experience in [IDEA] litigation, courts in this District have typically approved rates of $150-$275." *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *7. And "[p]aralegals, depending on skills and experience, have generally garnered between $100 and $125 per hour in IDEA cases in this District." *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050 at *3 (collecting cases).

CLF argues that excessive reliance on past rates awarded in similar cases will cause fees to unfairly stagnate in a manner that fails to reflect increased attorney experience and historic inflation. To this point, CLF has presented evidence of selected IDEA fee awards in this District since 1998, with adjustments for inflation. *See* Cuddy Dec. Ex. 4. These arguments are well-taken by the Court, as it is an "obvious proposition that billing rates continue to increase over time." *A.B. v. N.Y.C. Dep't*

of Educ., No. 20-cv-3129 (SDA), 2021 U.S. Dist. LEXIS 47573, 2021 WL 951928, at *3 & n.6 (S.D.N.Y. Mar. 13, 2021) (citing *O.R. v. N.Y.C. Dep't of Educ.*, 340 F. Supp. 3d 357, 365 (S.D.N.Y. 2018), in which the court applied the federal inflation index to set an hourly rate). And CLF's evidence certainly counsels for higher rates than those requested by the DOE, whose position rests entirely on historic rates awarded. But this does not lead the Court to assign prevailing market rates that adhere precisely to Plaintiff's requested rates. Rather, the Court must look to several sources of information together: Plaintiff's evidence, rates awarded in prior cases, and the Court's own familiarity with prevailing rates. *See Farbotko*, 433 F.3d at 209. These data points support awarding lower rates than those Plaintiff requests.

A holistic assessment of the *Johnson* factors further counsels awarding hourly rates that fall between Plaintiff's and the DOE's requested rates. To be sure, a critical *Johnson* factor weighs heavily in Plaintiff's favor: CLF obtained successful results for V.W. and A.H. And there is no question that the billing attorneys have significant experience and well-established reputations. However, the Court must also consider the other *Johnson* factors that weigh in favor of lower hourly rates. Most saliently, the questions in both the administrative action and the federal action were far from novel or difficult; for example, the Court does not see "[f]rom the hearing transcripts . . . any difficult legal issues or key credibility disputes in the case." *K.F. v. N.Y.C. Dep't of Educ.*, No. 10-cv-5465 (PKC), 2011 U.S. Dist. LEXIS 88653, 2011 WL 3586142, at *3 (S.D.N.Y. Aug. 10, 2011). Indeed, the administrative

proceeding was virtually uncontested, as the DOE submitted no exhibits and produced no witnesses.[3] Nor is there any indication that the particular facts of this case required an unusual amount of time or labor from CLF's attorneys and paralegals. And CLF does not assert that it was precluded from pursuing other employment by taking on this case or that the case presented any particular time limitations.

Taking these factors into account, the Court modifies the hourly rates as follows.

Andrew Cuddy, Michael Cuddy, and Jason Sterne are all highly experienced special education law attorneys. Andrew Cuddy received his law degree in 1996 and has twenty years of experience in the field. Cuddy Dec. ¶¶ 41, 44. During that time, he has litigated hundreds of special education due process hearings and is "regularly recognized as having experience in the special education legal field and [is] invited to speak on the topic to

3. While Plaintiff argues that "straightforward is not a synonym for uncontested," the case from which that language derives featured an administrative proceeding in which the DOE put on a defense by submitting its own exhibits and witnesses. *C.B. v. N.Y.C. Dep't of Educ.*, No. 18-cv-7337 (CM), 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *8 (S.D.N.Y. July 2, 2019). Here, by contrast, there is no indication that the DOE meaningfully opposed Plaintiff's DPC. *See* Coretti Dec. Ex. 4 (FOFD stating that "the DOE took no position on the[] issues" raised by Plaintiff). In any event, the Court is awarding the senior attorneys in this case the same hourly rate as that awarded in *C.B.* notwithstanding the lesser degree of complexity here, taking into account the passage of time between this case and that case.

professional organizations." *Id.* ¶ 44-45. Michael Cuddy received his law degree in 1988 and has over twenty years of general legal experience. Coretti Dec. ¶¶ 13, 16. He has worked for CLF since 2009 and been a shareholder of CLF since 2012. *Id.* ¶ 18. During that time, he has represented parents of disabled children in over 100 due process hearings and has presented on special education law topics for various organizations. *Id.* ¶¶ 18, 20. And Jason Sterne, who has practiced law since 1998, litigated hundreds of special education due process hearings over the fifteen years he was employed at CLF. Cuddy Dec. ¶ 17. Balancing these attorneys' significant experience, the passage of time since previous awarded rates, and the relative lack of complexity in this case, the Court finds that an hourly rate of $400 is appropriate for each of them. *Cf. C.B.*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *6-8 (awarding $400 per hour in 2019 when the administrative proceeding was contested); *A.B.*, 2021 U.S. Dist. LEXIS 47573, 2021 WL 951928, at *3 (awarding $400 per hour in 2021 to an attorney with about ten years' experience in special education law); *M.H.*, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *2-5, *12 (awarding $420 per hour in 2021 when the administrative proceeding was contested, the hearings were significantly more complex, and the federal action raised additional claims).

The Court turns to the more junior attorneys in this case. Kevin Mendillo has worked for CLF since 2014 and has litigated approximately 100 due process hearings and nearly thirty federal fee cases during that time. Cuddy Dec. ¶ 13-14. Justin Coretti graduated law school in 2012 and has worked for CLF since 2015, during which time

he has litigated over fifty due process hearings. Coretti Dec. ¶¶ 5, 7. Both attorneys are entitled to a higher rate than the $150-275 range awarded to attorneys with under three years of specialized experience. Instead, the Court finds that an hourly rate of $300 for both attorneys is appropriate and balances current market rates, their years of experience in the special education field during the relevant period (three to seven years for Mendillo and two to six years for Coretti), and the relative lack of complexity of this case. *Compare O.R v. N.Y.C. Dep't of Educ.*, 340 F. Supp. 3d 357, 365-66 (S.D.N.Y. 2018) (awarding $350 per hour in 2018 to an attorney with six years' experience in IDEA law when she began her work on a comparable proceeding), *with A.G. v. N.Y.C. Dep't of Educ.*, No. 20-cv-7577 (LJL), 2021 U.S. Dist. LEXIS 201748, 2021 WL 4896227, at *7 (S.D.N.Y. Oct. 19, 2021) (awarding $300 per hour in 2021 to Coretti and Mendillo), *and C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *7 (finding in 2018 that a rate of $300 per hour was appropriate for a lawyer with ten years' experience in general litigation).

Finally, the Court finds that a rate of $100 per hour is appropriate for Allison Bunnell and Amanda Pinchak, each of whom have relatively little experience as paralegals. Cuddy Dec. ¶¶ 23-24. By contrast, a rate of $125 per hour is appropriate for Shobna Cuddy, who is an office administrator at CLF with over ten years of relevant experience, and for Sarah Woodard, who has over twenty years of experience as a paralegal and legal assistant. *Id.* ¶¶ 19, 22.

The Court is of the opinion that, even today, each of these hourly rates is "sufficient to induce a capable attorney to undertake the representation of a meritorious civil rights case." *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552, 130 S. Ct. 1662, 176 L. Ed. 2d 494 (2010).

II. Number of Hours

The DOE argues that the number of hours billed at the administrative level is unreasonable, objecting to various time entries as excessive or unnecessary. The DOE further argues that CLF should be permitted to bill only twenty hours total at the federal level for their work on the instant motion, rather than the 44.3 hours that were billed.

Justin Coretti billed 86.6 hours in the administrative action and 46.7 hours in the federal action. Cuddy Dec. ¶ 59. The number of hours billed at the administrative level appears somewhat excessive: as noted previously, this was a relatively straightforward case that was not contested by the DOE; CLF's submissions were not unusually complex and did not pose difficult legal questions; and the hearings lasted only a few hours total. "Rather than engage in a painstaking line-item review of each billing entry, in calculating an appropriate reduction of compensable hours '[a] district court may exercise its discretion and use a percentage deduction as a practical means of trimming fat from a fee application.'" *M.D.*, 2018 U.S. Dist. LEXIS 132930, 2018 WL 4386086, at *4 (quoting *McDonald ex rel. Prendergast v. Pension Plan of the NYSA-ILA Pension Tr. Fund*, 450 F.3d 91, 96 (2d Cir. 2006)). The Court finds such a strategy appropriate here, where Coretti's number of hours billed is generally disproportionate

to the complexity of and work required in this case. In comparable cases brought by CLF, courts in this District have reduced the firm's hours by twenty to fifty percent. *See, e.g., J.R. v. N.Y.C. Dep't of Educ.*, No. 19-cv-11783 (RA), 2021 U.S. Dist. LEXIS 146057, 2021 WL 3406370, at *4-5 (S.D.N.Y. Aug. 4, 2021) (finding 85.8 hours billed in a comparable administrative action to be an unreasonable number and reducing hours by twenty percent); *M.D. v. N.Y.C. Dep't of Educ.*, No. 20-cv-6060 (LGS), 2021 U.S. Dist. LEXIS 132930, 2021 WL 3030053, at *5 (S.D.N.Y. July 16, 2021) (reducing hours by twenty percent in a case in which CLF billed 84.4 hours in connection with an uncontested administrative proceeding). Accordingly, the Court reduces Coretti's hours by twenty percent at the administrative level.

By contrast, the Court finds the 46.7 hours Coretti billed at the federal level reasonable, notwithstanding the limited scope and straightforward nature of the case. *Cf. B.B. v. N.Y.C. Dep't of Educ.*, No. 17-cv-4255 (VEC) (SDA), 2018 U.S. Dist. LEXIS 38271, 2018 WL 1229732, at *3 (S.D.N.Y. Mar. 8, 2018) (finding that counsel should not have needed more than 40 hours to litigate a standard IDEA fee petition); *S.J. v. N.Y.C. Dep't of Educ.*, No. 12-cv-1922 (LGS) (SDA), 2020 U.S. Dist. LEXIS 194258, 2020 WL 6151112, at *6-7 (S.D.N.Y. Oct. 20, 2020), *adopted as modified by* 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501 (concluding that approximately 56 hours billed in a federal court IDEA fee action was reasonable).[4]

4. The DOE argues that 1.5 hours Michael Cuddy billed during February 2016—nearly two years before the DPC was filed—should be excluded on the ground that this work lacked sufficient temporal proximity to the administrative proceedings. *See* Cuddy Dec. Ex. 1

III. Costs

CLF seeks the following costs: $774.55 in lodging, $174.40 in meals, $855.10 in mileage, $149.00 in parking, $43.00 in tolls, $10.32 in postage, $456.00 in copying, $430.00 in faxing, $143.39 in transportation, and $400 in filing fees. Cuddy Dec. ¶ 59. CLF also seeks $150.00 in travel fees for Michael Cuddy, charged at a rate of $250 per hour (approximately forty-five percent of his standard requested rate), as well as $9,180.00 in travel fees for Justin Coretti, charged at a rate of $212.50 per hour (approximately half of his standard requested rate). *Id.*

The DOE argues that CLF should not be compensated for lodging, parking, mileage, and tolls. In support of

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(time entries describing meeting with V.W. and subsequently drafting letters requesting A.H.'s educational records). The Court disagrees: while these time entries significantly predate the DPC, they clearly describe work that was necessary in deciding to take on V.W. and A.H. as clients. The DOE also takes issue with .6 hours Michael Cuddy spent traveling during this time period, but it appears that this time was already subject to a discretionary reduction. *See* Cuddy Dec. Ex. 1.

The DOE further argues that Michael Cuddy's hours be reduced by .8 hours he spent billing for tasks that could purportedly have been accomplished by a paralegal. The Court disagrees, and finds that the tasks at issue—reviewing educational records, selecting documents for use in the administrative hearing, and removing unnecessary documents—could reasonably have required an attorney's review, even if they were straightforward in nature. *Cf. M.D.*, 2021 U.S. Dist. LEXIS 132930, 2018 WL 4386086, at *4 ("Uncomplicated and straightforward tasks . . . still require the attention of a skilled attorney.").

this proposition, it relies on *K.F.*, 2011 U.S. Dist. LEXIS 88653, 2011 WL 3586142, in which the court denied costs for expenses relating to attorneys' travel between Auburn and New York City, *see* 2011 U.S. Dist. LEXIS 88653, [WL] at *6. Other courts have similarly denied travel-related costs in whole or in part, reasoning that clients "would not agree to pay in-district attorney rates while also paying for extensive . . . expenses necessitated by out-of-district attorneys' travel." *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *13 (denying in full a request for lodging expenses and reducing by seventy percent requests for certain non-lodging travel expenses); *see also M.H.*, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *28 (same); *S.J.*, 2020 U.S. Dist. LEXIS 194258, 2020 WL 6151112, at *7 (denying lodging, mileage, tolls, and parking costs in full). Considering these cases, the Court concludes that CLF may not bill for lodging and may bill for only thirty percent of its costs incurred in mileage, parking, and tolls. For similar reasons, the Court finds the 43.2 hours Coretti billed traveling between Auburn or Ithaca and New York City to be unreasonable. "[I]t is doubtful that a reasonable client would retain an Auburn or Ithaca attorney over a New York City attorney if it meant paying New York City rates and an additional five hours in billable time for each trip." *K.F.*, 2011 U.S. Dist. LEXIS 88653, 2011 WL 3586142, at *6; *see also C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *10. Coretti's billable travel hours are thus reduced to one hour each way for each trip he took to and from New York City in relation to this action. *See, e.g., M.H.*, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *18 (doing the same and collecting cases).

Finally, the Court finds Plaintiff's faxing costs non-reimbursable. "Modern copy machines have the ability to scan documents so that they can be emailed" at no cost. *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *6. Given this fact, the Court concludes that "no rational client would pay to fax documents" when those documents could be transmitted via email for free. *Id.*[5]

CONCLUSION

For the foregoing reasons, the Court grants the motion for attorneys' fees and costs, as well as post-judgment interest, but with the following modifications:

(1) CLF is entitled to fees at: an hourly rate of $400 for Andrew Cuddy, Michael Cuddy, and Jason Sterne (reduced by fifty percent for billable travel time); an hourly rate of $300 for Justin Coretti and Kevin Mendillo (reduced by fifty percent for billable travel time); an hourly rate of $125 for Shobna Cuddy and Sarah Woodard; and an hourly rate of $100 for Allison Bunnell and Amanda Pinchak;

5. To the extent Plaintiff argues that CLF's fees should not be reduced at all because the DOE purportedly unreasonably protracted the proceedings, the Court rejects this argument. "[A] conclusion that Defendant unreasonably protracted the resolution of the proceedings and forced Plaintiff to engage in what should have been unnecessary work might justify the reasonableness of some of the hours worked by counsel and the paralegals. However, it would not entitle CLF to more than a reasonable attorney's fee calculated based on the standards well established by the Supreme Court and in this Circuit." *M.H.*, 2021 U.S. Dist. LEXIS 190419, 2021 WL 4804031, at *25.

(2) Justin Coretti's hours billed in the administrative action are reduced by twenty percent;

(3) Justin Coretti may bill for only one hour of travel time each way for his trips to New York City in connection with the administrative action; and

(4) CLF may not seek costs for lodging and faxing and may seek costs of only thirty percent for expenses incurred in parking, mileage, and tolls.

No later than January 18, 2022, Plaintiff shall submit a proposed judgment consistent with this decision. If the DOE objects to the proposed judgment, it shall file a letter explaining its position no later than February 1, 2022. Absent an objection from the DOE by that date, the Court will sign and docket Plaintiff's proposed judgment.

SO ORDERED.

Dated: January 4, 2022
New York, New York

/s/ Ronnie Abrams
Hon. Ronnie Abrams
United States District Judge

APPENDIX M — A.G. OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED OCTOBER 19, 2021

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

20-cv-7577 (LJL)

A.G., INDIVIDUALLY AND ON BEHALF OF R.P., A CHILD WITH A DISABILITY,

Plaintiff,

-v-

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant.

October 19, 2021, Decided;
October 19, 2021, Filed

OPINION AND ORDER

LEWIS J. LIMAN, United States District Judge:

Plaintiff A.G., individually and on behalf of R.P., a child with a disability, brings this action pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1415(i)(3), seeking attorneys' fees and costs, and pursuant to 42 U.S.C § 1983, seeking equitable

relief. Pending before the Court is Plaintiff's motion for summary judgment, seeking attorneys' fees and costs for work performed by the Cuddy Law Firm.

For the following reasons, Plaintiff's motion is granted in part and denied in part.

BACKGROUND

The following facts are undisputed for purposes of summary judgment except as otherwise stated.

R.P. is a child with a disability under IDEA, 20 U.S.C. § 1401(3)(A), and is classified as a student with a learning disability. Dkt. No. 16 ("Statement of Material Facts Not in Dispute" or "SMF") ¶¶ 2, 6; Dkt. No. 24 ("Counter Statement" or "CS") ¶¶ 2, 6. A.G. is R.P.'s parent as defined by IDEA, 20 U.S.C. § 1401(23). SMF ¶ 3; CS ¶ 3. R.P. and A.G. reside in Bronx County, New York. SMF ¶ 1; CS ¶ 1.

Defendant New York City Department of Education ("Defendant" or "DOE") is a local educational agency as defined by IDEA, 20 U.S.C. § 1401(19). SMF ¶ 4; CS ¶ 4.

Plaintiff first approached counsel for advice in late 2017 and early 2018. Dkt. No. 14-3. The matter was assigned to Jason Sterne, Esq., who worked with the parent regarding her concerns about the 2017-2018 school year, including make-up and compensatory education and support necessary for R.P. to receive a free, appropriate public education ("FAPE"). Dkt. No. 14 ("Cuddy Decl.") ¶ 42.

Appendix M

On May 11, 2018, Sterne initiated the administrative hearing component of the matter by filing a due process complaint on behalf of the parent. SMF ¶ 7; CS ¶ 7. The complaint asserted that (1) a DOE committee on special education had convened to develop a required individualized education services program ("IESP") for R.P. on June 29, 2016; (2) the IESP had recommended group special education teacher support services six periods per week with no related services; (3) the committee did not reconvene until January 11, 2018 in violation of regulations requiring annual review; (4) the January 11, 2018 committee recommended group special education teacher support services eight periods per week, group occupational therapy twice weekly in forty-minute sessions, and group counseling once weekly for forty minutes; and (5) the DOE had failed to provide the required services. Dkt. No. 14-1. The parent complained that the DOE had failed to timely convene a committee or develop an IESP until January 2018 and that as a result R.P. had not received the services to which he was entitled and had been denied a FAPE, that there was no triennial review in June 2017, and that as of May 2018 and that the DOE had not implemented the counseling and occupational therapy required in the January 2018 IESP. *Id.* The complaint demanded a finding that Defendant did not provide R.P. with a FAPE during the 2017-2018 school year pursuant to the IDEA and sought an order directing DOE to immediately implement all services recommended by the January 11, 2018 IESP and to provide makeup occupational therapy and counseling services at an enhanced rate to compensate for Defendant's delay in commencing and implementing services. *Id.*

Appendix M

An impartial hearing officer ("IHO") was appointed on May 23, 2018 and held a hearing on July 17, 2018. SMF ¶¶ 9; CS ¶¶ 9; Cuddy Decl. ¶¶ 46-48. The July 2018 hearing was later adjourned so that the parties could explore settlement, but the parties failed to reach a settlement agreement after the Department offered only a fraction of the relief sought. Cuddy Decl. ¶¶ 48-49.

A further impartial due process hearing was held on March 29, 2019. SMF ¶ 10; CS ¶ 10. Plaintiff presented testimony from one witness and submitted 20 pieces of documentary evidence. Cuddy Decl. ¶ 50. Defendant presented no witnesses and no documentary evidence, SMF ¶ 12; CS ¶ 12, and conceded to a denial of a FAPE for the 2017-2018 school year due to a combination of an untimely delay in the issuance of the IESP for the 2017-2018 school year and a failure to provide mandated services to R.P. for two full school years, Cuddy Decl. ¶ 50. Defendant, however, requested that the IHO deny awarding an enhanced rate for any award of compensatory makeup services. *Id.* ¶ 52.

On June 25, 2019, the IHO issued findings of fact and decision in favor of Plaintiff, finding that Defendant denied R.P. a FAPE during the 2017-2018 school year. SMF ¶ 12; CS ¶ 12; Cuddy Decl. ¶ 53; Dkt. No. 14-2. The IHO ordered 50 periods of special education teacher support services, 160 periods of occupational therapy, 36 periods of counseling, and, if necessary, transportation for R.P. so that he may receive the awarded compensatory services. Cuddy Decl. ¶ 53; Dkt. No. 14-2. In addition, the IHO mandated that Defendant locate compensatory

service providers before April 19, 2019 for all ordered compensatory services. Cuddy Decl. ¶ 53; Dkt. No. 14-2. If Defendant failed to do so, the parent was authorized to locate qualified providers of her choosing at an enhanced rate. Dkt. No. 14-2.

Thereafter, Plaintiff's counsel engaged in implementation efforts for a period of over seven months, until about November 4, 2020, to locate providers and subsequently authorize payment of the awarded makeup services. Cuddy Decl. ¶ 56. In September 2020, the parties stipulated to an open issue regarding the duration of compensatory services to be provided to R.P. *Id.* ¶¶ 67-68. R.P. began receiving compensatory makeup services in November 2020. *Id.* ¶ 69.

In June 2020, Plaintiff submitted a fee demand to Defendant. SMF ¶ 13; CS ¶ 13. The parties have not reached a resolution on fees in this matter. SMF ¶ 14; CS ¶ 14.

PROCEDURAL HISTORY

Plaintiff initiated this action by complaint filed on September 16, 2020. Dkt. No. 1. The complaint asserts two causes of action: (1) equitable relief under 42 U.S.C. § 1983 for Defendant's deprivation of Plaintiff's rights under the IDEA by failing to implement the findings of fact and decision;[1] and (2) reasonable attorneys' fees and costs pursuant to 20 U.S.C. § 1415(i)(3).

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1. Plaintiffs do not mention the claim for equitable relief in the summary judgment papers and appear to have abandoned the claim.

Plaintiff moved for summary judgment for attorneys' fees and costs on April 2, 2021. Dkt. No. 12. In the accompanying memorandum in support and declaration, Plaintiff sought $15,838.52 for the administrative component of the matter and $28,002.50 for the federal component, for a total of $43,841.02 in fees and costs. Dkt. No. 13 at 28-29; Cuddy Decl. ¶ 87. DOE filed a memorandum of law in opposition to the motion for summary judgment on May 24, 2021. Dkt. No. 25. Plaintiff filed a reply memorandum of law in further support of the motion for summary judgment for attorneys' fees and costs on June 17, 2021. Dkt. No. 28. Along with the reply, Plaintiff submitted an updated billing statement seeking $38,812.50 for the federal component. Dkt. No. 30-1. Thus, together with the amount sought for the administrative component, Plaintiff requests a total award of $54,651 in fees and costs.

LEGAL STANDARD

Under Federal Rule of Civil Procedure 56(a), a court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). "A genuine issue of material fact exists if 'the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Nick's Garage, Inc. v. Progressive Cas. Ins. Co.*, 875 F.3d 107, 113-14 (2d Cir. 2017) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)). "The movant bears

the burden of 'demonstrat[ing] the absence of a genuine issue of material fact.'" *Id.* at 114 (quoting *Celotex*, 477 U.S. at 323). In deciding a motion for summary judgment, the Court must "construe the evidence in the light most favorable to the non-moving party, and draw all reasonable inferences in its favor." *Gilman v. Marsh & McLennan Cos., Inc.*, 826 F.3d 69, 73 (2d Cir. 2016).

If the movant meets its burden, "the nonmoving party must come forward with admissible evidence sufficient to raise a genuine issue of fact for trial in order to avoid summary judgment." *Jaramillo v. Weyerhaeuser Co.*, 536 F.3d 140, 145 (2d Cir. 2008). It may not rely on "mere speculation or conjecture as to the true nature of the facts," *Hicks v. Baines*, 593 F.3d 159, 166 (2d Cir. 2010), or "on the allegations in [its] pleading, or on conclusory statements, or on mere assertions that affidavits supporting the motion are not credible," *Gottlieb v. Cnty. of Orange*, 84 F.3d 511, 518 (2d Cir. 1996) (citation omitted). Rather, to survive a summary judgment motion, the opposing party must establish a genuine issue of fact by "citing to particular parts of materials in the record," Fed. R. Civ. P. 56(c)(1)(A), and demonstrating more than "some metaphysical doubt as to the material facts," *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986). *See also Wright v. Goord*, 554 F.3d 255, 266 (2d Cir. 2009). If "the party opposing summary judgment propounds a reasonable conflicting interpretation of a material disputed fact," summary judgment must be denied. *Schering Corp. v. Home Ins. Co.*, 712 F.2d 4, 9-10 (2d Cir. 1983).

Appendix M

DISCUSSION

The IDEA provides that "the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing party who is the parent of a child with a disability."[2] 20 U.S.C. § 1415(i)(3)(B)(i)-(i)(I). The aim of the statute is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs." *A.R. ex rel. R.V. v. N.Y. City Dep't of Educ.*, 407 F.3d 65, 72 (2d Cir. 2005) (quoting 20 U.S.C. § 1400(d)(1)(A)). The statute mandates the fees awarded "shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished" and that "[n]o bonus or multiplier may be used in calculating the fees awarded." 20 U.S.C. § 1415(i)(3)(C). The award must be "reasonable" and may not be based on rates exceeding those "prevailing in the community." *Id.* § 1415(i)(3)(F)(ii).

The Court applies the interpretation of a "reasonable attorney's fee" that has been developed in connection with all civil rights fee-shifting statutes. *A.R. ex rel. R.V.*, 407 F.3d at 75 ("[W]e 'interpret the IDEA fee provisions in consonance with those of other fee-shifting statutes.'" (quoting *I.B. ex rel. Z.B. v. N.Y.C. Dep't of Educ.*, 336 F.3d 79, 80, 63 Fed. Appx. 21 (2d Cir. 2003) (per curiam))); *see also S.N. ex rel. J.N. v. Pittsford Cent. Sch. Dist.*, 448 F.3d 601, 604 (2d Cir. 2006). The purpose of allowing

2. As a threshold matter, Defendant does not dispute that Plaintiff is a prevailing party, entitled to an award of attorneys' fees. Dkt. No. 25 at 1, 9.

attorneys' fees in a civil rights action "is to ensure effective access to the judicial process for persons with civil rights grievances." *Hensley v. Eckerhart*, 461 U.S. 424, 429, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983) (internal quotation marks omitted). "When a plaintiff succeeds in remedying a civil rights violation, . . . he serves 'as a "private attorney general," vindicating a policy that Congress considered of the highest priority.'" *Fox v. Vice*, 563 U.S. 826, 833, 131 S. Ct. 2205, 180 L. Ed. 2d 45 (2011) (quoting *Newman v. Piggie Park Enterps., Inc.*, 390 U.S. 400, 402, 88 S. Ct. 964, 19 L. Ed. 2d 1263 (1968) (per curiam)). "[T]he fee-shifting feature of the IDEA—including the authority to award reasonable fees for the fee application itself—plays an important role in 'attract[ing] competent counsel' to a field where many plaintiffs with meritorious cases could not afford to pay such counsel themselves." *G.T. v. N.Y.C. Dep't of Educ.*, 2020 U.S. Dist. LEXIS 25557, 2020 WL 1516403, at *10 (S.D.N.Y. Feb. 12, 2020) (alteration in original) (quoting *Simmons v. N.Y.C. Transit Auth.*, 575 F.3d 170, 176 (2d Cir. 2009)).

In determining a reasonable fee, "the district court must ascertain 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*.'" *Chambless v. Masters, Mates & Pilots Pension Plan*, 885 F.2d 1053, 1058-59 (2d Cir. 1989) (quoting *Blum v. Stenson*, 465 U.S. 886, 896 n.11, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984)). "The reasonable hourly rate is the rate a paying client would be willing to pay . . . bear[ing] in mind that a reasonable, paying client wishes to spend the minimum necessary to litigate the

case effectively." *Ortiz v. City of New York*, 843 F. App'x 355, 359 (2d Cir. 2021) (alteration in original) (quoting *Lilly v. City of N.Y.*, 934 F.3d 222, 231 (2d Cir. 2019)). The Court also considers the *Johnson* 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.

Lilly, 934 F.3d at 228. "A district court need not recite and make separate findings as to all twelve *Johnson* factors, provided that it takes each into account in setting the attorneys' fee award." *C.D. v. Minisink Valley Cent. Sch. Dist.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *4 (S.D.N.Y. Aug. 9, 2018) (quoting *E.F. ex rel. N.R. v. N.Y. City Dep't of Educ.*, 2014 U.S. Dist. LEXIS 34606, 2014 WL 1092847, at * 3 (S.D.N.Y. Mar. 17, 2014)); *see also C.B. v. N.Y. City Dep't of Educ.*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *5 (S.D.N.Y. July 2, 2019) (same).

After determining a reasonable hourly rate, the Court multiplies "that rate by the number of hours reasonably expended to determine the presumptively reasonable fee." *Lilly*, 934 F.3d at 230. "To calculate . . . attorneys' fees, 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.*, 407 F.3d at 79 (internal quotation marks and alteration omitted) (quoting *G.M. v. New Britain Bd. of Educ.*, 173 F.3d 77, 84 (2d Cir. 1999)). "[T]here is . . . a strong presumption that the lodestar figure represents a reasonable fee." *Id.* (alteration in original) (quoting *G.M.*, 173 F.3d at 84); *accord I.B. ex rel. Z.B.*, 336 F.3d at 80.

The Second Circuit has stated:

> In *Arbor Hill* [522 F.3d 182 (2d Cir. 2008)], we attempted to . . . clarify our circuit's fee-setting jurisprudence. We instructed district courts to calculate a presumptively reasonable fee by determining the appropriate billable hours expended and setting a reasonable hourly rate, taking account of all case-specific variables. We explained with respect to the latter:
>
> [T]he district court, in exercising its considerable discretion, [should] bear in mind *all* of the case-specific variables that we and other courts have identified as relevant to the reasonableness of attorney's fees in setting a reasonable hourly rate. The reasonable hourly rate is the rate

a paying client would be willing to pay. In determining what rate a paying client would be willing to pay, the district court should consider, among others, the *Johnson* [488 F.2d 714 (5th Cir. 1974)] factors; it should also bear in mind that a reasonable, paying client wishes to spend the minimum necessary to litigate the case effectively. The district court should also consider that such an individual might be able to negotiate with his or her attorneys, using their desire to obtain the reputational benefits that might accrue from being associated with the case. The district court should then use that reasonable hourly rate to calculate what can properly be termed the "presumptively reasonable fee."

In the wake of *Arbor Hill*, we have consistently applied this method of determining a reasonable hourly rate by considering all pertinent factors, including the *Johnson* factors, and then multiplying that rate by the number of hours reasonably expended to determine the presumptively reasonable fee. It is only after this initial calculation of the presumptively reasonable fee is performed that a district court may, in extraordinary circumstances, adjust the presumptively reasonable fee when it does not adequately take into account a factor that may properly be considered in determining a reasonable fee.

Lilly, 934 F.3d at 229-30 (internal quotation marks and citations omitted).

The Court's task is to make "a conscientious and detailed inquiry into the validity of the representations that a certain number of hours were usefully and reasonably expended." *Lunday v. City of Albany*, 42 F.3d 131, 134 (2d Cir. 1994). At the same time, however, in reviewing a fee application, "trial courts need not, and indeed should not, become green-eyeshade accountants." *Fox*, 563 U.S. at 838. "The essential goal in shifting fees (to either party) is to do rough justice, not to achieve auditing perfection." *Id.*

"[T]he fee applicant bears the burden of establishing entitlement to an award, and documenting the appropriate hours expended and hourly rates." *Hensley*, 461 U.S. at 437; *see also C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *7. The fee applicant must "establish his hourly rate with satisfactory evidence—in addition to the attorney's own affidavits." *Chambless*, 885 F.2d at 1059 (internal quotation marks omitted). Where the fee applicant presents no evidence to support the timekeeper's relevant qualifications, "courts typically award fees at the bottom of the customary fee range." *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *7 (citing cases).

I. Reasonable Hourly Rate

The reasonable hourly rate is the "'prevailing market rate,' i.e., the rate 'prevailing in the [relevant] community for similar services by lawyers of reasonably comparable

skill, experience, and reputation.'" *Farbotko v. Clinton Cty. of New York*, 433 F.3d 204, 208 (2d Cir. 2005) (alteration in original) (quoting *Blum v. Stenson*, 465 U.S. 886, 896, 104 S. Ct. 1541, 79 L. Ed. 2d 891 & n.11 (1984)). It is not the rate that the particular client subjectively "desires" or is willing or able to pay. *Beastie Boys v. Monster Energy Co.*, 112 F. Supp. 3d 31, 52 (S.D.N.Y. 2015); *see also HomeAway.com v. City of New York*, 523 F. Supp. 3d 573, 2021 U.S. Dist. LEXIS 37643, 2021 WL 791232, at *15 (S.D.N.Y. Mar. 1, 2021) ("[T]he fact that the prevailing party has negotiated, or paid its lawyers based on, a particular billing rate is not the test of the rate's reasonableness."). An "attorney's customary hourly rate" is only one of the *Johnson* factors. *Lilly*, 934 F.3d at 228. At the same time, the reasonable hourly rate "is not ordinarily ascertained simply by reference to rates awarded in prior cases." *Farbotko*, 433 F.3d at 208. Instead, "the equation in the caselaw of a 'reasonable hourly fee' with the 'prevailing market rate' contemplates a case-specific inquiry into the prevailing market rates for counsel of similar experience and skill to the fee applicants counsel," *id.* at 209, and it "requires an evaluation of evidence proffered by the parties," *id.* "Recycling rates awarded in prior cases without considering whether they continue to prevail may create disparity between compensation available under [the fee-shifting statute] and compensation available in the marketplace. This undermines [the fee-shifting statute's] purpose of attracting competent counsel to public interest litigation." *Id.* While courts may take "judicial notice of past awards given to the same attorneys as counsel in the current case, particularly for firms active in IDEA-related matters . . ., reasonable hourly rates awarded in

past cases are *not* binding precedents." *C.B*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *5; *see also C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *6 (S.D.N.Y. Aug. 9, 2018) (declining to apply rate approved in earlier cases because "[w]hile that approved rate is instructive, some four or more years passed between 2011 and 2015-2016, when the bulk of work at issue here was undertaken"); *M.D. v. N.Y.C. Dep't of Educ.*, 2018 U.S. Dist. LEXIS 156923, 2018 WL 4386086, at *4 (S.D.N.Y. Sept. 14, 2018) (refusing to adopt the rates awarded in a previous case because "[t]he [previous case] . . . is five years old"). The Court may consider the passage of time, the increase in fees that may come with such passage of time, and the matriculation of attorneys over that passage of time as junior attorneys gain experience and become more senior. *See C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *6. The hourly rate should account both for the income reasonable counsel would forego at the time by handling the matter (hence, sensitivity to historical rates) and also the current rates to account for the delay in payment from when the services were rendered. In addition, the Court keeps in mind that "a 'reasonable fee' must still be 'sufficient to induce a capable attorney to undertake the representation of a meritorious civil rights case.'" *C.B.*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *4 (quoting *Perdue v. Kenny A.*, 559 U.S. 542, 552, 130 S. Ct. 1662, 176 L. Ed. 2d 494 (2010)).

The parties dispute the reasonable hourly rate that should be used to calculate the attorneys' fee award in this case. The DOE consistently claims that the reasonable hourly rate for attorneys should be between about $150 and $200 less than what Plaintiff claims, as follows:

Appendix M

ATTORNEY/ PARALEGAL NAME	PLAINTIFF REQUESTED RATE/HR	DOE PROPOSED RATE
Jason Sterne	$550	$360
Andrew Cuddy	$550	$360
Michael Cuddy	$550	$360
Kevin Mendillo	$450	$300
Justin Coretti	$425	$280
Brittan Bouchard	$375	$200
Shobna Cuddy	$175	$100
Allison Bunnell	$150	$125
Sarah Woodard	$150	$125
Allyson Green	$150	$100
Cailin O'Donnell	$150	$100
Amanda Pinchak	$150	$100
John Slaski	$150	$100

The Court will apply $420 an hour as the reasonable rate for Andrew Cuddy and $400 for Sterne.[3] Andrew Cuddy was admitted to the bar in 1996 and since 2001 has litigated hundreds of special education due process hearings throughout the State of New York. Cuddy Decl.

3. The Court will not calculate a rate for Michael J. Cuddy who devoted 0.30 hours to the matter related to intake, Dkt. No. 14-3, as the Court declines to award these fees. *See G.B. ex rel. N.B. v. Tuxedo Union Free Sch. Dist.*, 894 F. Supp. 2d 415, 439 (S.D.N.Y. 2012) ("A court has the discretion to reduce the award for time spent by attorneys engaging in less skilled work, like filing and other administrative tasks." (internal quotation marks omitted)).

¶¶ 71, 74. He is the head of the Cuddy Law Firm P.L.L.C. and is a published author and regular speaker on special education topics. *Id.* ¶¶ 75-76. Sterne is a 1996 law school graduate and has practiced special education law full time since September 2005. *Id.* ¶¶ 32, 39. He has written closing briefs for over 150 IDEA impartial due process hearings since September 2005. *Id.* ¶ 38. He began working with R.P. in February 2017. *Id.* ¶ 42. Counsel is experienced, has a good reputation, and achieved significant success.

The rate for Cuddy is somewhat higher than that approved by Judge Engelmayer for him in *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *6, and by Judge McMahon in *C.B.*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *8. It is consistent with that which the Court has awarded for Cuddy for work of comparable skill. *See M.H. v. N.Y.C. Dep't of Educ.*, 2021 WL 4804031, at *13 (S.D.N.Y. Oct. 13, 2021) ($420 hourly rate for Andrew Cuddy). The rate for Sterne is consistent with the rates approved by Judges Engelmayer and McMahon in those cases. It also is consistent with the $400 rate that the DOE has agreed to pay New York counsel to defend against requests for attorneys' fee. Dkt. No. 29-1 at 2.[4]

Judge Engelmayer granted the award in *C.D.* in 2018 for work performed primarily in 2017, *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *1, and Judge McMahon granted the award in 2019 for work performed

4. The agreement with counsel relates solely to federal litigation over attorneys' fees and related matters. The parties do not address whether the same fee that would be reasonable for federal litigation over fees would also be reasonable for the administrative phase.

in 2016 and 2017, *C.B.*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *1. The due process hearing here was held in March 2019, the findings of fact and decision issued in April 2019, and the award here will not be ordered until late 2021. It is appropriate for the Court to consider that counsel provided the services here at a date later than when the services were rendered in *C.B.* and in *C.D.* One of the *Johnson* factors is "the preclusion of employment by the attorney due to acceptance of the case." *Lilly*, 934 F.3d at 228. As a result of representing R.P., counsel was foreclosed from representing other clients at the same then-prevailing reasonable hourly rate. It also is appropriate for the Court to consider the delay factor. The Court has taken those factors into account for Cuddy.

At the same time, however, the skill required of Sterne in this case, the time and labor required, and the novelty and difficulty of the questions was significantly less than in those cases. *See C.D.*, , 2018 WL 3769972, at *1 (11 days of hearings along with an appeal and cross-appeal); *C.B.*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *1-2 (6 days of hearings with witnesses called by both sides and a post-hearing brief). Plaintiff argues that it should not be penalized for the speedy retreat of Defendant at the administrative phase; it "did not know that Defendant would not be putting on an affirmative case until the **day of hearing**." Dkt. No. 28 at 8. Counsel will not be penalized in terms of the hours billed to the matter; Plaintiff was entitled to prepare on the assumption that Defendant would contest the claims and put on an affirmative case. However, having reviewed the due process complaint, the Court also concludes that the matter was not one that

required extensive skill or was novel and that the speed with which Defendant conceded liability is a mark of the weakness of Defendant's case and the corresponding strength of Plaintiff's case. It is for those reasons as well, recognizing that counsel would be entitled to a higher rate in a case involving more risk and more skill, that the Court will not calculate fees for Sterne based on the $420 an hour approved in *M.H. See M.H.*, 2021 WL 4804031, at *13 (awarding $420 hourly rate for Sterne in case where cross-examinations of defendant's witnesses required "care and skill").

The award here is higher than the $360 awarded to Andrew Cuddy in *S.J. v. New York City Department of Education*, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *3-4 (S.D.N.Y. Jan. 12, 2021) (Schofield, J.), *modified*, 2021 WL 536080 (S.D.N.Y. Jan. 25, 2021), but there the court based the rate on what it found to be "the prevailing market rate for experienced, special-education attorneys in the New York area *circa* 2018 is between $350 and $475 per hour," not the current rate. *Id.* at *3 (quoting *R.G. v. N.Y. City Dep't of Educ.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *2 (S.D.N.Y. Sept. 26, 2019)).[5]

The Court will apply a rate of $300 an hour for each of Coretti and Mendillo. Both are mid-level associates. Dkt. No. 13 at 17. The rate is consistent with those applied to Coretti and Mendillo in the past and is appropriate given their skills and reputation, the services rendered, and the

5. The same can be said for *R.G.* upon which the court in *S.J.* relied. There, the court based the fee award on the prevailing rate at the time the services were rendered and not at the time of judgment.

result achieved, among other factors. *See C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *6-7 (awarding $300 hourly rate for a Cuddy Law Firm attorney who had been at the firm since 2012 and had served as lead counsel during the administrative proceedings); *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050 at *3 (awarding $300 hourly rate for attorney who began litigating IDEA cases in 2008 and specialized in them beginning in 2012); *H.C. v. N.Y.C. Dep't of Educ.*, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, *5 (S.D.N.Y. June 17, 2021) (awarding $300 hourly rate for Mendillo). The retainer agreement the DOE employs with outside counsel provides for associates to be paid at a rate of $300 an hour. Dkt. No. 29-1 at 2. There was not such risk in this case or skill required that counsel should be paid at a higher rate.

The Court will award fees at an hourly rate of $200 an hour for Bouchard who joined the Cuddy Law Firm in 2020. Cuddy Decl. ¶ 16. *Cf. S.J.*, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *4 ("The Report also correctly determined a reasonable rate of $200 per hour for attorney Benjamin Kopp, who graduated from law school in 2015, practiced general litigation for two years and joined the Cuddy Law Firm in 2018."); *M.H.*, 2021 WL 4804031, *14 (awarding $200 hourly rate for attorney Kopp); *A.B. v. N.Y.C. Dep't of Educ.*, 2021 U.S. Dist. LEXIS 47573, 2021 WL 951928, at *5 (S.D.N.Y. Mar. 13, 2021) (finding that an hourly rate of $225 an hour is appropriate for the work of a more junior associate); *G.T.*, 2020 U.S. Dist. LEXIS 25557, 2020 WL 1516403, at *5 (approving rate of $200 an hour for associates who worked only on the civil action and who had fewer than two years of IEDA-related experience

when they began doing so); *H.C.*, 2021 WL 2471195, at *6 (assigning rate of $200 an hour to associate who was admitted to practice in 2009 and practiced general litigation from 2009 until 2018, when he joined Cuddy Law Firm). No information is submitted for Bouchard that would justify a higher rate.

Plaintiff also seeks compensation for the time of paralegals and other non-lawyers spent on the matter. "Paralegals, depending on skills and experience, have generally garnered between $100 and $125 per hour in IDEA cases in this District." *A.B.*, 2021 U.S. Dist. LEXIS 47573, 2021 WL 951928, at *7 (quoting *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *3). "Paralegals with evidence of specialized qualifications typically receive $120- or $125-per-hour." *Id.* at *7. In addition, paralegals with experience have received awards of up to $150 per hour. *See D.B. on behalf of S.B. v. N.Y.C. Dep't of Educ.*, 2019 U.S. Dist. LEXIS 68880, 2019 WL 6831506, at *5 (S.D.N.Y. Apr. 22, 2019) (awarding $150 an hour for experienced paralegal). The rate for paralegals in the December 2020 retainer agreement the City enjoys with private counsel for DOE cases is $100 an hour. Dkt. No. 29-1 at 2.

The Court will award fees at a rate of $125 an hour for Slaski, Shobna Cuddy, and Woodard. Slaski holds bachelor of arts and law degrees and was an intern in the New York State Attorney General Office prior to joining the Cuddy Law Firm. Cuddy Decl. ¶ 25. Shobna Cuddy has been the office administrator at the Cuddy Law Firm since 2012 and before that was a paralegal at the firm for five years. Dkt.

No. 14-3 at 24. Woodard has over 30 years of experience. *Id.* at 25. The Court will use an hourly rate of $100 an hour for the other paralegals and non-lawyers. *See C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *7; *G.T.*, 2020 U.S. Dist. LEXIS 25557, 2020 WL 1516403, at *5; *H.C.*, 2021 WL 2471195, at *7 (holding that $100 an hour is a reasonable rate for Bunnell, Pinchak, Woodard, Cuddy, Meghezzi, Slaski, and O'Donnell); *A.B.*, 2021 WL 951928, at *7 ("Where plaintiffs have failed to provide evidence showing that a paralegal has special qualifications in the form of formal paralegal training, licenses, degrees, or certifications or longer paralegal experience, courts have typically awarded fees at the lower rate of $100-per-hour for that paralegal.").

II. Reasonable Hours

After determining the reasonable rates, the Court must determine a reasonable number of hours to be billed. "The task of determining a fair fee requires a conscientious and detailed inquiry into the validity of the representations that a certain number of hours were usefully and reasonably expended." *Lunday*, 42 F.3d at 134. "If the court finds that the fee applicant's claim is excessive or insufficiently documented, or that time spent was wasteful or redundant, the court may decrease the award, either by eliminating compensation for unreasonable hours or by making across-the-board percentage cuts in the total hours for which reimbursement is sought." *Wise v. Kelly*, 620 F. Supp. 2d 435, 442 (S.D.N.Y. 2008) (citing *Hensley*, 461 U.S. at 434; then citing *Kirsch v. Fleet St., Ltd.*, 148 F.3d 149, 173 (2d Cir. 1998); then

citing *New York State Ass'n for Retarded Child., Inc. v. Carey*, 711 F.2d 1136, 1146 (2d Cir. 1983)); *A.B.*, 2021 WL 951928, at *7 ("A fee award should compensate only those hours that were 'reasonably expended' by the attorneys on this case. In determining the number of hours reasonably expended for purposes of calculating the lodestar, the district court should exclude excessive, redundant or otherwise unnecessary hours." (citation and internal quotation marks omitted)). A court can "use estimates in calculating and allocating an attorney's time," since the "essential goal in shifting fees" is "to do rough justice, not to achieve auditing perfection." *Fox*, 563 U.S. at 838.

The work during the administrative phase of the case was performed primarily by Sterne who incurred 17.4 hours of work time and 5.50 hours of travel time (which is billed at 50%). Dkt. No. 13 at 28. He was assisted by Pinchak who billed 12.10 hours to the matter and Bunnell who billed 6.60 hours to the matter. *Id.* Andrew Cuddy billed only 0.60 hours for reviewing the billing statement and making discretionary reductions. *Id.*; Dkt. No. 14-3. Michael Cuddy billed 0.30 hours of non-compensable time at the very beginning of the matter for intake. Dkt. No. 13 at 28; Dkt. No. 14-3. Woodard, Shobna Cuddy, and Slaski also billed time for paralegal work. Dkt. No. 13 at 28.

Defendant contends that the hours billed at the administrative level were excessive because they included up to 9 hours for time spent reviewing and re-reviewing educational records, and 4.5 hours for hearing preparation when the hearing was not contested. It claims that preparation time should be reduced to no more than 3

hours. The Court has reviewed the hours and rejects the claim that they are excessive. The DOE's claim that the hours of review were duplicative is misleading. The records were received at different times and by different professionals. *See C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *9 ("There is of course nothing inherently wrong with staffing multiple attorneys on a case, a practice that is common to, *inter alia*, civil rights litigation."). The due process complaint was three-single spaced pages and provided a detailed educational history of R.P. and his unique needs. The Court cannot conclude that the hours for the preparation of the administrative complaint were unnecessary. *See R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *4 (rejecting DOE argument because court cannot conclude that tasks were unrelated to the preparation of the complaint). The hours for preparation also were not excessive. Although Defendant argues that it did not contest the finding of lack of a FAPE at the hearing, it did not inform Plaintiff's counsel of that position until the day of the hearing. "Plaintiff appropriately prepared for a full hearing and should not be penalized for Defendant's last-minute decision to only contest relief." *D.B.*, 2019 U.S. Dist. LEXIS 68880, 2019 WL 6831506, at *5 ("Defendant did not advise Plaintiff's counsel until the very last minute that it would not contest liability. It could have avoided this by giving more notice of this decision."). The Court might have reached a different conclusion had Defendant bound itself to the position that Plaintiff was denied a FAPE at some sufficiently early point in time that counsel would not have needed to prepare.

Defendant is correct, however, that the fee request related to Sterne's travel should be reduced in line with the Court's reduction of his reasonable hourly rate. *See C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *10 ("Courts generally approve fees, at 50% of an attorney['s] usual rate, for reasonable travel conducted in service of ongoing litigation." (citing *K.F.*, 2011 WL 3586142, at *6)); *see also L.V. v. New York City Dep't of Educ.*, 700 F. Supp. 2d 510, 526 (S.D.N.Y. 2010) ("Courts in this Circuit regularly reduce attorneys' fees by 50 percent for travel time.").

Plaintiff seeks to be compensated for 101.2 hours at the federal court level. Cuddy Decl. ¶ 87; Dkt. No. 13 at 28-29. At Plaintiff's suggested rates (prior to reduction by the Court), the attorneys' fees would be $38,812.50. The bulk of those hours were billed by Bouchard—83 hours. Only 6.50 hours were billed by paralegals. Andrew Cuddy billed 9.70 hours at the federal level, primarily for implementation, in supervision of Bouchard, in working on his declaration filed in this Court, and in reviewing the billing statements. Dkt. No. 30-1. The time billed by Coretti and Mendillo—two hours in total—is negligible.

The IDEA gives a prevailing parent the right to receive reasonable attorneys' fees and costs incurred in a federal court action related to vindicating rights under the statute. *See C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *11; *J.S.*, 2011 U.S. Dist. LEXIS 82169, 2011 WL 3251801, at *8 ("[R]equested fees for the federal action are reasonable."). Those fees may be incurred in enforcing the rights of the parent or counsel, under the IDEA, to

a reasonable attorneys' fee. As Judge Parker put it, "[t]o hold otherwise [and not to grant counsel reasonable fees for time spent preparing fee applications] would further deter [both] private attorneys [and] resource strapped non-profits in important civil rights matters." *D.B.*, 2019 U.S. Dist. LEXIS 68880, 2019 WL 6831506, at *6. Counsel also is entitled to reasonable fees for the time necessary to compile their time entries. *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *4.

Counsel also is entitled to fees and costs incurred in enforcing the decision of an IHO and the findings of fact and decision. *See H.C.*, 2021 WL 2471195, at *10 (holding that where a complaint is not confined to the issue of attorneys' fees, but also sought equitable relief under 42 U.S.C. § 1983, counsel is entitled to be reasonably compensated for that work). "To uphold the IDEA's purpose of providing educational services to disabled children, parents must be able to choose litigation if they believe that is necessary to effectively enforce order given by IHOs." *SJB ex rel. Berkhout v. N.Y.C. Dep't of Educ.*, 2004 WL 1586500, at *4 (S.D.N.Y. July 14, 2004). "Limiting the actions plaintiff might take to force implementation of an IHO's decision can only reduce the urgency school districts would attribute to the implementation of an IHO's decision and thereby lessen the credibility of the IHO process." *Id.* "'[P]ost-decision activities' that are 'largely useful and of a type ordinarily necessary to secure the final result[s] obtained' are compensable." *C.B.*, 2019 WL 3162177, at *11 (second alteration in original) (quoting *M.D.*, 2018 WL 4386086, at *5).

However, the Court concludes that the hours at the federal level were excessive. *Id.* at *4 ("If the hours spent on litigation appear excessive in light of the success obtained, the court has discretion to eliminate specific hours or reduce the final award."). The complaint in this case is five-and-a-half pages long. Dkt. No. 1. It contains 22 allegations of fact—primarily the procedural history of the administrative phase of the case—and raises no novel issues. Counsel spent 6.1 hours drafting the five-and-a-half pages, not counting the time spent reviewing documents in anticipation of drafting the complaint. Dkt. No. 30-1.

Plaintiff billed approximately 21.6 hours of attorney time to the preparation of the two initial declarations in support of summary judgment and the Rule 56.1 statement. *Id.* The Rule 56.1 statement is two pages long. Dkt. No. 16. It largely recites facts from the complaint, adding citations to the record. *Id.* Bouchard's six-page declaration recites the facts of the federal action, including efforts to settle attorneys' fees. Dkt. No. 15. It appears to be based solely on the billing records. Andrew Cuddy's declaration largely recites material from earlier or other submissions in this case or in other cases, including Cuddy's qualifications, Sterne's qualifications, the history of the administrative phase, and the efforts at settlement. The documents should have taken no more than a few hours to prepare.

These examples are illustrative and not exhaustive. In other instances, counsel billed for time that clearly is not compensable (such as saving and filing stamped copies of the complaint) or for tasks that could have been performed by paralegals (such as updating the case spreadsheet). In still other instances, counsel billed extensive time to the

draft of the motion in support of summary judgment, at least portions of which were borrowed from other briefs filed in this Court. Dkt. No. 30-1.

Rather than go through each time entry separately, the Court exercises its discretion and reduces Bouchard's hours at the federal level by two thirds to 27.6 hours. The hours billed by the other professionals and paralegals at the federal court level are reasonable.

III. Unreasonable Protraction

Plaintiff argues that the Court should not reduce its requested fees and expenses because Defendant unreasonably protracted the proceedings. Dkt. No. 13 at 6. Plaintiff claims that Defendant made a late stipulation to Plaintiff's prevailing party status and failed to participate in good faith negotiations for fees, costs, and expenses. *Id.* at 7-10.

The argument is without merit for two separate reasons. First, the evidence does not establish that Defendant engaged in unreasonable protraction. Although Defendant might have been able to avoid some of the fees Plaintiff reasonably incurred in obtaining relief at the administrative level and in seeking relief at the federal court level by more quickly responding to Plaintiff's requests, Plaintiff has not submitted evidence that the time Defendant took in responding was unreasonable. Second, even if Defendant had caused an unreasonable protraction, such delay would not authorize the Court to award fees at more than the reasonable hourly rate or based on time that was not reasonably expended. *See*

M.H., 2021 WL 4804031, at *25. Rather, Defendant's delay makes the time Plaintiff spent in seeking statutorily authorized relief necessary and reasonable that, had Defendant acted more responsibly, might not have been necessary. As Plaintiff notes, "reasonable diligence in [Defendant's] actions could have avoided the hearing altogether." Dkt. No. 28 at 7.

IV. Costs

A district court may award reasonable costs to the prevailing party in IDEA cases. *See* 20 U.S.C. § 1415(i)(3)(B); *see also Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 297-98, 126 S. Ct. 2455, 165 L. Ed. 2d 526 (2006) (holding "costs," as used in 20 U.S.C. § 1415(i)(3)(B), to refer to the list set out in 28 U.S.C. § 1920, the statute governing taxation of costs in federal court); *H.C.*, 2021 WL 2471195, at *11 (S.D.N.Y. June 17, 2021) ("A district court may award reasonable costs to the prevailing party in IDEA cases." (quoting *C.D.*, 2018 WL 3769972, at *12)); *S.J.*, 2021 WL 100501, at *5 (stating the same).

Plaintiff seeks $816.02 in costs at the administrative level. It seeks only the $400 filing fee at the federal stage. Cuddy Decl. ¶ 87. In response, Defendant argues that the costs are "excessive, and include[] lodging, mileage, and parking costs." Dkt. No. 25 at 19. However, Defendant does not offer any further argument for why the costs sought are excessive in this case. Without particularized objections, the Court declines to reduce the costs sought for being excessive. The Court awards $816.02 in costs at the administrative level and $400 in costs at the federal stage.

V. Interest

Plaintiff seeks post-judgment interest. Dkt. No. 13 at 28. Plaintiff's request for post-judgment interest is granted. "Pursuant to 28 U.S.C. § 1961, '[t]he award of post-judgment interest is mandatory on awards in civil cases as of the date judgment is entered.'" *Tru-Art Sign Co. v. Loc. 137 Sheet Metal Workers Int'l Ass'n*, 852 F.3d 217, 223 (2d Cir. 2017) (alteration in original) (quoting *Lewis v. Whelan*, 99 F.3d 542, 545 (2d Cir. 1996)); *see also S.J*, 2021 WL 100501, at *5 (stating the same).

CONCLUSION

For the reasons stated, Plaintiff's motion is GRANTED IN PART AND DENIED IN PART. For the administrative phase, Plaintiff is awarded $10,694.50 in fees and $816.02 in costs for a total of $11,510.52. For the federal court level, Plaintiff is awarded $10,924 in fees and $400 in costs for a total of $11,324. The total award is $22,834.52, plus post-judgment interest at the applicable statutory rate. The Clerk of Court is respectfully directed to prepare a judgment reflecting the Court's holding and to close Dkt. No. 12 and close the case.

SO ORDERED.

Dated: October 19, 2021
New York, New York

/s/ Lewis J. Liman
LEWIS J. LIMAN
United States District Judge

APPENDIX N — M.H. AMENDED OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED OCTOBER 13, 2021

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

20-cv-1923 (LJL)

M.H., INDIVIDUALLY AND ON BEHALF OF M.T.,

Plaintiff,

-v-

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant.

AMENDED OPINION AND ORDER

LEWIS J. LIMAN, United States District Judge:

Plaintiff brings this action pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1415(i)(3), seeking attorneys' fees and equitable relief. Pending before the Court is Plaintiff's motion for summary judgment, seeking attorneys' fees, costs, and interest for work performed by the Cuddy Law Firm ("CLF"), as well as equitable relief, and the cross-motion of Defendant New York City Department of Education ("DOE") for summary judgment on Plaintiff's claims for equitable relief.

For the following reasons, Plaintiff's motion for summary judgment is granted in part and denied in part and Defendant's cross motion is granted.

BACKGROUND

The following facts are undisputed for purposes of summary judgment except as otherwise stated.

I. Relevant Parties

M.T. is a child with a disability under IDEA, 20 U.S.C. § 1401(3)(A), and is classified with autism. Dkt. No. 33 ("Joint Statement" or "Undisputed Facts") ¶ 2; 31-3. M.H. is M.T.'s parent as defined by IDEA, § 1401(23). Joint Statement ¶ 3. M.H. and M.T. reside in Kings County, New York. Joint Statement ¶ 1.

Defendant New York City Department of Education ("DOE") is a local educational agency as defined by IDEA, 20 U.S.C. § 1401(19). *Id.* ¶ 6.

M.T. has an Individualized Education Program ("IEP"), *see* 20 U.S.C. § 1414(d), mandating a state-approved nonpublic school. She attends Brooklyn Blue Feather ("BBF"), a state-approved nonpublic school.

II. The Due Process Complaint and Hearing

On April 17, 2017, M.H. initiated an impartial due process hearing (Case Number 165990), pro se, on behalf of M.T. Joint Statement ¶¶ 12-13 (citing Dkt. Nos. 14, 15 ¶¶ 8, 9). The request was on a form created by Defendant.

Dkt. Nos. 35 ¶ 46, 31 ¶ 31, 31-1. M.H. sought limited relief in the form of an outside evaluation, noting that M.T.'s last evaluation had been three years earlier. Dkt. No. 31-1.

After filing her initial complaint pro se, M.H. retained CLF to represent her when DOE contacted M.H to try to resolve the case without a hearing and made threatening noises to M.H. when she did not settle. Dkt. No. 32-1 ¶¶ 3-4. Nina Aasen of CLF served as lead counsel for M.H. Dkt. No. 31 ¶ 28.

On June 15, 2017, CLF sought to amend the due process complaint on behalf of M.H. to allege a denial of a free appropriate public education ("FAPE"), *see* 20 U.S.C. § 1401(9), for the 2016-2017 and 2017-2018 school years. Joint Statement ¶ 15 (citing Dkt. Nos. 14, 15 ¶ 10). A due process complaint can be amended either by agreement between the parties or, if at least five days before a hearing, by the impartial hearing officer ("IHO"). *See* N.Y. Comp. Codes R. & Regs. tit. viii § 200.5(i)(7). Defendant denied M.H.'s request to amend the due process complaint on or about June 20, 2017, Joint Statement ¶ 16, but on July 18, 2017, the IHO overruled Defendant's denial and accepted the amended due process complaint. *Id.* ¶ 18 (citing Dkt. Nos. 14, 15 ¶ 12).

The amended due process complaint contained five alleged IDEA violations contributing to that claim, including the failure to recommend an appropriate program for the 2016-2017 school year, the failure to recommend an appropriate program for the 2017-2018 school year, the failure to conduct updated comprehensive evaluations, the failure to agree to the parent's request

for independent evaluations, and the failure to conduct a functional behavioral assessment and develop a behavior intervention plan. Dkt. No. 31-3. It claimed, among other things, that the failure of the IEP to specify that M.T. would receive applied behavior analysis ("ABA") or discrete trial instruction and home-based ABA services, and the lack of updated comprehensive evaluations in all areas, constituted a denial of a FAPE. Although BBF offers ABA services as part of its elementary school program for children, like M.T., who have autism, it was not on M.T.'s IEP and was not recognized as one of her needs, despite recommendations in her evaluations that she receive ABA. Joint Statement ¶¶ 4, 5; Dkt. No. 32-1 ¶ 8.

The amended complaint sought the following relief: (1) a finding that M.T.'s March 16, 2016 IEP denied her a FAPE; (2) a finding that M.T.'s March 11, 2017 IEP denied her a FAPE; (3) an order directing Defendant to fund the requested independent evaluations by providers of M.H.'s choosing and at the providers' usual and customary rates; (4) an order that ABA and discrete trials be specified as methodology on M.T.'s IEP; (5) an order that ABA home-based services be added to M.T.'s IEP as part of her educational program; (6) an order reimbursing Plaintiff for expenses of providing home-based ABA services to M.T. for necessary home ABA services that the Department had failed to provide; (7) an order for additional services of home-based ABA services to M.T. to make up for ABA home-based services denied to M.T. and to compensate for the ongoing denials of a FAPE; (8) an order directing Defendant's Committee on Special Education ("CSE") to reconvene to consider all appropriate evaluations, including independent evaluations, to develop a new IEP;

(9) payment of attorneys' fees and expenses; and (10) any further relief that the IHO would deem just and proper to ensure that M.T. received a FAPE. Dkt. No. 31-3.

An impartial due process hearing for M.H. and M.T. was first scheduled for May 30, 2017. The May 30, 2017 first pre-hearing conference lasted only two minutes because the representative from DOE failed to attend, apparently because the representative did not have the code for the telephonic hearing. In the absence of the DOE representative, the IHO simply confirmed that the due process complaint would be amended. Joint Statement ¶ 14; Dkt. No. 31 ¶ 35; 31-2.

The due process hearing was ultimately held over four separate days from August 7, 2017 to April 18, 2018. Over the course of the hearings, Plaintiff introduced 59 exhibits into evidence and Defendant introduced an additional three exhibits.[1] Defendant presented two witnesses while Plaintiff presented the testimony of five witnesses, including that of M.H.

At the August 7 hearing, the parties and IHO addressed DOE's refusal to agree to pay the rates charged by the independent providers selected by M.H. for a M.T.'s evaluation[2] and Plaintiff moved its first 45 exhibits

1. Defendant also relied on certain of Plaintiff's exhibits.

2. Pursuant to New York State regulations section 200.5(g) of the Regulations of the Commissioner of Education, if a Parent disagrees with an evaluation obtained by the school district, the Parent has a right to obtain an independent evaluation at public expense.

into the record. Joint Statement ¶ 20; Dkt. No. 31-4. The IHO directed that counsel for M.H. and counsel for DOE speak about the issue of rates. A second hearing was held on September 19, 2017. At the September 2017 hearing, Plaintiff entered an additional five exhibits into evidence and Defendant put on as a witness a DOE supervisor of psychologists for DOE's CSE, who was subject to both cross-examination and re-direct examination. Joint Statement ¶ 21; Dkt. No. 31-5. Also, after the parties noted that the DOE did not speak to counsel about rates but contacted M.H. directly to demand that she agree to the DOE's rates, the IHO directed Plaintiff's counsel to prepare a proposed order that Plaintiff was entitled to have independent evaluations at providers' rates. Joint Statement ¶ 21; Dkt. No. 31-5. The third hearing was on December 19, 2017. At that hearing, Plaintiff entered an additional six exhibits into evidence and Defendant entered its first three exhibits into evidence and presented two witnesses—the principal and school psychologist from M.T.'s school—who were subject to cross-examination, re-direct examination, and re-cross-examination. Joint Statement ¶ 23.

The last hearing was on April 18, 2018 and lasted approximately three hours and fifty minutes. *Id.* ¶ 24. On October 6, 2017, the IHO had issued an Interim Order requiring Defendant to fund at M.H.'s proposed rates: (i) an independent neuropsychological evaluation; (ii) an independent speech and language evaluation; (iii) an independent occupational therapy evaluation; and (iv) an independent functional behavior assessment, all at rates specified in the order. *Id.* ¶ 22; Dkt. No. 31-6. At the April 18, 2018 hearing, Plaintiff entered three

additional exhibits into evidence and presented her own testimony and that of four other witnesses, including the neuropsychological evaluator, the occupational therapy evaluator, and M.T.'s ABA therapist and board-certified behavior analyst ("BCBA"). *Id.*; Dkt. No. 31-9. At the conclusion of the April 18 hearing, the IHO ordered closing briefs to be submitted within two weeks of the date when the transcript was delivered. Dkt. No. 31-9. M.H.'s closing brief was 20 pages long, complete with citations to the relevant portions of the record and applicable regulations and case law. Dkt. No. 31-10.

III. The Findings of Fact and Decision

On June 6, 2018, the IHO issued her initial Findings of Fact and Decision ("FOFD"). Dkt. No. 31 ¶ 72; Dkt. No. 31, Ex K. On June 7, 2018, the IHO issued an amended FOFD. Joint Statement ¶ 26.

In the FOFD, the IHO found that M.T. had been denied a FAPE for both school years at issue. The IHO determined that "[p]redetermination during the March 2017 IEP meeting led to inappropriate instructional services, failure to perform a functional behavioral assessment, and inadequate related services" and that "[t]he decision not to include ABA on the Student's IEP arose from predetermination, not an assessment of the individualized needs," concluding "[p]redetermination is a denial of FAPE." Dkt. No. 31, Ex L at 5.[3] The IHO

3. Regarding predetermination, the IHO explained: "This [i.e. predetermination] means that the CSE has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives.

also concluded that M.T. "requires ABA both at school and at home" and that "occupational therapy and speech/language therapy should be increased." Dkt. No. 31, Ex. L at 7. The IHO thus concluded that "the Department defied the consensus of the experts and refused to offer ABA on the IEP, thus denying M.T. a FAPE." *Id.* at 9. The IHO also concluded that the failure to conduct a functional behavioral assessment ("FBA") and then develop a behavior intervention plan ("BIP") deprived M.T. of a FAPE. Dkt. No. 31, Ex. L at 12. The IHO ruled that M.T. should receive occupational theory "4x45 in a sensory gym with direct billing to the Department." *Id.* at 14.

The amended FOFD ordered that:

> (1) The CSE "shall reconvene and develop a new IEP consistent with the results of the independent evaluations that places the Student in a state-approved non-public school with appropriate goals, programming, and individual related services and present levels of performance, and ABA methodology with discrete trials specified."
>
> (2) "Student shall receive[ ]10 hours of home-based ABA services at the provider's prevailing rate."

In other words, an IEP team cannot determine a student's program and placement in advance of a meeting and without discussing several placement options with the Parent. It is the Student's individual need that drives program recommendations, not the availability of special education and related services, configuration of the service delivery system, availability of space, or administrative convenience." Dkt. No. 31, Ex. L at 5.

> (3) "Student shall receive 517.5 hours of 1:1 compensatory ABA services at the provider's prevailing rate."
>
> (4) "Parent shall receive 62 hours of parent counseling and training services ["PCAT"] at the provider's prevailing rate."
>
> (5) "The Department shall reimburse Parent for home-based ABA in the amount of $4,592.22 with appropriate documentation within 14 days."
>
> (6) DOE shall fund occupational therapy services ("OT") four times weekly, for forty-five minutes per session, as follows: "[t]he Department shall fund OT 4x45 in a sensory gym with Parent's chosen provider for school year 2018/19 beginning July 1, 2018."[4]

Id. ¶¶ 27-34. The FOFD also included a notice that both parties had a right to obtain review by a State Review Officer ("SRO") of the New York State Education Department. *Id.* ¶ 35.

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4. The Joint Statement notes: "As agreed to between Plaintiff and Defendant on about July 26, 2018, based upon language on page 13 of the FOFD, calculating two sets of 10 weekly hours of ABA over the course of one year, the second and third items ordered by the FOFD should be interpreted as an award of 1035 hours of ABA," and "[a]s agreed to between Plaintiff and Defendant on February 1, 2019, based upon a review of the administrative record, ABA is to be direct payment to the provider." Joint Statement ¶¶ 30, 33.

The amended FOFD awarded M.H. effectively everything that counsel and the independent evaluators helped her request, including ABA of 1035 hours at a rate of $126/hour, for a value of $130,410.00, on top of $4,592.22 in copays that Defendant was ordered to fund. Dkt. No. 35 ¶ 48.

IV. Implementation Efforts

The process to implement the FOFD was lengthy. It was engaged in by CLF on behalf of M.H. and M.T. and members of DOE's Impartial Hearing Order Implementation Unit ("IHOIU"), which is responsible for implementing impartial hearing orders on behalf of Defendant. Joint Statement ¶¶ 7, 36-37.

The parties initially disputed the interpretation of the FOFD's language with respect to compensatory ABA services. Point 2 of the amended FOFD had awarded 10 hours per week of home-based ABA for one year (which would equate to 517.5 hours) and Point 3 of the amended FOFD had awarded 517.5 hours of 1:1 compensatory ABA services. IHOIU suggested that the FOFD should be interpreted to require that the 1035 hours of ABA (517.5 x 2) would have to be used within one year. *Id.* ¶ 39; Dkt. No. 31-13. M.H. disagreed. Eventually, on July 26, the IHOIU agreed that the 1035 hours would be used within three years of July 25, 2018. Joint Statement ¶¶ 40-41, 46; Dkt. No. 31 ¶¶ 84-86; Dkt. No. 41 ¶ 18; Dkt. No. 31-13.

Plaintiff elected to have the ABA provided by M.T.'s ABA providers, Attentive Mental Health Counseling,

P.C. and Attentive Behavior Care, Inc. (collectively, "Attentive Behavior"), which had already been providing ABA services to M.T. Dkt. No. 41 ¶¶ 12, 36-37. Attentive Behavior has since integrated with an entity known as Proud Moments. Dkt. No. 41, Exs. L, OO. The FOFD provided that M.T. would be "reimbursed" for the services provided by Attentive Behavior prior to the FOFD and that the services going forward by Attentive Behavior would be paid for by the Defendant. The process of getting Attentive Behavior paid for the services it had provided and would provide was marked by delay and confusion on the part of Defendant. On July 31, 2018, Ms. Bunnell, a paralegal from CLF, emailed IHOIU with the pre-FOFD invoice for $4,592.22 from Attentive Behavior and requesting authorization for the ABA services as well as any additional documentation that would be needed for Attentive Behavior to be directly reimbursed. Joint Statement ¶ 48. The $4,592.22 invoice was not paid by Defendant until February 2019, a delay that was accounted for only in part by the fact that the order provided for "reimbursement," while M.T. had not actually paid out of pocket for the prior services by Attentive Behavior. Over the course of July and August 2018, both Ms. Bunnell from CLF and counsel (Nina Aasen) sent numerous emails to IHOIU inquiring about the payment. With the exception of correspondence on August 8, 2018 inquiring whether the payment should be made directly to Attentive Behavior, CLF's emails were met with silence. *Id.* ¶¶ 49-55.

On September 19, 2018, the managing partner of CLF, Andrew Cuddy, emailed IHOIU that the firm was "having extreme difficulty with implementation and

the failure of [their] office to respond to efforts to work through implementation," and that going forward, in any case without solid evidence of implementation within sixty days of the decision, CLF would immediately sue for enforcement. *Id.* ¶ 56. IHOIU responded the same day, assuring CLF that it would review communications with CLF about its cases, promising to provide a status update by the following week, and inquiring whether there was "any additional information on priorities or cases [it] should focus on." *Id.* ¶ 57. Ms. Bunnell followed up the next day with a list of "high priority cases," including M.T.'s case with a notation: "Reimbursement of Attentive Behavior Care, IEP meeting, and all the services awarded in the decision have not been authorized." *Id.* ¶ 58. Still there was silence. CLF followed up with an email on October 4, 2018 from counsel; an email on October 11, 2018 from Ms. Bunnell that noted that authorizations and information had not been received and that the matter was urgent since the decision was dated June 7, 2018; and another email from Ms. Bunnell on October 25, 2018, which asked IHOIU to advise on the status of the matter as soon as possible. *Id.* ¶¶ 59-61.

On January 10, 2019, IHOIU indicated that the 1035 hours of ABA would be authorized the following day, but by email the same day also stated that the Unit would only reimburse the money after proof of payment, unless CLF demonstrated where precisely in the transcript direct payment was addressed. Dkt. No. 31 ¶ 89. On January 30, 2019, Ms. Bunnell emailed IHOIU, directing IHOIU to pages 314-316 of the transcript from the administrative hearing in reference to the reimbursement for ABA

services awarded at item "5" of the FOFD, occupational therapy ("OT"). *Id.* ¶ 79; *see also* Dkt. No. 31-12 at 15 (Amended FOFD stating "The Department shall fund OT 4x45 in a sensory gym with Parent's chosen provider for school year 2018/19 beginning July 1, 2018"); Dkt. No. 31-20 (email from Nina Aasen to Sapna Kapoor stating "See pages 314-316"). On February 1, 2019, IHOIU emailed CLF that they had reviewed the transcript, and would set up Plaintiff's matter as "direct payment to the provider" and would "be in touch if he needs anything else." Joint Statement ¶ 79; Dkt. No. 31 ¶ 90.

On February 19, 2019, Ms. Bunnell inquired with IHOIU on each item of awarded relief still at issue, including the ordered IEP hearing, payment of pre-FOFD ABA, payment of compensatory post-FOFD ABA, and occupational therapy services directed to begin on July 1, 2018 and carry on for the 2018-2019 school year. IHOIU did not respond to that or any follow-up by CLF on Plaintiff's case until July 2, 2020. Dkt. No. 31 ¶¶ 95-100; Dkt. No. 32, Exs. I, J, K, R. Only then, and after M.H. had filed this lawsuit, did IHOIU send counsel a chart of claimed invoice hours and amounts and request that CLF send over unpaid invoices concerning ABA. Dkt. No. 32 ¶ 125.

All of the invoices for ABA have now been paid by the Defendant. Hr'g Tr. at 9. Eight of them were paid before this litigation was instituted.

Appendix N

PROCEDURAL HISTORY

M.H. filed her initial complaint on March 4, 2020. Dkt. No. 1. The initial complaint asserted four causes of action: (1) reasonable attorneys' fees and costs pursuant to 20 U.S.C. § 1415(i)(3); (2) equitable relief under 42 U.S.C. § 1983 for defendant's deprivation of Plaintiff's rights under the IDEA by failing to implement the FOFD; (3) a claim under the IDEA's own enforcement authority asking the Court to direct Defendant to comply with the FOFD; and (4) a claim that Defendant caused Plaintiff to breach their contract with ABC, Inc., by not authorizing funding for M.T.'s services through ABC, Inc.

On July 27, 2020, M.H. filed an amended complaint. Dkt. No. 14. The amended complaint dropped Plaintiff's fourth cause of action, which sounded in state law. *Id.*

By order dated October 1, 2020, the Court approved a case management plan over Defendant's objection, permitting limited discovery into two issues: (1) Plaintiff's allegations that the Department failed to implement the amended FOFD by not paying Attentive Behavior for awarded services and (2) Plaintiff's allegation that it should be awarded additional makeup services to compensate for Department's alleged failure to implement the amended FOFD in a timely manner. The Court entered the order without prejudice to a properly tailored motion for a protective order from either side, if necessary. Dkt. No. 23. Subsequently, the parties sparred over discovery and the Court granted in part and denied in part Plaintiff's motion with respect to discovery. Dkt. No. 26.

Appendix N

Plaintiff moved for summary judgment on April 7, 2021. Dkt. No. 30. DOE submitted a cross motion for summary judgment on May 19, 2021. Dkt. No. 39. Plaintiff filed a response on June 30, 2021. Dkt. No. 49. The parties submitted legal memoranda in support of their motions, *see* Dkt. Nos. 34, 43, 48; as well as declarations, *see* Dkt. Nos. 31, 32, 35, 40, 41, 45, 46, 47; and Local Rule 56.1 Statements, *see* Dkt. Nos. 33, 39, 42.

While the motions for summary judgment were pending, Plaintiff moved for a preliminary injunction requiring Defendant to confirm to non-party Proud Moments the remaining ABA hours not in dispute and that were available under the FOFD. Dkt. No. 44. The Court denied the motion on the grounds that, after it was filed, Defendant had filed a declaration setting forth the balance available of ABA services that Plaintiff could provide to Proud Moments as a representation made by the Defendant in a judicial proceeding, and that as a result Plaintiff had not shown a basis for preliminary injunctive relief from the Court. *Id.*

LEGAL STANDARD

Under Federal Rule of Civil Procedure 56(a), a court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). "A genuine issue of material fact exists if 'the evidence is such that a reasonable jury could return a verdict for

the nonmoving party.'" *Nick's Garage, Inc. v. Progressive Cas. Ins. Co.*, 875 F.3d 107, 113-14 (2d Cir. 2017) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)). "The movant bears the burden of 'demonstrat[ing] the absence of a genuine issue of material fact.'" *Id.* at 114 (quoting *Celotex*, 477 U.S. at 323). In deciding a motion for summary judgment, the Court must "construe the evidence in the light most favorable to the non-moving party, and draw all reasonable inferences in its favor." *Gilman v. Marsh & McLennan Cos., Inc.*, 826 F.3d 69, 73 (2d Cir. 2016).

If the movant meets its burden, "the nonmoving party must come forward with admissible evidence sufficient to raise a genuine issue of fact for trial in order to avoid summary judgment." *Jaramillo v. Weyerhaeuser Co.*, 536 F.3d 140, 145 (2d Cir. 2008). It may not rely on "mere speculation or conjecture as to the true nature of the facts," *Hicks v. Baines*, 593 F.3d 159, 166 (2d Cir. 2010) (citation omitted), or "on the allegations in [its] pleading, or on conclusory statements, or on mere assertions that affidavits supporting the motion are not credible," *Gottlieb v. Cnty. of Orange*, 84 F.3d 511, 518 (2d Cir. 1996) (internal citation omitted). Rather, to survive a summary judgment motion, the opposing party must establish a genuine issue of fact by "citing to particular parts of materials in the record," Fed. R. Civ. P. 56(c)(1)(A), and demonstrating more than "some metaphysical doubt as to the material facts," *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986); *see also Wright v. Goord*, 554 F.3d 255, 266 (2d Cir. 2009). If "the party opposing summary judgment propounds a reasonable conflicting interpretation of a

material disputed fact," summary judgment must be denied. *Schering Corp. v. Home Ins. Co.*, 712 F.2d 4, 9-10 (2d Cir. 1983).

DISCUSSION

The competing motions present two separate sets of issues for the Court to decide: (1) Plaintiff's motion for fees, costs, and interest; and (2) whether equitable relief should be granted to ensure Defendant's compliance with the FOFD. The Court considers these issues in turn.

I. Fees, Costs, and Interest

Plaintiff seeks an award of $191,436.65 in fees, costs, and interest for work it performed at the administrative and federal court stages in this case. *See* Dkt. No. 47 ¶ 7 (revising the previous grand total); Dkt. No. 35 ¶ 131 (stating the original total request of $179,766.27). Defendant responds that the rates requested by Plaintiff exceed those prevailing in the community, that the hours billed are unreasonably high, and that Plaintiff should be awarded at most $53,955.44. *See* Dkt. No. 43 at 30. The Court begins with the award of attorney's fees. It then turns to costs and interest.

A. Attorney's Fees

1. General Principles

"The IDEA aims 'to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and

related services designed to meet their unique needs.'" *A.R. ex rel. R.V. v. N.Y. City Dep't of Educ.*, 407 F.3d 65, 72 (2d Cir. 2005) (quoting 20 U.S.C. § 1400(d)(1)(A)). To that end, the statute provides that "the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing party who is the parent of a child with a disability." 20 U.S.C. § 1415(i)(3)(B)(i); 20 U.S.C. § 1415(i)(3)(B)(i)(I). The statute mandates the fees awarded "shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded . . . ." *Id.* § 1415(i)(3)(C). The award thus must be "reasonable" and may not be based on rates exceeding those "prevailing in the community."[5]

The Court applies the interpretation of a "reasonable attorney's fee" that has been developed in connection with all civil rights fee-shifting statutes. *A.R. ex rel. R.V*, 407 F.3d at 75 ("[W]e 'interpret the IDEA fee provisions in consonance with those of other fee-shifting statutes.'" (quoting *I.B. ex rel. Z.B. v. N.Y.C. Dep't of Educ.*, 336 F.3d 79, 80, 63 Fed. Appx. 21 (2d Cir. 2003) (per curiam))); *see also S.N. ex rel. J.N. v. Pittsford Cent. Sch. Dist.*, 448 F.3d 601, 604 (2d Cir. 2006). The purpose of allowing attorneys' fees in a civil rights action "is to ensure

5. As a threshold matter, neither party disputes that Plaintiff is entitled to an award of attorneys' fees. Plaintiff states "M.H., the prevailing party at the underlying administrative due process hearing, is entitled to attorneys' fees and costs associated with this matter." Dkt. No. 34 at 13. Defendant does not dispute that Plaintiff is entitled to some award, but rather disputes the amount of the award. *See, e.g.*, Dkt. No. 43 at 4.

effective access to the judicial process for persons with civil rights grievances." *Hensley v. Eckerhart*, 461 U.S. 424, 429, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983). "When a plaintiff succeeds in remedying a civil rights violation, . . . he serves 'as a "private attorney general," vindicating a policy that Congress considered of the highest priority.'" *Fox v. Vice*, 563 U.S. 826, 833, 131 S. Ct. 2205, 180 L. Ed. 2d 45 (2011) (quoting *Newman v. Piggie Park Enterps., Inc.*, 390 U.S. 400, 402, 88 S. Ct. 964, 19 L. Ed. 2d 1263 (1968) (per curiam)). "[T]he fee-shifting feature of the IDEA — including the authority to award reasonable fees for the fee application itself — plays an important role in 'attract[ing] competent counsel' to a field where many plaintiffs with meritorious cases could not afford to pay such counsel themselves." *G.T. v. N.Y.C. Dep't of Educ.*, 2020 U.S. Dist. LEXIS 25557, 2020 WL 1516403, at *10 (S.D.N.Y. Feb. 12, 2020) (quoting *Simmons v. N.Y.C. Transit Auth.*, 575 F.3d 170, 176 (2d Cir. 2009)).

In determining a reasonable fee, "[t]he district court must ascertain 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.'" *Chambless v. Masters, Mates & Pilots Pension Plan*, 885 F.2d 1053, 1058-59 (2d Cir. 1989) (quoting *Blum v. Stenson*, 465 U.S. 886, 896 n.11, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984)). "The reasonable hourly rate is the rate a paying client would be willing to pay . . . bear[ing] in mind that a reasonable, paying client wishes to spend the minimum necessary to litigate the case effectively." *Ortiz v. City of New York*, 843 F. App'x 355, 359 (2d Cir. 2021) (quoting *Lilly v. City of N.Y.*, 934

F.3d 222, 228). The Court also considers the *Johnson* 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.

Lilly, 934 F.3d at 228. "A district court need not recite and make separate findings as to all twelve *Johnson* factors, provided that it takes each into account in setting the attorneys' fee award.'" *C.D. v. Minisink Valley Cent. Sch. Dist.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *4 (S.D.N.Y. Aug. 9, 2018) (quoting *E.F. ex rel. N.R. v. N.Y. City Dep't of Educ.*, 2014 U.S. Dist. LEXIS 34606, 2014 WL 1092847, at * 3 (S.D.N.Y. Mar. 17, 2014)); *see also C.B. v. N.Y. City Dep't of Educ.*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *5 (S.D.N.Y. July 2, 2019) (same).

After determining a reasonable hourly rate, the Court multiplies "that rate by the number of hours reasonably expended to determine the presumptively reasonable fee."

Lilly, 934 F.3d at 230. "To calculate . . . attorneys' fees, 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.*, 407 F.3d at 79 (internal quotation marks omitted) (quoting *G.M. v. New Britain Bd. of Educ.*, 173 F.3d 77, 84 (2d Cir. 1999)). "[T]here is . . . a strong presumption that the lodestar figure represents a reasonable fee." *Id.* (internal quotation marks omitted) (quoting *G.M.*, 173 F.3d at 84); *accord I.B. ex rel. Z.B.*, 336 F.3d at 80.

The Second Circuit has stated:

> In *Arbor Hill* [522 F.3d 182 (2d Cir. 2008)] , we attempted to . . . clarify our circuit's fee-setting jurisprudence. We instructed district courts to calculate a presumptively reasonable fee by determining the appropriate billable hours expended and setting a reasonable hourly rate, taking account of all case-specific variables. We explained with respect to the latter:
>
> [T]he district court, in exercising its considerable discretion, [should] bear in mind all of the case-specific variables that we and other courts have identified as relevant to the reasonableness of attorney's fees in setting a reasonable hourly rate. The reasonable hourly rate is the rate a paying client would be willing to pay. In determining what rate a paying client would be willing to pay, the district court should

> consider, among others, the *Johnson* [488 F.2d 714 (5th Cir. 1974)] factors; it should also bear in mind that a reasonable, paying client wishes to spend the minimum necessary to litigate the case effectively. The district court should also consider that such an individual might be able to negotiate with his or her attorneys, using their desire to obtain the reputational benefits that might accrue from being associated with the case. The district court should then use that reasonable hourly rate to calculate what can properly be termed the "presumptively reasonable fee."
>
> In the wake of *Arbor Hill*, we have consistently applied this method of determining a reasonable hourly rate by considering all pertinent factors, including the *Johnson* factors, and then multiplying that rate by the number of hours reasonably expended to determine the presumptively reasonable fee. It is only after this initial calculation of the presumptively reasonable fee is performed that a district court may, in extraordinary circumstances, adjust the presumptively reasonable fee when it does not adequately take into account a factor that may properly be considered in determining a reasonable fee.

Lilly, 934 F.3d at 229-30 (internal quotation marks and citations omitted).

The Court's task is to make "a conscientious and detailed inquiry into the validity of the representations that a certain number of hours were usefully and reasonably expended." *Lunday v. City of Albany*, 42 F.3d 131, 134 (2d Cir. 1994). At the same time, however, in reviewing a fee application, "trial courts need not, and indeed should not, become green-eyeshade accountants." *Fox*, 563 U.S. at 838. "The essential goal in shifting fees (to either party) is to do rough justice, not to achieve auditing perfection." *Id.*

"[T]he fee applicant bears the burden of establishing entitlement to an award, and documenting the appropriate hours expended and hourly rates." *Hensley*, 461 U.S. at 437; *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *7. The fee applicant must "establish his hourly rate with satisfactory evidence—in addition to the attorney's own affidavits." *Chambless*, 885 F.2d at 1059 (internal quotation marks and citation omitted). Where the fee applicant presents no evidence to support the timekeeper's relevant qualifications, "courts typically award fees at the bottom of the customary fee range." *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *7 (citing cases).

2. Reasonable Hourly Rate

The parties sharply disagree on the reasonable hourly rate to be applied in this case. M.H.'s lead counsel at the administrative stage was Nina C. Aasen, who worked with managing partner Andrew K. Cuddy. Plaintiff argues that a rate of $525 per hour should be applied to Aasen,

who was admitted to the New York State bar on January 25, 1994, and to Andrew K. Cuddy, who was admitted on June 19, 1996. Aasen was assisted by Jason Sterne, who drafted the post-hearing brief, and Justin M. Coretti, who attended the first hearing. Benjamin M. Kopp has handled the federal litigation, with very brief support from Kevin Mendillo. Sterne was admitted to the bar on July 13, 1998, Coretti on February 21, 2013, and Kopp on January 13, 2016. Joint Statement ¶¶ 124-128. Plaintiff asks for fees at a rate of $525 an hour for Sterne, and $425 an hour for Coretti, Kopp, and Mendillo. Plaintiff also seeks $225 an hour for paralegal time. Dkt. No. 47 ¶ 7.

Defendant argues that application of the *Johnson* factors warrants a fee no greater than $360 an hour for Cuddy, Sterne, and Aasen, $280 an hour for Coretti and Mendillo, $200 an hour for Kopp, and between $100 and $125 an hour for the paralegals. Dkt. No. 43 at 8.

Plaintiff relies on several sources of evidence in support of the reasonableness of its requested rates. First, Managing Partner Cuddy declares that the customary fees in 2016, and for many matters initiated toward the end of the 2016-17 school year, which CLF agreed to charge M.H, were:

- Senior Attorney: $525.00/hour
- Associate Attorney: $425.00/hour
- Legal Assistant/Paralegal: $225.00/hour

Dkt. No. 35 ¶ 52. CLF's current hourly rates, as applied to current (and relevant former) staff, include $550 for Cuddy, Sterne, and Aasen; $450 for Mendillo; $425 for

Coretti; $400 for Kopp; and $225 for paralegals. *Id.* ¶ 52 n.1. Although CLF agreed with M.H. to remove language from the retainer for her responsibility for costs, making the matter entirely contingent on fee-shifting, and a large percentage of the Firm's regular clientele are low-income parents requiring the fee-shifting provision of the IDEA for payments, CLF asks its clientele to remain responsible for fees in "certain scenarios that would either significantly reduce or eliminate [its] ability to collect any fees under the IDEA's fee-shifting provision." *Id.* ¶¶ 58-59. "Clients that are able to afford the Firm's rates retain the Firm on a fee-for-service basis." *Id.* ¶ 60. Cuddy also identifies several factors that he argues support the requested rate. Those factors include: (1) the questions before the IHO were difficult and fact-intensive, *id.* ¶¶ 44-45; (2) M.H. received outstanding results compared to her pro se request, *id.* ¶¶ 46-49; (3) CLF was precluded—due to the relatively small size of the parents' bar—from taking on a case from "one of the other tens of thousands of families within the five boroughs requiring [their] services," *id.* ¶ 51; (4) CLF was operating on a shortened time schedule because M.H. reached out toward the end of the 30-day period given to a school district to schedule and hold a resolution meeting, *id.* ¶ 52; *see also* 34 C.F.R. §§ 300.510(c), 300.515; N.Y. Comp. Codes R. & Regs. tit. viii § 200.5(j)(5); (5) children with disabilities are underrepresented because the rates previously approved by courts for special education cases are lower than fee awards for other civil rights cases, making special education cases less attractive and "discouraging more competent counsel — even general practitioners — from taking the time to learn and litigate these matters," Dkt. No. 35 ¶¶ 64-65; (6) CLF maintained a continuing

professional relationship with M.H., resulting in multiple decisions along the way to keep down the costs of her litigation, *id.* ¶¶ 69-71; and (7) attorney and paralegal assignments at each step of the case were appropriately matched to the experiences, reputations, and abilities of those assigned. *Id.* ¶ 72.[6]

Second, Plaintiff relies on records that it obtained through a New York State Freedom of Information Law request for Defendant's records on attorneys' fees where the underlying litigation was initiated by or against the DOE pursuant to (i) the IDEA, (ii) Section 3602-c of Article 73 of the N.Y.S. Education Law, (iii) Article 89 of the N.Y.S. Education Law, and/or (iv) Part 200 of the Regulations of the Commissioner of Education. Plaintiff also reviewed the Court's electronic dockets for the affidavits and declarations of special education lawyers who provide testimony regarding their rates. Dkt. No. 32 ¶¶ 254, 257 (internal quotation marks omitted). A non-scientific review of Plaintiff's compilation of the rates shows that the rates charged by the principal biller vary dramatically, from over $1,000 per hour for the large New York firms (without a specialty in special education law), to a range of approximately $250 to $300 per hour on the low-end and $400 to $500 per hour on the high-end for legal service providers and special education lawyers. *Id.* ¶ 255. Counsel declares that "while Defendant does pay varying proportions of parents' attorney fees in IDEA cases, it is not consistently based on the rates charged,"

6. The qualifications of the lawyers involved are set forth in the Cuddy, Kopp, and Aasen declarations. Dkt. No. 35 ¶¶ 91-130 (Cuddy); Dkt. No. 32 ¶¶ 261-72 (Kopp); Dkt. No. 31 ¶¶ 101-11 (Aasen).

and that "Defendant has paid 80-90% of invoices from practitioners who charge over $600 for services, [and] 20-30% of invoices for practitioners who charge less than $350 for services." *Id.* ¶ 256. The attorney declarations and affidavits "demonstrate that the prevailing hourly rate range in the community in 2018 and 2019 was: (i) $395-$675 per hour for experienced attorneys; (ii) $285-$525 for associates; and (iii) $150-$225 for paralegals, all with gradual increases since 2011." *Id.* ¶ 259.[7]

Third, Plaintiff relies on the declaration of another special education lawyer, Irina Roller, who states that her firm's billing rates for the 2018-19, 2019-20, 2020-21, and 2021-22 school years varied between $550-$575 per hour for the managing partner, $375-$450 per hour for senior attorneys, and $275-$500 for associate attorneys. Dkt. No. 46 ¶ 7. Currently, her firm charges $500 an hour for lawyers with 25-27 years of legal experience and 16-18 years of special education experience, and $485 per hour for an attorney with 18 years of legal experience and 10 years of special education experience. Roller stated that she believes these rates are consistent with those charged in this District for attorneys of comparable talent and experience. *Id.* ¶¶ 10-11.

For its part, Defendant relies on the decisions of other Judges in this District considering the reasonable rates for attorneys from CLF on cases before them. In

7. These figures do not include the hourly rate for a commercial litigator at a large firm whose regular practice is not special education law and whose rate for commercial clients is significantly higher than the rates charged by special education lawyers.

S.J. v. N.Y. City Dep't of Educ., 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *3-4 (S.D.N.Y. Jan. 12, 2021), *modified*, 2021 U.S. Dist. LEXIS 13366, 2021 WL 536080 (S.D.N.Y. Jan. 25, 2021), a court in this District awarded fees to Cuddy at a rate of $360 per hour and to Kopp at $200 per hour. The court stated, "the prevailing market rate for experienced, special-education attorneys in the New York area *circa* 2018 is between $350 and $475 per hour." 2021 U.S. Dist. LEXIS 6180, [WL] at *3 (Schofield, J.) (quoting *R.G. v. N.Y. City Dep't of Educ.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *2 (S.D.N.Y. Sept. 26, 2019)).[8] In *R.G.*, Judge Caproni awarded fees based on a rate of $350 per hour for Sterne and Cuddy and $150-$300 per hour for other lawyers. *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *7. In *K.L. v. Warwick Valley Central School District*, 2013 U.S. Dist. LEXIS 126933, 2013 WL 4766339, at *5 (S.D.N.Y. Sep. 5, 2013), *aff'd*, 584 F. App'x 17 (2d Cir. 2014), Judge Cote awarded attorney fees for the administrative portion of an IDEA case at a rate of $250 an hour for senior CLF attorneys and entirely denied compensation for the work on the federal action due to what she found were CLF's "wholly unreasonable" billing practices in that case. 2013 U.S. Dist. LEXIS 126933, [WL] at *4. In *O.R v. N.Y. City Dep't of Educ.*, 340 F. Supp. 3d at 365 (S.D.N.Y. 2018),

8. Here, CLF requested payment for legal work it did starting May 19, 2017. *See* Dkt. No. 47-1. Indeed, CLF did much of the legal work in this case was "*circa* 2018." For example, CLF represented Plaintiff in the last and longest IHO hearing on April 18, 2018, submitted a closing brief on Plaintiff's behalf on May 21, 2018, and represented Plaintiff throughout the implementation of the FOFD, which began in June 2018. *See* Joint Statement ¶¶ 24, 25, 36.

Judge Gorenstein awarded fees at a rate of $350 an hour for an attorney with nine years of experience (including seven in IDEA law) and $225 an hour for an attorney with six years of litigation experience (including one year in IDEA law).

Each of these approaches has its own inherent flaws. The fact that M.H. may have agreed that CLF should be paid at a particular rate does not establish that such rate is reasonable. *Beastie Boys v. Monster Energy Co.*, 112 F. Supp. 3d 31, 52 (S.D.N.Y. 2015) ("On a fee-shifting application, . . . the governing test of reasonableness is objective; it is not dictated by a particular client's subjective desires or tolerance for spending."); *see also HomeAway.com v. City of New York*, 523 F. Supp. 3d 573, 2021 U.S. Dist. LEXIS 37643, 2021 WL 791232, at *15 (S.D.N.Y. Mar. 1, 2021) ("[T]he fact that the prevailing party has negotiated, or paid its lawyers based on, a particular billing rate is not the test of the rate's reasonableness."). "[T]he attorney's customary hourly rate" is only one of the *Johnson* factors. *Lilly*, 934 F.3d at 228. It is entitled to even less weight where, as here, CLF admits those rates are what it agrees to seek when it is awarded counsel fees and not what the client agrees to pay regardless of whether CLF is awarded fees. *See S.J.*, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *3 (rates submitted are not indicative of rates actually paid by clients). CLF does not set forth the rates it is paid in those few instances when it has a client who can afford to pay.

For similar reasons, the records CLF obtained through the FOIL request and the review it conducted of

attorney declarations and affidavits filed in this District are of limited value. The declarations were made in support of fee requests. They do not reflect what the Court actually awarded and Plaintiff does not indicate whether the rates reflected in the declarations are those that the client paid or would pay the attorney in question. The FOIL requests, which reflect the rates paid to a number of differing attorneys of varying experience lack sufficient context to provide an adequate basis for the Court to make a finding about the proper hourly rate for the attorneys who litigated M.H.'s case. *See S.J.*, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *3 (declining to rely on similar evidence as a "starting point in the analysis of a reasonable hourly rate, . . . because the . . . evidence either does not substantiate such rates were actually paid (versus claimed), or where rates are asserted to have been actually paid, does not provide relevant context for such rates billed"). Without questioning the veracity of the attorney declarations, it is difficult to say that a rate reflected in the declarations is the "prevailing" rate in the community if it is not actually paid to anyone in the community and the Court routinely discounts it. *See C.B. v. N.Y.C. Dep't of Education*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *5 (S.D.N.Y. 2019) (McMahon, C.J.) (citing cases) (explaining that district courts "have decided not to rely too heavily [on such] affidavits, since they may only provide isolated examples of billing rates of a few lawyers, may leave out context that rationalizes the rates billed, and may even list rates that are not in practice ever paid by reasonable, paying clients"). The declaration by another attorney in the IDEA area also is of some, albeit limited, value. Accepting the claims in the declaration

as true because they are undisputed, at most they show the rates that one attorney believes are reasonable. They do not indicate which, if any, clients "actually paid the rates they claim to charge" or provide details of any of the cases. *G.T.*, 2020 U.S. Dist. LEXIS 25557, 2020 WL 1516403, at *4 (discounting similar declarations filed in support of a fee request by Roller); *see also H.C. v. N.Y. City Dep't of Educ.*, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *4 n.5 (S.D.N.Y. June 17, 2021) (citing cases and declining to award any weight to affidavits from other attorneys because they do not provide the context necessary to properly apply the *Johnson* factors); *C.B.*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *8 ("[T]he Court finds these declarations instructive, [but] they cannot be so easily taken at face value.")[9]

The Defendant's approach also is flawed. First, as Judge Parker recently noted, reviewing similar declarations, "[t]hese affidavits also highlight the increasing complexity of IDEA matters and the need for parents of children with special needs to obtain specialists in this area to effectively litigate their claims." *D.B. ex rel. S.B. v. N.Y.C. Dep't of Educ.*, 2019 U.S. Dist. LEXIS 68880, 2019 WL 6831506, at *4 (S.D.N.Y. Apr. 22, 2019). Those concerns cannot simply be dismissed out-of-hand, as Defendant would do.

Second, CLF is entitled to attorneys' fees based on the "'prevailing market rate,' i.e., the rate 'prevailing in the

9. Because the Court puts little weight on Ms. Roller's declaration, it need not address Defendant's argument that it should be stricken because it was filed only in reply. Dkt. No. 52-2.

[relevant] community for similar services by lawyers of reasonably comparable skill, experience, and reputation.'" *Farbotko v. Clinton Cty. of New York*, 433 F.3d 204, 208 (2d Cir. 2005) (quoting *Blum v. Stenson*, 465 U.S. 886, 896 n.11, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984)). That rate "is not ordinarily ascertained by reference to rates awarded in prior cases." *Id.* Instead, "the equation in the caselaw of a 'reasonable hourly fee' with the 'prevailing market rate' contemplates a case-specific inquiry into the prevailing market rates for counsel of similar experience and skill to the fee applicants counsel," *id.*, and it "requires an evaluation of evidence proffered by the parties," *id.* at 209. "Recycling rates awarded in prior cases without considering whether they continue to prevail may create disparity between compensation available under [the fee-shifting statute] and compensation available in the marketplace. This undermines [the fee-shifting statute's] purpose of attracting competent counsel to public interest litigation." *Id.* Unthinking application of fee rates simply because they were approved in the past also runs the risk of freezing fee awards in place. Thus, while a court may take "judicial notice of the rates awarded in prior cases and [employ its] own familiarity with the rates prevailing in the district," the law requires "a case-specific inquiry into the prevailing market rates for counsel of similar experience and skill to the fee applicant's counsel." *Id.*

The Court applies this principle to fee litigation under the IDEA. It consults the decisions of sister courts, but it is not bound by them. *See C.B*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *5 (stating that while courts may take "judicial notice of past awards given to the same

attorneys as counsel in the current case, particularly for firms active in IDEA-related matters, . . . reasonable hourly rates awarded in past cases are not binding precedents"); *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *6 (S.D.N.Y. Aug. 9, 2018) (declining to apply rate approved in earlier cases because "[w]hile that approved rate is instructive, some four or more years have passed between 2011 and 2015-2016, when the bulk of the work at issue here was undertaken"); *M.D. v. N.Y.C. Dep't of Educ.*, 2018 U.S. Dist. LEXIS 156923, 2018 WL 4386086 (S.D.N.Y. Sept. 14, 2018) (refusing to adopt the rates awarded in a previous case because "[t]he [previous case] . . . is five years old"). The Court may consider the passage of time, the increase in fees that may come with such passage of time, and the matriculation of attorneys over that passage of time as junior attorneys gain experience and become more senior. *See C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *6. In addition, the Court keeps in mind that "a 'reasonable fee' must still be 'sufficient to induce a capable attorney to undertake the representation of a meritorious civil rights case.'" *C.B.*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *4 (quoting *Perdue v. Kenny A.*, 559 U.S. 542, 552, 130 S. Ct. 1662, 176 L. Ed. 2d 494 (2010)).

This case-specific inquiry is reflected in the very cases upon which Defendant relies. Those cases consider rates approved in other decisions; they eschew, however, a rule of law that would find a rate reasonable and anything above it unreasonable simply because it has been applied in an earlier decision. Thus, in 2018, Judge Engelmayer approved an award of $400 per hour for Cuddy and

Sterne—$40 an hour higher than the maximum Defendant says should be paid here and $125 less than what was requested for each lawyer—after noting that a $375 fee had been approved by Cuddy and Stern in 2011 and that "some four or more years had passed between 2011 and 2015-2016, when the bulk of the work at issue here was undertaken," during which "the Cuddy Law Firm has grown substantially . . . ." *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *13. Likewise, in 2019, Judge McMahon awarded fees at a rate of $400 per hour for Cuddy and Stern—again, $40 higher than what Defendant argues as the maximum here, but $125 less than what counsel sought—for administrative work done through mid-2017. *See C.B.*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *8 (McMahon, C.J.).

After considering all the evidence submitted by each party, along with the *Johnson* factors, the Court concludes that a rate of $420 an hour for the time of Aasen, Cuddy, and Sterne is consistent with the prevailing rate in the community and is an amount that a reasonable client would pay based on their skill, experience and reputation, taking into accounting the success that they achieved. First, each of Aasen, Cuddy, and Stern has substantial experience. Aasen received her J.D. degree in 1990 from Syracuse University College of Law and in 2018 had approximately 24 years of practice in education law, first at her own firm and then as a senior attorney at CLF. She also was an elementary school teacher for a collective total of 13 years. Dkt. No. 31 ¶¶ 101-111 (describing Aasen qualifications). Cuddy received his J.D. degree from State University of New York ("SUNY") at Buffalo School of Law in 1996 and

has litigated hundreds of special education due process hearings since 2001. He lectures on topics in the special education field and is the author of a guide to the impartial due process hearing; he also is the Founder and Managing Attorney of CLF. Dkt. No. 35 ¶¶ 91-100. Sterne received his J.D. degree from SUNY at Buffalo the same year, practiced general litigation from his admission to the bar in 1998 to 2005, and has concentrated in special education law since 2005. As of September 2017, he had drafted the closing briefs in more than 150 IDEA impartial due process hearings and had conducted numerous multi-day impartial due process hearings. Dkt. No. 109.

The rate also is intended to take into account the time period during which the services were performed, as well as the delay counsel has experienced in being paid. *See infra*. Cuddy and Stern were awarded fees in 2018 based on a rate of $400 an hour for work done in 2017. The work here was done in 2018 and the fees will not be awarded until 2021.

The rate is also consistent with "the time and labor required," "the novelty and difficulty of the questions involved," and "the level of skill required to perform the legal service properly." *Lilly*, 934 F.3d at 228 (quoting *Arbor Hill v. Cnty. of Albany*, 522 F.3d 182, 186 n.3 (2d Cir. 2008)). The Court accepts that the questions involved here were not the most complicated questions under the IDEA; Plaintiff simply claimed denial of a FAPE and predetermination. Still, this case is far from those cases such as *M.D.*, 2018 U.S. Dist. LEXIS 156923, 2018 WL 4386086, at *3, where liability was "essentially

uncontested" and the Court still awarded fees of $360 per hour for the most senior CLF attorneys. *See G.T. v. N.Y.C. Dep't of Educ.*, 2020 U.S. Dist. LEXIS 25557, 2020 WL 1516403, at *5 (approving hourly rate of $375 for senior attorney where proceeding was "essentially uncontested"); *H.C. v. New York City Dep't of Educ.*, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195 at *6 (S.D.N.Y. June 17, 2021) (assigning rate of $360 an hour to Cuddy and Stern where "the proceedings were ultimately minimally contested"). The four hearings here summed to a total of just over 7.5 hours, with five witnesses presented by Plaintiff and two witnesses presented by Defendant. These witnesses included the principal of BBF and a school psychologist from the school, both of whose cross-examinations required care and skill. *See* Joint Statement ¶¶ 20-23; *cf. C.B.*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *8 (holding that, although a proceeding that lasted 9.8 hours and in which the DOE produced two witnesses and submitted its own evidence was "'relatively straightforward,' 'straightforward' is not a synonym for 'uncontested'" and that the fees awarded in "essentially uncontested [cases] would be too low here").

Last but not least, "the hourly rates should reflect that counsel secured the relief Plaintiff requested in the underlying administrative proceeding, which is 'the most critical factor' when determining a fee award." *S.J. v. N.Y.C. Dep't of Educ.*, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *4 (S.D.N.Y. Jan. 12, 2021) (quoting *C.B.*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *11); *G.T.*, 2020 U.S. Dist. LEXIS 25557, 2020 WL 1516403, at *5 (stating that most critical factor is the degree of

success obtained by plaintiff's counsel). Here, in a disputed proceeding, Plaintiff obtained relief far greater than she had requested in her initial pro se complaint and even greater than what counsel had requested in the amended due process complaint.

A rate of $280 an hour for each of Coretti and Mendillo, and $200 an hour for Kopp, is appropriate. Each of Kopp, Coretti, and Mendillo have substantially less experience than the other lawyers in the matter. Coretti was admitted to the bar in February 2013, Dkt. No. 33 ¶ 127, and was hired by CLF in 2015, Dkt. No. 35 ¶ 106. He worked on the administrative stage, where there was greater risk and more skill was required. Coretti prepared witnesses for testimony, including M.H., and attended hearings. In *C.D.*, the Court found that a $300 hourly rate was appropriate for a CLF attorney who had been at the firm since 2012 and had served as lead counsel during the administrative proceedings; however, that attorney was a 1997 law school graduate. *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *6-7. The *R.G.* court awarded the same rate to a lawyer who began litigating IDEA cases in 2008 and specialized in them beginning in 2012. 2018 U.S. Dist. LEXIS 134646, [WL] at *3. Although Coretti is somewhat more junior to those lawyers, the work he performed was commensurate with the work they performed, and he achieved substantial success. In *H.C. v. New York City Department of Education*, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195 (S.D.N.Y. June 17, 2021), the court held that a $300 hourly rate should be assigned to Mendillo because he was practicing law for more than 10 years. But in *H.C.*, Mendillo was lead counsel in the

two administrative proceedings. 2021 U.S. Dist. LEXIS 113620, [WL] at *5. Here, Mendillo worked primarily at the federal court stage, at which point there was no question that M.H. was a prevailing party who would be entitled to some amount of attorneys' fees, and so his work involved lesser risk. But he is the most senior of the three; he was hired by CLF in 2014. Dkt. No. 35 ¶ 106.

Kopp graduated from the Syracuse University College of Law in May 2015 and was admitted to the bar in January 2016. He practiced general commercial law as an associate for his first two years after being admitted to the bar and only joined CLF in April 2018. Dkt. No. 32 ¶¶ 261-272; Dkt. No. 33 ¶ 128. His work was more quotidian and carried lesser risk. He was charged, in part, with corresponding with Defendant regarding implementation after the lawsuit was filed, and, in part, with negotiating with Defendant over attorneys' fees and presenting Plaintiff's argument with respect to attorney's fees. The work did not involve the same skills as those required of the attorneys who participated in the due process hearing, formulated the arguments for M.H., and prepared the direct and cross examinations and the legal briefing at the administrative stage. A fee of $200 is appropriate. *See S.J.*, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *4 ("The Report also correctly determined a reasonable rate of $200 per hour for attorney Benjamin Kopp, who graduated from law school in 2015, practiced general litigation for two years and joined the Cuddy Law Firm in 2018."); *A.B. v. N.Y.C. Dep't of Educ.*, 2021 U.S. Dist. LEXIS 47573, 2021 WL 951928, at *5 (S.D.N.Y. Mar. 13, 2021) (finding that an hourly rate of $225 an hour is appropriate for the work

of a more junior associate); *G.T.*, 2020 U.S. Dist. LEXIS 25557, 2020 WL 1516403, at *5 (approving rate of $200 an hour for associates who worked only on the civil action and who had fewer than two years of IEDA-related experience when they began doing so); *H.C.*, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *6 (assigning rate of $200 an hour to associate who was admitted to practice in 2009 and practiced general litigation from 2009 until 2018, when he joined CLF).

Plaintiff also seeks compensation for the time of paralegals and other non-lawyers spent on the matter. "Paralegals, depending on skills and experience, have generally garnered between $100 and $125 per hour in IDEA cases in this District." *A.B*, 2021 U.S. Dist. LEXIS 47573, 2021 WL 951928, at *7 (quoting *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *3). "Paralegals with evidence of specialized qualifications typically receive $120-or $125-per-hour. Where plaintiffs have failed to provide evidence showing that a paralegal has special qualifications in the form of formal paralegal training, licenses, degrees, or certifications or longer paralegal experience, courts have typically awarded fees at the lower rate of $100-per-hour for that paralegal." *A.B*, 2021 U.S. Dist. LEXIS 47573, 2021 WL 951928, at *7 (internal citations and quotations omitted).

The paralegals, in order of hours worked, are Allison Bunnell (lead paralegal), Allyson Green, Amanda Pinchak, Sarah Woodward, Shobna Cuddy, Caitlin O'Donnell, and Diana Galgliostro. In addition, the following administrative assistants and legal assistants worked

on the matter: Rebecca Mills, Burhan Meghezzi, and John Slaski. Of the group, Plaintiff offers evidence that Gagliostro attended American University from 1999-2001, has a Bachelor of Law degree from the American University in Mangaua, Nicaragua, and has a Master of Science from the University of Phoenix. Dkt. No. 35 ¶ 116. A rate of $125 an hour is reasonable for her time. *See C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *7. With respect to the others as to whom no evidence is submitted regarding their qualifications, the bottom end of a reasonable range of $100 per hour is appropriate. *Id.*; *G.T.*, 2020 U.S. Dist. LEXIS 25557, 2020 WL 1516403, at *5; *H.C.*, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *7 (holding that $100 an hour is a reasonable rate for Bunnell, Pinchak, Woodard, Cuddy, Meghezzi, Slaski, and O'Donnell).

In each of these instances in determining these hourly rates, the Court has attempted to account for the reasonable *current* rates for attorneys of comparable skill, experience, and reputation, and not just the historical rates at the time the services were performed. As discussed *infra*, the civil rights fee-shifting statutes contemplate that the fee should both be sufficient to account both for the income reasonable counsel would forego at the time by handling the matter (hence, sensitivity to historical rates) and also the current rates to account for the delay in payment from when the services were rendered. In this case, Plaintiffs have only provided the Court historical rates; they have not provided current rates reasonably charged in the community. Accordingly, while the Court adjusts the rate, it does so only modestly by using a rate

within the range from the time but at the slightly higher end of the range than it would have used had there been no delay.

3. Reasonable Hours

After determining the reasonable rates, the Court must determine a reasonable number of hours to be billed. "The task of determining a fair fee requires a conscientious and detailed inquiry into the validity of the representations that a certain number of hours were usefully and reasonably expended." *Lunday v. City of Albany*, 42 F.3d 131, 134 (2d Cir. 1994). "If the court finds that the fee applicant's claim is excessive or insufficiently documented, or that time spent was wasteful or redundant, the court may decrease the award, either by eliminating compensation for unreasonable hours or by making across-the-board percentage cuts in the total hours for which reimbursement is sought." *Wise v. Kelly*, 620 F. Supp. 2d 435, 442 (S.D.N.Y. 2008) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983); then citing *Kirsch v. Fleet St., Ltd.*, 148 F.3d 149, 173 (2d Cir. 1998); then citing *New York State Ass'n for Retarded Child., Inc. v. Carey*, 711 F.2d 1136, 1146 (2d Cir. 1983)); *A.B. v. New York City Department of Education*, 2021 U.S. Dist. LEXIS 47573, 2021 WL 951928, at *7 (S.D.N.Y. Mar. 13, 2021) ("A fee award should compensate only those hours that were "reasonably expended" by the attorneys on this case. In determining the number of hours reasonably expended for purposes of calculating the lodestar, the district court should exclude excessive, redundant or otherwise unnecessary hours."

(internal citations and quotations omitted)). A court can "use estimates in calculating and allocating an attorney's time," since the "essential goal in shifting fees" is "to do rough justice, not to achieve auditing perfection." *Fox v. Vice*, 563 U.S. 826, 838, 131 S. Ct. 2205, 180 L. Ed. 2d 45 (2011).

a. Reasonableness of Hours at the Administrative Phase

Plaintiff submits the following number of hours billed for the administrative component of this case:

- Andrew K. Cuddy (attorney): 1.50
- Jason Sterne (attorney): 31.20
- Justin M. Coretti (attorney — travel): 10.00 (billed at half the hourly rate for work)
- Justin M. Coretti (attorney): 12.90
- Nina Aasen (lead attorney — travel): 27.50 (billed at half the hourly rate for work)
- Nina Aasen (lead attorney): 87.80
- Shobna Cuddy (senior paralegal): 1.60
- Sarah Woodard (paralegal): 2.40
- Allison Bunnell (lead paralegal): 32.30
- Amanda Pinchak (paralegal): 3.60
- Diana Gagliostro (paralegal): 0.20
- Rebecca Mills (administrative assistant): 3.70

Dkt. No. 47 ¶ 7. In total, Plaintiff claims 170.9 hours of attorney time and 43.8 hours of paralegal or non-legal time, for a total of 214.7 hours for the administrative

component. Plaintiff also submits billing statements with summaries of what each hour was used for. *See generally* Dkt. No. 47-1.

Defendant argues that Plaintiff's hours should be reduced for each of the following reasons: (1) overbilling for the drafting of the due process complaint, hearing preparation, hearing attendance, and post-hearing briefing; (2) excessive travel time; (3) implementation tasks that should have been billed at a paralegal rate; (4) attorneys' fees prohibited by statute; (5) excessive fee preparation time; and (6) certain other reductions at the administrative level. Defendant also argues that Plaintiff billed excessive costs. *See* Dkt. No. 40 ¶ 6 ("Costa Declaration"); Dkt. Nos. 40-1, 40-2, 40-3, 40-4, 40-5, 40-6, 40-7, 40-8, 40-9, 40-10, 40-11, 40-12, 40-13, 40-14, 40-15 (recommending new rates and hours for virtually every entry in CLF's timesheets); Dkt. No. 47-1 (CLF's timesheets).

i. Due Process Complaint

For entries before the due process complaint (i.e., from May 19, 2017 to June 15, 2017), Defendant argues that the billable hours should be reduced from 23.3 to 18.9; approximately a 19% decrease. *See* Dkt. No. 43 at 15; Dkt. No. 40-2. Certain of the hours that are billed allegedly reflect duplicative time, where two paralegals billed time for the same routine work or an attorney and a paralegal billed time for what appears to be the same work (0.5 hours). The bulk of the Defendant's suggested reductions come from what it claims is excessive time for the drafting

of the amended due process complaint (3.5-hour reduction from 13.5 to 10 hours) and 0.4 hours for work related to an initial scheduling conference where the lawyers were waiting for the parties to appear. Defendant's submission provides no legitimate basis for reducing the hours from May 19, 2017 to June 1, 2017. *See R.G. v. N.Y. City Dep't of Educ.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *4 (S.D.N.Y. Sept. 26, 2019) (rejecting DOE argument because court cannot conclude that tasks were unrelated to the preparation of the complaint).

The billed time that Defendant claims was duplicative represents different work by different people. *See C.D. v. Minisink Valley Cent. Sch. Dist.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *9 (S.D.N.Y. Aug. 9, 2018) ("There is of course nothing inherently wrong with staffing multiple attorneys on a case, a practice that is common to, inter alia, civil rights litigation."). For example, while it is appropriate for a paralegal to prepare a notice of appearance, it also is appropriate for a lawyer to spend a few minutes looking at that notice before it is filed.

Plaintiff's counsel properly billed the 0.4 hours that she was required to wait during an initial scheduling conference, because Defendant failed to provide the IHO with the code for the telephonic conference and Defendant failed to appear; that time was required and would not have had to be billed but for Defendant's errors. Moreover, Defendant's submission is simply in error when it asserts that Aasen billed 3.5 extraneous hours for drafting the due process complaint. *Compare* Dkt. No. 40 ¶ 10 *with* Dkt. No. 45 ¶¶ 39-40.

Appendix N

ii. Hearing Preparation

Defendant argues that only 70.8 of the 85.6 hours billed preparing for the 8/7/17, 9/19/17, 12/19/17, and 4/8/18 hearings were reasonable, approximately 17% fewer hours than Plaintiff requested. Dkt. No. 40 ¶¶ 11-15; Dkt. No. 40, Ex 3. It argues that 0.7 hours for interoffice communications should be deducted completely, that hours spent for hearing preparation time were unreasonable, and that CLF should not receive fees for time preparing an affidavit for a witness who did not submit testimony by affidavit. Dkt. No. 40 ¶ 13. It also argues that Coretti overbilled 2.5 hours for witness preparation and direct examination that was duplicative of work performed by Aasen and 0.3 hours for time spent reviewing the transcript of a non-substantive scheduling hearing that lasted less than 0.3 hours. *Id.* ¶ 14. Defendant further alleges that Aasen overbilled 5.9 hours for witness preparation time, in excess of 2 hours to prepare a witness. *Id.*

For the most part, the time spent for what Defendant characterizes as interoffice communications was appropriately billed; it reflects communications between counsel and a paralegal. However, another 0.7 hours—which was not challenged by Defendant—was spent for a conversation between Aasen and Coretti who was covering during Aasen's vacation. Such time is not appropriately billed, and Coretti's hours are reduced by 0.7. Defendant further challenges 5.3 hours in hearing time as double billing, but the record contradicts that claim. At best, 0.6 hours spent by Coretti in August 2017 to review exhibits that would have been reviewed by Aasen when

she made her initial determination to amend the due process complaint were overbilled. The claim that the witness affidavit was not submitted is wrong. Dkt. No. 45 ¶ 53. With one exception, the remainder of Defendant's objections are without merit. That one exception is the 5.9 hours for time Aasen spent preparing a witness. Although Plaintiff attempts to defend these hours by referring to gaps in time and losses and witness memories, as well as the adjournment of the March 2018 hearing, those explanations do not account for the full figure of 5.9 hours. The Court will reduce it by 2.5 hours to 3.4 hours. Plaintiff has voluntarily agreed to reduce 0.6 hours that Bunnell billed. Accordingly, the hours for Aasen are reduced by 2.5 to a total of 85.3 hours, the hours for Coretti are reduced by 0.7 to 12.2, and the hours for Bunnell are reduced by 0.6 to 32.1.

iii. Hearing Attendance

Defendant would reduce the time billed for actual substantive hearing attendance from 12.3 hours to 10.7 hours. Dkt. No. 40-3. Defendant's calculation does not account for scheduled hearing times, off-record conversations between the IHO and the parties, or reasonable attorney-client communications before and after hearings. Dkt. No. 45 ¶ 64. However, twelve of the minutes billed by Plaintiff for Aasen should be removed from the billing records. Her hours should be reduced by 0.2 to 85.1.

Appendix N

iv. Travel Time

CLF billed 37.5 hours for travel time for a total fee claimed of $9,343.75. Defendant argues that CLF's travel time should be limited to 1 hour in each direction associated with the substantive hearing days of August 7, 2017, September 9, 2017, December 19, 2017, and April 18, 2018, and that travel time on March 7, 2018 should be disallowed in its entirety. Dkt. No. 40 ¶ 21.

Defendant's argument that travel time should be limited to 1 hour in each direction is well-founded. *See C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *10; *K.F. v. N.Y.C. Dep't of Educ.*, 2011 U.S. Dist. LEXIS 88653, 2011 WL 3586142, at *6 ("A reasonable attorney's fee does not include the time for commuting from Auburn or Ithaca to Brooklyn and back."); *U.S. ex rel. Feldman v. Van Gorp*, 2011 U.S. Dist. LEXIS 14914, 2011 WL 651829, at *3 (S.D.N.Y. Feb. 9, 2011) (denying attorney's fees for travel time and costs related to travel to this District by a Philadelphia-based lawyer in an IDEA case); *Imbeault v. Rick's Cabaret Int'l Inc.*, 2009 U.S. Dist. LEXIS 71562, 2009 WL 2482134, at *8, n.3 (S.D.N.Y. Aug. 13, 2009) (disallowing fees for travel between home city of Minneapolis and litigation forum in this District in a FLSA case). Defendant's argument that the travel time on March 7, 2018 should be disallowed, on the other hand, is without merit. The conference scheduled then was only subsequently adjourned. Aasen Decl. ¶¶ 61-64; Dkt. No. 45 ¶ 70. There was nothing unnecessary at the time about Aasen's travel to that conference.

Appendix N

Plaintiff argues that travel time should not be reduced because the pro se Plaintiff relied on the recommendation of a close friend who happened to be a CLF client and because she comes from an underrepresented population and thus her retention of CLF did not take work away from attorneys in the Southern District of New York. Dkt. No. 45 ¶ 69. Neither argument is persuasive. The logic for limiting the pay counsel can receive for travel time is based on the policy of the statute. Fee-shifting statutes promote enforcement of the law with the promise that counsel—if she prevails—will receive a reasonable attorneys' fee, i.e., the fee a reasonable attorney would receive given the risks and rewards of the matter, the skill required, and the other factors. *See Fox v. Vice*, 563 U.S. 826, 832-33, 131 S. Ct. 2205, 180 L. Ed. 2d 45 (2011). They are not intended to compensate the particular attorney the fee she would have received had she been privately retained and had her client had the funds to pay her. Thus, "the relevant issue is whether a hypothetical reasonable client would be willing to pay for the full hours of travel expended here." *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *10. Under *Arbor Hill*, a court must "step into the shoes of the reasonable, paying client, who wishes to pay the *least amount necessary to litigate the case effectively*," not the shoes of the law firm who is asked by the client to retain it and determines its reasonable rate. *H.C.*, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *7 (S.D.N.Y. June 17, 2021) (quoting *O.R.*, 340 F. Supp. 3d at 364 (quoting, in turn, *Arbor Hill*, 522 F.3d at 184)). Thus, the question is not whether it was reasonable for M.H. to retain CLF, an out-of-town firm, to represent her child in a New York litigation. A reasonable client might

be willing to pay travel time for an out-of-town lawyer if that travel time was limited to one hour each way and was billed at half the attorney's reasonable rate. *See id.* "[A] reasonable client would [not] agree to pay its counsel rates customary for this District and for protracted travel time to and from Auburn." *Id.*

Finally, Defendant argues that CLF should only be compensated at 50% of its recommended reduced hourly rates. *See C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *10 ("Courts generally approve fees, at 50% of an attorney['s] usual rate, for reasonable travel conducted in service of ongoing litigation." (citing *K.F.*, 2011 U.S. Dist. LEXIS 88653, 2011 WL 3586142, at *6)); *see also L.V. v. New York City Dep't of Educ.*, 700 F. Supp. 2d 510, 526 (S.D.N.Y. 2010) ("Courts in this Circuit regularly reduce attorneys' fees by 50 percent for travel time."). CLF already charges only 50% of its rates for travel.

Coretti's travelling hours are reduced by 8.0 to 2.0, while Aasen's travelling hours are reduced by 21.5 to 6.0.

v. Post-Hearing Brief

Defendant challenges 13.6 hours of the 36.8 hours it classifies as hours related to post-hearing briefing. Dkt. No. 40 ¶¶ 24-25. The hours were billed by two attorneys and two paralegals on a 20-page brief of a record spanning hundreds of pages. As a general matter, the hours spent on the post-hearing brief were reasonable. *See C.B. v. N.Y.C. Dep't of Educ.*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *11 (S.D.N.Y. July 2, 2019) (rejecting

DOE argument that hours for post-hearing brief were excessive). On the other hand, certain of Defendant's challenges are well-founded. Portions of Sterne's time were spent performing annotation work that could have been performed by a paralegal, while some of his work appears to be either duplicative or unnecessary. Five hours should be eliminated from Sterne's time, bringing him from 31.2 hours to 26.2 hours.

vi. Implementation

CLF billed 21.4 hours for implementation tasks following the issuance of the FOFD on June 7, 2018, for a total claimed fee of $5,732.50. "'[P]ost-decision activities' that are 'largely useful and of a type ordinarily necessary to secure the final result[s] obtained' are compensable." *C.B.*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *11 (quoting *M.D.*, 2018 U.S. Dist. LEXIS 156923, 2018 WL 4386086, at *5).

Defendant does not dispute the reasonableness of the time spent on implementing the FOFD, but argues that the 2.9 hours billed by attorneys should have been billed out at the paralegal rate. Dkt. No. 43 at 26. The DOE claims that CLF has not shown "why such routine implementation task work could not have been done by paralegals." *Id.* at 26 n.14. CLF disputes that claim and argues that the work performed by Coretti and Aasen involved legal skills, interpretation of the FOFD, and supervision of the paralegal staff in communicating with the DOE, and thus are appropriately billed out at attorney time.

The Court has reviewed the challenged time entries. They involve minimal time supervising the paralegals, reviewing correspondence, and speaking with the DOE. The work is necessary lawyer-work and the time is reasonable. The case DOE cites for the proposition that the implementation work should have been done entirely by paralegals and that no attorney time is appropriate is inapposite. In *C.B.*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *11, the Court approved CLF's requests that fees be awarded for paralegal time spent implementing the results of the hearing. The Court did not hold, and no party argued, that only paralegals could reasonably be involved in implementation work. The Court approves the time spent in full.

vii. Attorney's Fees Prohibited by Statute

Defendant argues that CLF should not be paid for 0.2 hours billed by Aasen and 0.2 hours billed by Bunnell in connection with the resolution session for total fees. Dkt. No. 43, at 26. It relies on 20 U.S.C. § 1415(i)(3)(D)(iii), which provides "[a] meeting conducted pursuant to subsection (f)(1)(B)(i) shall not be considered - (I) a meeting convened as a result of an administrative hearing or judicial action; or (II) an administrative hearing or judicial action for purposes of this paragraph." The section refers to the resolution meeting required to be held by the local educational agency with the parents and a relevant member or members of the IEP team prior to the opportunity for an impartial due process hearing. *See id.* § 1415(f)(1)(B)(i). Under the statute, the local educational

agency may not be accompanied by an attorney unless the parent is accompanied by an attorney. *Id.* § 1415(f)(1)(B)(i)(III). "[A]ttorneys' fees for time actually spent at a resolution session . . . generally are not compensable under the IDEA," but "if a settlement offer is rejected at the resolution session and the matter goes forward, a parent is still entitled to attorneys' fees under the statute for time spent on behalf of the client before and after the resolution session if the parent ultimately is the prevailing party." *D.D. ex rel Davis v. District of Columbia*, 470 F. Supp. 2d 1, 2 (D.D.C. 2007); *see also M.K. ex rel. C.K. v. Arlington Cent. Sch. Dist.*, 2019 U.S. Dist. LEXIS 1129, 2019 WL 92004, at *7 (S.D.N.Y. Jan. 3, 2019) (holding that parent was not entitled to attorneys' fees for time spent at the resolution session and travel to and from the resolution session).

Aasen and Bunnell had a conversation (0.1 increment) regarding the resolution meeting and additional disclosure needed. In addition, Aasen reviewed correspondence regarding the end of the resolution period and Bunnell reviewed an email from the client and drafted an email to the client regarding the resolution meeting. No time was billed for actual attendance of the resolution meeting. Defendant's arguments are rejected.

viii. Fee Preparation Time

Counsel is entitled to reasonable fees for the time necessary to compile their time entries. *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *4. By Defendant's classification, CLF billed 6.4 hours in preparing its fee

claim and negotiating at the administrative level. Dkt. No. 42 ¶ 150; Dkt. No. 40 ¶ 32; Dkt. No. 40, Ex. 9 at 1. Defendant argues that the amount should be reduced to 2 hours because time spent making discretionary reductions and negotiating with DOE should not be compensated.

After reviewing the time entries, the Court concludes that Defendant's arguments are without merit, with a single exception. The Court cannot say that most of the time billed by counsel and a senior paralegal was unnecessary. It would be inappropriate for a law firm to submit a fee request to an administrative agency or to a court without a lawyer having reviewed the request and the hours billed; it also would be inappropriate for the lawyer to do so without relying on a paralegal. Defendant also offers no basis for excluding time spent negotiating with DOE. There has been no showing that CLF negotiated in bad faith or otherwise wasted time. The law should encourage parties to attempt to resolve fee disputes and should not dock them pay for the time spent doing so. The single exception has to do with the 1.5 hours billed by Cuddy for reviewing the billing statement for accuracy and discretionary reductions. Plaintiff has not explained why that task required more than one hour and the Court thus will reduce Cuddy's hours by one-half hour. His hours are reduced to 1.0.

ix. Other Reductions at the Administrative Level

Defendant challenges 0.5 hours spent by Bunnell in October 2017 looking at other schools for a placement for M.T. and drafting an email to the client regarding schools

for placement. Defendant claims that the time spent finding a different school placement for M.T. was not part of the underlying due process complaint. Dkt. No. 40 ¶ 35; Dkt. No. 43 at 27. Bunnell billed for M.H. seeking and receiving preliminary information about nonpublic schools that could be more appropriate for M.T. in light of the ordered evaluations, so that M.H. could make an informed decision about whether to request a second amended due process complaint. The objection is therefore rejected.

x. Overall Assessment

The Court also has reviewed the billing records as a whole for any telltale signs of overbilling, such as the failure to set forth evidence of the necessity of services, duplication of services, blockbilling, billing paralegal or attorney time for clerical or office administration tasks, vague entries, claiming a service that was evidently not performed, billing multiple attorneys and paralegals involved in internal conferences or discussions, excessive communication with co-counsel, the practice of counsel and paralegals in billing a plethora of 0.1 hour services for minor tasks of minimal duration, and billing for time spent by senior attorneys on work that should have been performed by lower-billing attorneys. *See C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *8. The Court has not found evidence of those practices with respect to the work done at the administrative level. The time is recorded in appropriate increments, contemporaneously, and in great detail. The work was done by lawyers and non-legal staff of appropriate seniority and there was not a practice of billing in 0.1 hour increments. With the adjustments made by the Court, the total number of hours

reasonable expended by CLF attorneys and staff was as follows:

- Andrew K. Cuddy (attorney): 1.0
- Jason Sterne (attorney): 26.2
- Justin M. Coretti (attorney — travel): 2.0 (billed at half the hourly rate for work)
- Justin M. Coretti (attorney): 12.2
- Nina Aasen (lead attorney — travel): 6.0 (billed at half the hourly rate for work)
- Nina Aasen (lead attorney): 85.1
- Shobna Cuddy (senior paralegal): 1.60
- Sarah Woodard (paralegal): 2.40
- Allison Bunnell (lead paralegal): 32.1
- Amanda Pinchak (paralegal): 3.60
- Diana Gagliostro (paralegal): 0.20
- Rebecca Mills (administrative assistant): 3.70

b. Reasonableness of Hours at the Federal Court Stage

i. Federal Hours

Plaintiff submits the following number of hours billed for this case's federal component:

- Andrew K. Cuddy (attorney): 29.60
- Jason Sterne (attorney): 1.40
- Justin M. Coretti (attorney): 0.20
- Nina Aasen (lead attorney): 0.60
- Benjamin M. Kopp (attorney): 206.40

- Kevin Mendillo (attorney): 0.20
- Jaclyn Kaplan (attorney — serve process): 1.00
- Allison Bunnell (lead paralegal): 7.20
- Allyson Green: 4.70
- Burhan Meghezzi (legal assistant): 0.70
- Cailin O'Donnell: 3.70
- John Slaski (legal assistant): 0.20
- Shobna Cuddy (senior paralegal): 4.60

Dkt. No. 47 ¶ 7. In total, Plaintiff claims 238.4 hours of attorney time and 22.1 hours of paralegal or non-legal time, for a total of 260.5 hours expended at the federal court stage.

The IDEA gives a prevailing parent the right to receive its reasonable attorneys' fees and costs incurred in a federal court action related to vindicating its rights. *See C.D. v. Minisink Valley Central School District*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *11 (S.D.N.Y. Aug. 9, 2018; *J.S.*, 2011 U.S. Dist. LEXIS 82169, 2011 WL 3251801, at *8 ("[R]equested fees for the federal action are reasonable."). Those fees may be incurred in enforcing the rights of the parent or counsel, under the IDEA, to a reasonable attorneys' fee. Although "[a] request for attorney's fees should not result in a second major litigation." *Hensley*, 461 U.S. at 437; *accord C.B.*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *12, neither should the threat that counsel will not receive its reasonable fees be a bludgeon that can be used by the losing school district to coerce the parent at the administrative stage to an inadequate settlement or to a compromise of

the parent's rights. To paraphrase Judge Parker, "[t]o hold otherwise [and not to grant counsel reasonable fees for time spent preparing fee applications] would further deter [both] private attorneys [and] resource strapped non-profits in important civil rights matters." *D.B. ex rel. S.B. v. N.Y.C. Dep't of Educ.*, 2019 U.S. Dist. LEXIS 68880, 2019 WL 6831506, at *6 (S.D.N.Y. Apr. 22, 2019).

Counsel also is entitled to fees and costs incurred in enforcing the decision of an IHO and a FOFD. *See H.C. v. N.Y.C. Dep't of Educ.*, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *10 (S.D.N.Y. June 17, 2021) (holding that where a complaint is not confined to the issue of attorneys' fees, but also sought equitable relief under 42 U.S.C. § 1983, counsel is entitled to be reasonably compensated for that work). "To uphold the IDEA's purpose of providing educational services to disabled children, parents must be able to choose litigation if they believe that is necessary to effectively enforce order given by IHOs." *SJB ex rel. Berkhout v. N.Y.C. Dep't of Educ.*, 2004 U.S. Dist. LEXIS 13227, 2004 WL 1586500, at *4 (S.D.N.Y. July 14, 2004). "Limiting the actions plaintiff might take to force implementation of an IHO's decision can only reduce the urgency school districts would attribute to the implementation of an IHO's decision and thereby lessen the credibility of the IHO process." *Id.* At the same time, however, the Court must recognize the limited value that the hours spent enforcing the FOFD provided to Plaintiff and reasonably could have been understood to have provided to Plaintiff. *See Hensley*, 461 U.S. at 436 ("If . . . a plaintiff has achieved only partial or limited success, the product of hours reasonably expended on the

litigation as a whole times a reasonably hourly rate may be an excessive amount."); *C.B.*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *4 ("If the hours spent on litigation appear excessive in light of the success obtained, the court has discretion to eliminate specific hours or reduce the final award.").

With those principles in mind, the Court analyzes Plaintiff's fee request and Defendant's arguments. Defendant argues that the Court should make deductions in the federal action for excessive billing in the drafting of the complaint, time spent negotiating settlement, duplicative internal communications, implementation tasks that should have been billed at a paralegal rate, unnecessary time spent amending the complaint, time spent on unnecessary tasks, excessive time spent on preparing CLF's fee application, and otherwise excessive time entries. Dkt. No. 43 at 30. Defendant argues that CLF is only entitled to a total of 64.25 hours of work on the federal action. *Id.* The Court reviews each of Defendant's objections in turn.

The Court concludes that a modest reduction should be made for the time Kopp spent on the federal court complaint. Kopp spent 5.9 hours on activities related to the original complaint, including drafting, service, and review of the court's rules, and then an additional 3.1 hours on the amended complaint, for a total of 9.0 hours. Defendant argues that Plaintiff is entitled only to 1.5 hours on the drafting of the complaint and activities associated therewith, and is not entitled to compensation for any hours in connection with the amendment because the amendment

dropped a claim that had been improperly included in the original complaint. The Court will reduce the total time to four hours. Although it might be appropriate to reduce the time spent on a complaint limited to attorneys' fees to 1.5 hours if that time was spent by a senior lawyer or a lawyer who charged at a higher rate, Kopp was a junior lawyer who is being compensated at a more junior rate. Moreover, the complaint did not address only attorneys' fees, but also the implementation and enforcement issues. Thus, while the pleading was more complicated than a "pro forma" IDEA complaint, Dkt. No. 40 ¶ 44, nine hours is still excessive. Kopp billed hours for withdrawing a claim that should never have been brought in the first place. CLF achieved limited success on the enforcement claims—the DOE focused on, and paid, the outstanding bills—but that success inured only to the benefit of Plaintiff in an attenuated way. There is no evidence M.T. was deprived of services as a result of the DOE's failure to pay. The reduction to four hours takes into account the limited value of the work on the implementation and enforcement issues.

The Court rejects Defendant's argument that fees should be eliminated for the cost of attempting to negotiate a settlement. Defendant argues that the 7.2 hours Kopp spent negotiating a settlement should be eliminated entirely, on the theory that Kopp asked for more than was ever previously awarded to CLF in other cases. Dkt. No. 40 ¶ 45. Kopp disputes that his request was based on a calculation that exceeded prior cases. It is unreasonable for Defendant to make this argument when it refused to specify to Plaintiff the hours it believed to be unreasonable. In any event, no two cases are exactly comparable. It is

difficult to tell whether Plaintiff's fees were higher in all respects than in other cases, nor is it necessary. The time entries reflect that Kopp was responding to contacts made by counsel for Defendant. There is no argument that Kopp was not negotiating in good faith and attempting to achieve the best result for his firm and his client, as well as for the special education bar, within the confines of the law. His hours in doing so were not excessive. If it were the case that the fees Kopp was seeking were higher than in previous cases, no law prevents counsel from arguing that—on the facts of his case—the fee award should be higher. Defendant could have cut short the negotiations at any point if it believed Kopp was not negotiating in good faith or that the negotiations were a waste of time. As the Court has concluded, neither Plaintiff nor Defendant were right in how they calculated fees.

Defendant argues that 16.4 hours of time spent by Cuddy, and in one instance by Mendillo, supervising Kopp should be eliminated entirely. Dkt. No. 40 ¶ 46. Cuddy consulted with Kopp on the amended complaint, negotiating positions, the conferences with the Court, the possibility of an order to show cause, and on the summary judgment motion. The Court would have expected Cuddy to do so. Defendant cannot have it both ways, reducing Kopp's hourly rate to that of a junior lawyer requiring supervision, and then attempting to withhold the fees associated with that supervision. The hours should be reduced only to reflect the limited result and value of the enforcement aspects of this case, and should be reduced by about 33%. Accordingly, Cuddy's hours will be reduced by 5.4 hours, to 24.2 hours.

Appendix N

Defendant's argument that CLF should be compensated only at a senior paralegal rate for what it characterizes as "implementation" tasks, and that all of Kopp's 9 hours spent on such tasks should be billed at a rate of $125 per hour, is meritless. Dkt. No. 40 ¶ 47. Implementation was a central feature of the complaint in this case because Defendant failed to pay the provider, as required by the FOFD. It thus was reasonable for a junior attorney like Kopp to have the conversations with both the client and the provider about the implementation of the FOFD, particularly when that implementation was a fact in dispute between the parties and when counsel for Defendant indicated to Plaintiff he was interested in working with counsel to resolve it. Dkt. No. 45 ¶ 143. Kopp's work pertained to the ongoing litigation. Indeed, as Plaintiff points out, the contrary way of proceeding—which would have had Kopp instruct the paralegal, then have the paralegal make the calls at issue, and then have the paralegal report back to Kopp—would have probably generated higher fees. Dkt. No. 45 ¶ 141. The argument is rejected.

Defendant's objection to 0.9 hours of Cuddy's time preparing the fee application is meritless. The time included review of the final version of the memorandum on fees and implementation submitted to the Court. Cuddy was the senior lawyer on the matter; it was appropriate for him to review a federal court filing prepared by a junior lawyer on the team. *See C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *9 n.11.

Defendant argues that 17.38 hours of Kopp's time spent on what it characterizes as unnecessary tasks should

be eliminated. Dkt. No. 40 ¶ 49. The 17.38 hours includes time spent scheduling phone calls, preparing detailed stipulated facts at the outset of the case, seeking an OT evaluation from Defendant in lieu of retaining an expert for litigation, researching how to serve a subpoena, and drafting a declaration relating to fee claims submitted to DOE in other matters. Defendant also argues that the remaining 93.17 hours billed by Kopp should be reduced by 75%, or 69.88 hours, to 23.29 hours. Dkt. No. 40 ¶ 51. The DOE does not offer a critique on any particular items, but argues generally that the time was excessive compared to what was at issue in this case and fee request litigation in general. Defendant's position has force, but not to the extent it argues. The hours should be reduced substantially to account for excess and unnecessary time spent, and for the limited results of the enforcement aspect of the federal litigation. For example, many of the hours in this category were spent on discovery matters and unnecessary time negotiating and preparing summary judgment papers. Although discovery is permitted in IDEA cases, particularly when the "evidence concern[s] relevant events occurring subsequent to the administrative hearing," *Genn v. New Haven Bd. of Educ.*, 2014 U.S. Dist. LEXIS 25, 2014 WL 28689, at *1 (D. Conn. Jan. 2, 2014) (quoting *Plainville Bd. of Educ. v. R.N.*, 2009 U.S. Dist. LEXIS 61693, 2009 WL 2059914, at *1 (D. Conn. July 10, 2009)), and the Court here permitted discovery, that does not mean that all the time for discovery was well spent. Courts express reluctance to allow discovery unless there is a "particularized and compelling justification," *N.J. v. N.Y. City Dep't of Educ.*, 2021 U.S. Dist. LEXIS 47980, 2021 WL 965323, at *8 (S.D.N.Y. Mar. 15, 2021) (quoting *Ganje ex rel. J.M.G. v. Depew Union Free Sch.*

Dist., 2012 U.S. Dist. LEXIS 161661, 2012 WL 5473491, at *16 (W.D.N.Y. Sept. 26, 2012)), and here Plaintiff was not able to explain at argument or in its submissions what it gained—or reasonably expected to gain—from the hours it spent litigating the right to discovery. Plaintiff established that Defendant knew that it had to pay the outstanding invoices, but it already had that evidence in its possession from its correspondences with Defendant.

Other hours were spent on the enforcement component, including on a meritless request to obtain preliminary injunctive relief. Those hours are appropriately removed. For the same reason, hours spent researching Attentive Behavior's billing practices and other related matters were not well spent and are removed.

Kopp spent 6.9 hours preparing Cuddy's 26-page declaration, his own declaration, the declarations of Aasen, Cuddy, and M.H., and in otherwise preparing the summary judgment papers. Defendant's reduction of 75% would give Plaintiff virtually no credit for any of those hours, many of which were necessary to present to the Court the relevant facts for the fee dispute it would have to resolve. Taking all of these factors into account, the Court concludes that a reduction of Kopp's hours in these categories by 50%, from 110.55 hours to 55.275 hours, would achieve "rough justice." *See S.J.*, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *5 (reducing hours by one-half where "a competent attorney should not have needed more than this amount of time to litigate this fee petition").

With the adjustments made by the Court, the total number of hours reasonable expended by CLF attorneys and staff was as follows:

- Andrew K. Cuddy (attorney): 24.2
- Jason Sterne (attorney): 1.40
- Justin M. Coretti (attorney): 0.20
- Nina Aasen (lead attorney): 0.60
- Benjamin M. Kopp (attorney): 146.13
- Kevin Mendillo (attorney): 0.20
- Jaclyn Kaplan (attorney — serve process): 1.00
- Allison Bunnell (lead paralegal): 7.20
- Allyson Green: 4.70
- Burhan Meghezzi (legal assistant): 0.70
- Cailin O'Donnell: 3.70
- John Slaski (legal assistant): 0.20
- Shobna Cuddy (senior paralegal): 4.60

ii. Unreasonable Protraction

Plaintiff argues that the Court should not reduce its requested fees and expenses because Defendant unreasonably protracted the proceedings. The IDEA provides that, with a single exception, "the court shall reduce . . . the amount of the attorneys' fees awarded under this section" under any one of the following circumstances:

> (i) the parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

> (ii) (ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
>
> (iii)(iii) the time spent and legal services furnished were excessing considering the nature of the action or proceeding; or
>
> (iv) (iv) the attorney representing the parent did not provide to the local educational agency the appropriate information in the notice of the complaint described in subsection (b)(7)(A).

20 U.S.C. § 1415(i)(3)(F)(ii)-(iii).

Plaintiff relies on the single exception. That exception is that the mandatory reductions in subparagraph F "shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section." *Id.* § 1415(i)(3)(G). Plaintiff argues that because Defendant unreasonably protracted the final resolution of the action, Section 1415(i)(3)(F) is not triggered and the Court thus should not reduce the requested fees either on a theory that rate exceeds the prevailing rate in the community or that the hours were excessive. The conclusion does not follow from the premise.

Appendix N

There is evidence that Defendant protracted the work that had to be done by counsel for M.H. in connection with the proceedings. At the administrative phase, the DOE failed to contact counsel for M.H. regarding the rates for the evaluators as directed, Dkt. No. 32 ¶ 114, failed to be prepared with witnesses to call in its case, Dkt. No. 31-7, did not inform counsel for M.H. or the IHO of its witnesses, *id.*, indicated it would call witnesses whom it did not call, Dkt. No. 32 ¶¶ 57-58, and was generally disorganized and unprepared, Dkt. No. 31-7. As a result, CLF was forced to attend hearings that could not go forward because the DOE failed to attend, was forced to prepare orders that it should not have had to prepare, and was forced to prepare for witness testimony that ultimately was not offered. Dkt. No. 31-9. The DOE delayed paying for the home-based ABA services, necessitating numerous follow-up emails from CLF. Dkt. Nos. 31-16, 31-17, 31-18, 31-20; 31-7 at 12. It is less clear that the Department's disorganization and unpreparedness protracted the final resolution in the sense of making the proceedings "prolonged," or longer than what would ordinarily be needed for the conclusion of the proceedings. *Protract*, Merriam-Webster, https://www.merriam-webster.com/dictionary/protract (last visited July 23, 2021); *see also S.J.*, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *5 (S.D.N.Y. Jan. 12, 2021) ("[C]onsidering both parties' arguments and their competing version of events that transpired during the administrative proceeding and subsequent federal litigation over fees, the Court does not find that the DOE 'unreasonably protracted' the final resolution of the action.").

In any event, a conclusion that Defendant unreasonably protracted the resolution of the proceedings and forced Plaintiff to engage in what should have been unnecessary work might justify the reasonableness of some of the hours worked by counsel and the paralegals. However, it would not entitle CLF to more than a reasonable attorney's fee calculated based on the standards well established by the Supreme Court and in this Circuit. That conclusion follows from the plain language of the statute and established principles of statutory interpretation. Before one ever gets to Section 1415(i)(3)(F), the statute instructs that the Court's discretion is limited to awarding a "reasonable" attorney's fee and that the fee must be based on rates prevailing in the community in which the action or proceeding arose, as determined by subsection (C). The caselaw further instructs that in using the term "reasonable" and in referring to the prevailing community rate, Congress intended to pick up and incorporate the meaning of those terms as long established under a number of civil rights statutes. Thus, even if the State or local educational agency has unreasonably protracted the final resolution of the action, a court does not award a fee that is greater than one that is "reasonable" as that term is understood in the statute. *See Somberg ex rel. Somberg v. Utica Cnty. Schs.*, 908 F.3d 162, 181-82 (6th Cir. 2018) ("Subparagraph (G), when found applicable, does not mandate that the district court abandon its discretion to ensure that fees are reasonable. Such a reading of subparagraph (G) would be inconsistent with subparagraph (B)'s instruction that only reasonable fees should be awarded in the court's discretion."); *Williams ex rel. Williams v. Fulton Cnty. Sch.*, 717

F. App'x 913 (11th Cir. 2017) (rejecting argument that court abused its discretion by reducing fee award where State unreasonably protracted proceedings); *D.D.M. ex rel. O.M.S. v. Sch. City of Hammond*, 2020 U.S. Dist. LEXIS 217339, 2020 WL 6826490, at *12 (N.D. Ind. Nov. 19, 2020) ("[U]nder the statutory scheme, a finding that the Defendant unreasonably protracted litigation under § 1415(i)(3)(G) only nullifies § 1415(i)(3)(F)'s requirement that the Court reduce fees if it finds that the Plaintiff also unreasonably protracted the litigation. The Court must still determine what fees are reasonable and may award those fees."); *Harris v. Friendship Public Charter Sch.*, 2019 U.S. Dist. LEXIS 31463, 2019 WL 954814, at *5 (D.D.C. Feb. 27, 2019) ("Magistrate Judge Harvey properly rejected this interpretation. It is unsupported by caselaw and has been rejected by other courts").[10]

c. Final Attorney's Fees

With both the "reasonable hourly rate[s]" and the "number of hours reasonably expended" calculated, all that remains is to multiply them together for the "presumptively reasonable [attorneys'] fee." *Lilly v. City of N.Y.*, 934 F.3d 222, 229-230 (2d Cir. 2019). The table below summarizes the adjustments and calculations:

10. If the Court's authority is limited to awarding a reasonable attorney's fee, which "shall" be based on rates prevailing in the communities under subsections (C) and (D), one might reasonably ask what work (F)(ii) and (F)(iii) do. There is no clear answer in the case law.

Appendix N

Attorney/ Paralegal	Rate per Hour	Hours in Admin Proceeding	Hours in Federal Proceeding	Total Hours	Total
Andrew Cuddy	$420	1.0	24.2	25.2	$10,584
Jason Sterne	$420	26.2	1.4	27.6	$11,592
Justin Coretti (travel)	$140	2.0		2.0	$280
Justin Coretti	$280	12.2	0.2	12.4	$3,472
Nina Aasen (travel)	$210	6.0		6.0	$1,260
Nina Aasen	$420	85.1	0.6	85.7	$35,994
Benjamin Kopp	$200		146.13	146.13	$29,226
Kevin Mendillo	$280		0.2	0.2	$56
Jaclyn Kaplan (serve process)	$90		1.0	1.0	$90
Shobna Cuddy	$100	1.6	4.6	6.2	$620

Sarah Woodard	$100	2.4		2.4	$240
Allison Bunnell	$100	32.1	7.2	39.3	$3,930
Amanda Pinchak	$100	3.6		3.6	$360
Diana Gagliostro	$125	0.2		0.2	$25
Rebecca Mills	$100	3.7		3.7	$370
Alysson Green	$100		4.7	4.7	$470
Burhan Meghezzi (legal assistant)	$100		0.7	0.7	$70
Cailin O'Donnell	$100		3.7	3.7	$370
John Slaski (legal assistant)	$100		0.2	0.2	$20
				TOTAL	$99,029

B. Costs

CLF seeks $1,814.79 in reimbursement for costs incurred during the administrative component of this case. Dkt. No. 47 ¶ 7. Specifically, CLF asks for costs of copying ($173.50, billed at $0.50/page), postage ($2.13),

tolls ($29.50), overnight fees for lodging and meals ($1,000, billed at $200/night), parking ($95), and mileage ($514.66). *Id.* For the federal component, CLF seeks $419 in cost reimbursement. Dkt. No. 47 ¶ 7. This includes costs of copying ($19.00, billed at $0.50/page) and a filing fee ($400).

A district court may award reasonable costs to the prevailing party in IDEA cases. *See* 20 U.S.C. § 1415(i)(3)(B); *see also Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 297-98, 126 S. Ct. 2455, 165 L. Ed. 2d 526 (2006) (holding "costs," as used in 20 U.S.C. § 1415(i)(3)(B), to refer to the list set out in 28 U.S.C. § 1920, the statute governing taxation of costs in federal court); *H.C. v. N.Y.C. Dep't of Educ.*, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *11 (S.D.N.Y. June 17, 2021) ("A district court may award reasonable costs to the prevailing party in IDEA cases.") (quoting *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *12); *S.J.*, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *5 (stating the same).

1. Costs for the Administrative Hearing

Defendant challenges the rate of fifty cents per page for which Plaintiff seeks to recover costs for copying, 70% of the out-of-district, non-lodging travel expenses, and 100% of the lodging expenses at the administrative stage. Dkt. No. 40 ¶¶ 38, 55.

Expenses of printing and copying are generally compensable. *See Duke v. Cnty. of Nassau*, 2003 U.S. Dist. LEXIS 26536, 2003 WL 23315463, at *6 (E.D.N.Y. Apr.

14, 2003) ("Courts have continuously recognized right to reimbursement of costs such as photocopying, postage, transcript fees and filing fees."). The majority of courts in this District limit copying costs to ten cents per page. *See S.J.*, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *5 (citing *Febus v. Guardian First Funding Grp., LLC*, 870 F. Supp. 2d 337, 341 (S.D.N.Y. 2012)); *see also H.C.*, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *11 ("District courts in New York 'routinely reduce [ ] requests for photocopying reimbursement to 10-15 cents per page.'" (quoting *Febus*, 870 F. Supp. 2d at 341)). This figure appears to go as far back as 1997 in this District.[11] *See Gen. Elec. Co. v. Compagnie Euralair, S.A.* ("GE's counsel charged 10¢ per page, which is appropriate"); *In re Towers Fin. Corp. Noteholders Litig.*, 1997 U.S. Dist. LEXIS 44, 1997 WL 5904, at *2 (S.D.N.Y. Jan. 8, 1997) (awarding costs at 10 cents per page because "[c]ounsel's submissions . . . show that where outside copying services were used, the cost was around 10c per copy"); *see also In re San Juan Dupont Plaza Hotel Fire Litig.*, 111 F.3d 220, 238 (1st Cir. 1997) (awarding costs at 10 cents per page). For decades, courts have adopted that figure, frequently citing no other support than that it has been deemed reasonable before. *See, e.g.*, *King Vision Pay-Per View, Ltd. v. Tardes Calenas Moscoro, Inc.*, 2004 U.S. Dist. LEXIS 3796, 2004 WL 473306, at *5 (S.D.N.Y. Mar.

11. Indeed, outside this District, it may go back as far as 1992. *See In re Towers Fin. Corp. Noteholders Litig.*, 1997 U.S. Dist. LEXIS 44, 1997 WL 5904, at *2 (S.D.N.Y. Jan. 8, 1997) (citing *Spicer v. Chicago Bd. Options Exch., Inc.*, 844 F. Supp. 1226, 1260 (N.D. Ill. 1993) for the proposition that $.10 per page is a reasonable rate because it is the rate charged at "local copy shops").

12, 2004) (citing *General Electric Co.* and *In re San Juan Dupont Plaza Hotel Fire* for proposition that ten cents per page is reasonable commercial rate and reducing rates for in-house copying to ten cents per page); *Brady v. Wal-Mart Stores, Inc.*, 455 F. Supp. 2d 157, 216 (E.D.N.Y. 2006) (citing *King Vision Pay-Per-View* and awarding photocopying costs at ten cents per page rather than twenty cents per page on theory that the lower rate "is more consistent with a reasonable commercial rate").

The ten-cent figure is not a hard-and-fast number, never to be departed from. Recently, a court in this District awarded copying costs at a rate of fifteen cents per copy. *See G.T.*, 2020 U.S. Dist. LEXIS 25557, 2020 WL 1516403, at *8. In 2001, Judge Stein of this District awarded copying costs at a rate of 12.5 cents per page under a fee-shifting civil rights statute, *Anderson v. City of New York*, 132 F. Supp. 2d 239, 246 (S.D.N.Y. 2001); thirteen years later, in 2014, he awarded copying costs at a rate of fifteen cents per page. *Hernandez v. Goord*, 2014 U.S. Dist. LEXIS 113720, 2014 WL 4058662, at *15 (S.D.N.Y. Aug. 14, 2014). In another case, in the Northern District of New York, Judge Sannes found copying costs of 25 cents per page to be reasonable in the context of calculating a bill of costs. *Green v. Venettozzi*, 2019 U.S. Dist. LEXIS 159343, 2019 WL 4508927, at *2 (N.D.N.Y. Sept. 19, 2019).

Plaintiff's support for the rate of 50 cents per page is Exhibit D to the Cuddy Declaration. Dkt. No. 35-4. That exhibit contains pages from the website of the New York Public Library that the self-service fees per

page for black-and-white copying is twenty cents and for staff-assisted black-and-white photocopies is fifty cents, and that the fee schedule for copying by the Clerk of Court of the Southern District of New York is fifty cents per page. The fee schedule for the Second Circuit is fifty cents per page for reproduction of documents in paper form, while the costs for copying of briefs and appendices under Federal Rule of Appellate Procedure 39 is fixed at twenty cents per page. Plaintiff's citation to the rates charged by the New York Public Library and the clerks of the Southern District of New York and the Second Circuit is not persuasive. The case law refers to the rates charged by a "commercial vendor." *Febus*, 879 F. Supp. 2d at 341. The New York Public Library and the court system, both of which have primary obligations other than the copying of papers, are not commercial vendors. The citation to the FRAP 39 rate in the Second Circuit is more persuasive. FRAP 39(c) implements 28 U.S.C. § 1920, the general statute governing taxation of costs in federal court, including the costs of making copies. In *Arlington Central School District Board of Education v. Murphy*, the Supreme Court held that Section 1415(i)(3)(B) was intended to "ad[d] reasonable attorney's fees incurred by prevailing parents to the list of costs that prevailing parents are otherwise entitled to recover" pursuant to Section 1920. 548 U.S. 291, 297, 126 S. Ct. 2455, 165 L. Ed. 2d 526 (2006). Under Rule 39(c), the costs of copies must be fixed at a rate that "must not exceed that generally charged for such work in the area where the clerk's office is located and should encourage economical methods of copying." Fed. R. App. P. 39(c). If the Second Circuit has determined that a rate of 20 cents

per page does not exceed that generally charged for such work in the area, that includes areas where costs generally tend to be lower than in the Southern District of New York. And if the prevailing party in the Second Circuit was entitled to allowable costs from the losing party at that rate, it follows that—at least absent evidence to the contrary—an attorney in an IDEA case in the Southern District of New York (where costs tend to be higher) who prevails should be entitled to reimbursement at a rate no lower than twenty cents per page. The Court finds that twenty cents per page is a reasonable figure for copying costs and will award costs at that rate.

Defendants' arguments with respect to the subpoenas at the federal level appear to be based on a mistake of fact. Those costs will be allowed.

"A prevailing party in IDEA litigation is entitled to recover for costs incurred during reasonable travel." *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *13. In *C.D.*, Judge Engelmayer determined:

> For the reasons discussed above in connection with the billing of travel time, it is not reasonable to shift most of the Cuddy Law Firm's travel costs to [defendant]. Having determined that only a one-hour—rather than three and a quarter-hour—trip to the site of the IDEA administrative proceedings is properly compensable, the Court will make a proportionate reduction in mileage costs, which appear largely to have been incurred

> traveling to and from the Cuddy Law Firm's offices (or the lawyers' homes) and the hearings . . . . The Court will thus reduce the requested mileage costs by 70%, from $1,721.54 for the administrative phase of the litigation to $516.46.

Id. For similar reasons, the court reduced the costs awarded for meals by 70%. *Id.* Finally, the court awarded no costs for lodging, because "[a]n attorney who was sited within a reasonable distance of the hearing location could commute daily to the hearings, obviating any need for lodging." *Id.*; *cf. S.J. v. New York City Dep't of Educ.*, 2020 U.S. Dist. LEXIS 194258, 2020 WL 6151112, at *7 (S.D.N.Y. Oct. 20, 2020) (citing *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *13 for the proposition that "[t]he Court declines to award the Cuddy Law Firm lodging expenses. Similarly, Plaintiff's counsel's other out-of-district travel-related expenses, including mileage, tolls and parking, are not compensable."), *report and recommendation adopted as modified,* 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501 (S.D.N.Y. Jan. 12, 2021), *modified,* 2021 U.S. Dist. LEXIS 13366, 2021 WL 536080 (S.D.N.Y. Jan. 25, 2021) (modifying on other grounds).

The Court agrees with the reduction of 70% of the non-lodging travel expenses and with the elimination of all lodging costs with respect to the administrative stage. Plaintiff argues that the expenses for "meals, tolls, mileage, and parking are all reasonable expenses" because "[a]ttorneys throughout the Southern District of New York would have still gone to Brooklyn for the hearing dates (all scheduled around meal times), requiring

these expenses," and "M.H. was *pro se*, in need of quick and reputable representation that she did not find in the Southern District of New York, and relied upon a close friend who referred her to Cuddy Law Firm." Dkt. No. 45 ¶¶ 107-108. However, attorneys in Manhattan who would have gone to Brooklyn would have incurred the travel costs of perhaps a subway token. The fact that it was convenient for M.H. to hire CLF does not qualify its travel expenses as "reasonable." On that logic, counsel from throughout the country would be able to obtain New York rates and be reimbursed for travel expenses, while at the same time bearing the lower overhead of the regions in which they are located and sticking the losing Defendants with a higher overall bill for fees and costs. The Court doubts that Congress had that result in mind when it authorized reasonable attorneys' fees. *See K.F.*, 2011 U.S. Dist. LEXIS 88653, 2011 WL 3586142, at *6 (denying expenses ancillary to CLF attorneys' travel from Auburn or Ithaca, NY to Brooklyn, including for hotel, tolls, parking and mileage); *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *13 (awarding $920.40 for mileage and meals where $3,068.01 was sought and denying entirely $3,745.76 billed for lodging); *see also S.J.*, 2020 U.S. Dist. LEXIS 194258, 2020 WL 6151112, at *7 (holding out-of-district travel expenses not compensable), *modified on other grounds,* 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501. A reasonable client "would not agree to pay in-district attorney rates while also paying for extensive lodging expenses necessitated by out-of-district attorneys' travel." *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *13. By the same logic, it would not agree to pay for that component of non-lodging travel expenses incurred

because counsel hails from Auburn or Ithaca rather than from some nearer locale.

The Court follows *C.D.* and *S.J.* in declining to award overnight expenses, for the reasons stated above. Accordingly, the appropriate award of travel-related costs for the administrative component is $191.75.

2. Costs of the Federal Hearing

The copying fee is reduced to $7.60 for the reasons stated above (applying a $0.20 per page going rate). Filing fees are generally recoverable. *See Duke*, 2003 U.S. Dist. LEXIS 26536, 2003 WL 23315463, at *6 ("Courts have continuously recognized right to reimbursement of costs such as . . . filing fees."); *see also Malibu Media, LLC v. Rios*, 2021 U.S. Dist. LEXIS 34076, 2021 WL 707274, at *4 (S.D.N.Y. Feb. 23, 2021) (taking judicial notice of a $400 filing fee and awarding it in costs), *report and recommendation adopted*, 2021 U.S. Dist. LEXIS 46782, 2021 WL 942737 (S.D.N.Y. Mar. 11, 2021); *La barbera v. ASTC Lab'ys Inc.*, 752 F. Supp. 2d 263, 279 (E.D.N.Y. 2010) ("Court filing fees are recoverable litigation costs."). Because Defendant does not object to reimbursement for the filing fee, *see* Dkt. No. 43 at 23, the Court awards it in full.

Summing the total costs, the Court finds that Plaintiff is awarded. The table below summarizes the calculations:

Item	Cost
Copying Costs (administrative proceeding)	$69.40
Toll	$8.85
Mileage	$154.40
Parking	$28.50
Postage	$2.13
Copying Costs (federal proceeding)	$7.60
Filing Fee	$400
TOTAL	**$670.88**

C. Prejudgement Interest

Plaintiffs request that the Court award prejudgment interest on its requested attorneys' fees. It claims that "it may even be an abuse of discretion *not to include* prejudgment interest in areas where, as here, a defendant essentially has an interest-free loan for as long as it can put off reaching a Court's judgment." Dkt. No. 48 at 12.

The law is unsettled in the Second Circuit on whether a court may add prejudgment interest to an attorneys' fee award. *See S.J.*, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *5 (noting that Plaintiff "failed to cite any IDEA case in this Circuit where prejudgment interest was awarded" and thus "did not adequately support the legal basis for the Court to award prejudgment interest for an award of attorneys' fees pursuant to IDEA"). Judge

Abrams recently granted CLF prejudgment interest, albeit without discussion. *J.R. v. N.Y. City Dep't of Educ.*, 2021 U.S. Dist. LEXIS 146057, 2021 WL 3406370, at *6 (S.D.N.Y. Aug. 4, 2021). In *S.J.*, Judge Schofield denied Plaintiff's request for prejudgment interest after assuming that she had discretion to make such an award, again without discussion. 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *5. The District of Connecticut has held that the court has "broad discretion' to grant prejudgment interest based on 'considerations of fairness," while at the same time denying an award of prejudgment interest. *P.J. v. Connecticut*, 2016 U.S. Dist. LEXIS 198949, 2016 WL 9753761 at *22 (D. Conn. Mar. 31, 2016) (internal quotation marks omitted) (quoting *S.E.C. v. Contorinis*, 743 F.3d 296, 307-308 (2d Cir. 2014) (internal citations omitted)).[12]

Outside the Circuit, the courts are divided on the availability of prejudgment interest on an attorneys' fee award in an IDEA case. *See, e.g.*, *Knox ex rel. J.D. v. St. Louis City Sch. Dist.*, 2020 U.S. Dist. LEXIS 114445, 2020 WL 3542286, at *15 n.26 (E.D. Mo. June 30, 2020) ("The Eighth Circuit has not determined whether prejudgment interest for attorney fees is available under the IDEA and, as other districts have noted, this remains an 'open question.'" (citing *T.B. v. San Diego Unified Sch. Dist.*, 293 F.Supp. 3d 1177, 1207 (S.D. Cal. 2018); then citing *McAllister v. District of Columbia*, 160 F. Supp. 3d 273, 277 n.1 (D. D.C. 2016))); *D.D.M. ex rel. O.M.S. v. Sch. City of Hammond*, 2020 U.S. Dist. LEXIS 217339, 2020 WL

12. *Contorinis* addressed prejudgment interest on disgorgement paid to the SEC and does not address the question here on whether prejudgment interest can be awarded on costs under the IDEA.

6826490, at *11 (N.D. Ind. Nov. 19, 2020) ("Many district courts have applied prejudgment interest to attorneys' fees under the IDEA" (citing *K.S. v. Bd. of Educ. of Vandalia Cmty. Unit Sch. Dist. No. 203*, 2018 U.S. Dist. LEXIS 141813, 2018 WL 3993628, at *18 (S.D. Ill. Aug. 21, 2018) (collecting cases)); *Brianna O. v. Bd. of Educ. of City of Chicago, Dist. 299*, 2010 U.S. Dist. LEXIS 118372, 2010 WL 4628749, at *13 (N.D. Ill. Nov. 8, 2010) (awarding prejudgment interest on the attorneys' fees for the underlying hearing); *Troy Sch. Dist. v. Janice*, 2016 U.S. Dist. LEXIS 39812, 2016 WL 1178260 (E.D. Mich. Mar. 28, 2016) (awarding prejudgment interest on attorneys' fees); *Christopher C. v Bd. of Educ. of City of Chi.*, 2010 U.S. Dist. LEXIS 88694, 2010 WL 3420266, at *4 (N.D. Ill. Aug. 26, 2010) ("The Seventh Circuit has not addressed the propriety of awarding prejudgment interest for fee awards under the IDEA, but other district courts have awarded interest in such cases") (citing cases); *Kaseman v. Dist. of Columbia*, 329 F. Supp. 2d 20, 28 (D.D.C. July 7, 2004) (awarding prejudgment interest where as a result of defendant's refusal to reasonable settlement on plaintiffs' attorneys' fees requests, plaintiff's counsel had to "struggle, in some instances for longer than two and a half years to obtain payment for her services").

The most extended appellate discussion of the issue is that of the Eleventh Circuit in *Williams ex rel. Williams v. Fulton Cnty. Sch. Dist.*, 717 F. App'x 913, 918 (11th Cir. 2017). There, the Eleventh Circuit affirmed a district court order declining to award prejudgment interest on an award of attorneys' fees. Although the appellate court framed its decision in the language of discretion, its analysis suggested that the district court was without power to

add prejudgment interest to an attorney fee award. The Eleventh Circuit noted that the statutory language of the IDEA allowed the court to award reasonable attorneys' fees "as part of the costs," 20 U.S.C. § 1415(i)(3)(B)(i), and that the Supreme Court had stated in *Library of Congress v. Shaw*, 478 U.S. 310, 321, 106 S. Ct. 2957, 92 L. Ed. 2d 250 (1986) that the term "costs" has "never been understood to include any interest component." In that same case, the Supreme Court also stated that a court could not award a delay premium against the Federal Government. *Id.* at 322.

To the extent that the Eleventh Circuit meant that a district court lacks authority to adjust an attorneys' fee award to account for delay, this Court respectfully disagrees. In its reliance on *Shaw*, the Eleventh Circuit *Williams* decision fails to take into account two salient developments that followed *Shaw*. First, three years after *Shaw*, the Supreme Court held that in interpreting an analogous fee-shifting statute, "an enhancement for delay in payment is, where appropriate, part of a 'reasonable attorney's fee'" and that "an appropriate adjustment for delay in payment—whether by the application of current rather than historic hourly rates or otherwise—is within the contemplation of the statute." *Missouri v. Jenkins ex rel. Agyei*, 491 U.S. 274, 282, 284, 109 S. Ct. 2463, 105 L. Ed. 2d 229 (1989). Quoting its prior decision in *Pennsylvania v. Delaware Valley Citizens' Council*, 483 U.S. 711, 716, 107 S. Ct. 3078, 97 L. Ed. 2d 585 (1987), the Supreme Court reasoned "[w]hen plaintiffs' entitlement to attorney's fees depends on success, their lawyers are not paid until a favorable decision finally eventuates, which may be years later. . . . Meanwhile, their expenses of doing

business continue and must be met. In setting fees for prevailing counsel, the courts have regularly recognized the delay factor, either by basing the award on current rates or by adjusting the fee based on historical rates to reflect its present value." 491 U.S. at 282.

In the wake of *Jenkins*, the Second Circuit has held that in awarding a reasonable attorneys fee "to 'adjust[] for delay,' the 'rates used by the court should be current rather than historic hourly rates.'" *Lochren v. County of Suffolk*, 344 F. App'x 706, 709 (2d Cir. 2009) (quoting *Reiter v. MTA N.Y. City Transit Auth.*, 457 F.3d 224, 232 (2d Cir. 2006) (internal citations and quotations omitted)); *see also Lawton v. Success Academy of Fort Greene*, 2021 U.S. Dist. LEXIS 1439, 2021 WL 1394372, at *9 (E.D.N.Y. Jan. 3, 2021) ("The Second Circuit does indeed require courts to award fees at current rates, 'because compensation received several years after the services were rendered—as it frequently is in complex civil rights litigation—is not equivalent to the same dollar amount received reasonably promptly as the legal services are performed.'" (quoting *Ravina v. Columbia Univ.*, 2020 U.S. Dist. LEXIS 39478, 2020 WL 1080780, at *7 (S.D.N.Y. Mar. 6, 2020)) (internal citations and quotations omitted)); *Lexjac, LLC v. Board of Trustees of the Incorporated Village of Muttontown*, 2015 WL 13001537, at *7 (E.D.N.Y. Mar. 10, 2015) ("[T]he fee application must be determined using current Eastern District rates.").

Second, in the immediate aftermath of *Shaw*, Congress passed Section 114(e), which provided that "the same interest to compensate for delay in payment shall be available in cases involving nonpublic parties."

42 U.S.C. § 2000e-16(d); *see also Brown v. Secretary of Army*, 78 F.3d 645, 647, 316 U.S. App. D.C. 284 (D.C. Cir. 1996). The transparent intent, and the subsequent effect, of Section 114(e) was to restore to the law of fee-shifting the rule applicable to fee awards prior to *Shaw* that, in appropriate circumstances, the court may make an adjustments to an award to account for delay. *See Shaw*, 478 U.S. at 324 & n.2 (Brennan, J., dissenting) (noting that "in appropriate circumstances, §706(k) permits the award of prejudgment interest (or a delay adjustment) on attorneys' fees awarded against losing parties other than the Federal Government" and citing cases); *see also Thorsen v. Cnty of Nassau*, 2011 U.S. Dist. LEXIS 27992, 2011 WL 1004862, at *5 (E.D.N.Y. Mar. 17, 2011) (awarding delay adjustment following *Lochren* and *Jenkins*). In the wake of the passage of Section 114(e), the courts continued to award delay notwithstanding the language of Title VII that a reasonable attorney's fee was part of costs. *See, e.g.*, *Raniola v. Bratton*, 2003 U.S. Dist. LEXIS 7199, 2003 WL 1907865, at *6 (S.D.N.Y. Apr. 21, 2003). Since the IDEA fee-shifting provision must be interpreted *in pari materia* with other fee-shifting statutes, it follows that the reference to fees being part of "costs" does not prevent a court from adjusting the appropriate rates to take delay into account.

The Court thus concludes that in IDEA cases, as in other fee-shifting contexts, the Court should take into account "delay" by using current rates in calculating a "reasonable" attorneys' fee. This result is consistent with the purpose of the fee-shifting provision. The law is intended to ensure that attorneys handle special education cases by assuring counsel reasonable fees if they prevail.

Fox, 563 U.S. at 833. It would defeat that purpose if a recalcitrant defendant could reduce the real value of counsel's fees by protracting negotiations over fees and thereby delaying payment. This result is also consistent with the language of the fee-shifting provision that makes reasonable attorneys' fees part of costs. In this case, for example, during settlement discussions, Defendant prolonged the proceedings by refusing to indicate to Plaintiff the line entries that it believed were overbilled, claiming it had a practice not to "go line-by-line on the entries that [it] believe[d] [we]re overbilled in advance of motion practice." Dkt. No. 32, Ex. Q at 1-2.

Finally, the Court's result is consistent with the holding of *A. v. Hartford Bd. of Educ.*, 2017 U.S. Dist. LEXIS 72567, 2017 WL 1967498, at *4 (D. Conn. May 11, 2017), in which after stating that the court has discretion to allow prejudgment interest on a fee award under the IDEA, the court declined to exercise that discretion because it had already awarded plaintiff's attorney his current hourly rate.

Plaintiff's counsel protests that this approach does not compensate them for the lost time value of money in a case such as this in which, as they argue, the rates at the time they rendered the services remain their current rates. Hr'g Tr. 21. That complaint has some force. The use of current rates is, at best, an imperfect proxy for the loss to counsel from a delay in payment. It will undercompensate counsel when interest rates exceed the rate of inflation of attorneys' fees, just as it will overcompensate counsel when the inflation rate exceeds the interest rate. If the use

of current rates, however, is imperfect, the imperfection lies with the test the Circuit has mandated and not with its application here. The law and the Supreme Court's interpretation of "costs" does not permit this Court to mix and match, giving counsel current rates when that would generate a greater fee award and prejudgment interest on historic rates when that would generate the greater fee. The request for prejudgment interest is denied.

D. Post-Judgment Interest

Plaintiff's request for post-judgment interest is granted. "Pursuant to 28 U.S.C. § 1961, '[t]he award of post-judgment interest is mandatory on awards in civil cases as of the date judgment is entered.'" *Tru-Art Sign Co. v. Loc. 137 Sheet Metal Workers Int'l Ass'n*, 852 F.3d 217, 223 (2d Cir. 2017) (alteration in original) (quoting *Lewis v. Whelan*, 99 F.3d 542, 545 (2d Cir. 1996)); *see also S.J*, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *5 (Schofield, J.) (stating the same).

E. Conclusion

Plaintiff is awarded the total fee award ($99,029) and the total cost award ($670.88) for a sum total of $99,699.88.

II. Enforcement of the FOFD

Defendant moves for summary judgment on Plaintiff's claims for equitable relief, asking the Court to order Defendant to comply with all the terms of the FOFD. *See* Dkt. No. 43 at 31.

Defendant does not dispute that the Court has the authority to issue an order to enforce the terms of a FOFD awarding services pursuant to 42 U.S.C. § 1983. *Id.* at 24 (citing *Rutherford v Fla. Union Free Sch. Dist.*, 2019 U.S. Dist. LEXIS 55971, 2019 WL 1437823, at *33 (S.D.N.Y. Mar. 29, 2019) (noting authority under 42 U.S.C. §1983)); *A. v. Hartford Bd. of Educ.*, 2016 U.S. Dist. LEXIS 95328, 2016 WL 3950079, at *32 (D. Conn. Jul. 19, 2016) (same).[13] The Court has "subject matter jurisdiction to enforce favorable administrative decisions rendered under the provisions of the IDEA." *Rutherford*, 2019 U.S. Dist. LEXIS 55971, 2019 WL 1437823, at *25 (quoting *A.T. v. N.Y. State Educ. Dep't*, 1998 U.S. Dist. LEXIS 23275, 1998 WL 765371, at *7, 9-10 & n.16 (E.D.N.Y. Aug. 4, 1998)). "With respect to Plaintiff['s] allegations of non-compliance, this Court has subject matter jurisdiction under § 1983 to enforce favorable administrative decisions rendered under the provisions of the IDEA." 2019 U.S. Dist. LEXIS 55971, [WL] at *25; *see also Y.S. ex rel. Y.F. v. N.Y. City Dep't of Educ.*, 2021 U.S. Dist. LEXIS 58361, 2021 WL 1164571 (S.D.N.Y. Mar. 26, 2021) (enjoining Department to comply with IHO order); *Blazejewski ex rel. Blazejewski v. Bd. of Educ. of Allegany Cent. Sch. Dist.*, 560 F. Supp. 701 (W.D.N.Y. 1983) (ordering injunctive relief requiring implementation of decision of New York State Education Department).[14]

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13. Defendant does argue that the Court does not have authority to enforce the FOFD under the IDEA itself as alleged in Count Three. *Id.* at 31.

14. The Second Circuit has assumed that the IDEA's exhaustion requirement do not apply to allegations that a school has failed to implement services that were specified or otherwise clearly stated

Defendant argues that Plaintiff has not identified any facts suggesting it has failed to comply with the FOFD and therefore it is entitled to summary judgment. Plaintiff's amended complaint, filed on July 27, 2020, alleged that Defendant had not paid for all of the compensatory ABA services awarded in the FOFD; Defendant and the CSE had failed to develop an IEP mandating ABA methodology with discrete trials specified; Defendant, its CSE, and its IHOIU had failed to mandate and provide ten hours of home-based ABA services "at the provider's prevailing rate," as ordered by the FOFD; Defendant had failed to fund occupational therapy (4x45) in a sensory gym with M.H.'s chosen provider, which was ordered to begin on July 1, 2018 and continue through the end of the 2018-2019 school year; and Defendant and the IHOIU had failed to fund the equivalent number of hours/minutes of OT in a sensory gym with M.H.'s chosen provider, that would have been provided had the DOE implemented the FOFD. Dkt. No. 14 ¶¶ 36-40. Those claims formed the basis for Plaintiff's claim for equitable relief.

Defendant has demonstrated that it has complied with the FOFD. Plaintiff has not identified a genuine issue of material fact. Therefore, Defendant is entitled to summary judgment.

Defendant has paid for all of the compensatory ABA services awarded in the FOFD. Hr'g Tr. 9. The IEPs conform to the relief awarded by the IHO. Although

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in an IEP. *Levine v. Greece Central Sch. Dist.*, 353 F. App'x 461 (2d Cir. 2009); *see also Calandrino ex rel. J.C. v. Farmingdale Union Free Sch. Dist.*, 2019 U.S. Dist. LEXIS 218397, 2019 WL 7473457, at *3 (E.D.N.Y. Dec. 18, 2019) (same).

Defendant did not pay all of the outstanding invoices until after this litigation was instituted, it is undisputed that the invoices to date have been paid. *Id.* Plaintiff's complaint is limited to the assertion that Defendant has "neglected its duties to maintain any appropriate bookkeeping method on M.T.'s case to determine what has actually been paid, as opposed to what may still be processing or what may be a technical error," Dkt. No. 34 at 24, but Plaintiff cites no authority for the right to compel the Department to have "appropriate bookkeeping." Defendant is not liable for the failure to include ABA in M.T.'s IEP. Although Plaintiff argues that the specification of ABA within the four corners of the IEP would have value for M.T., the FOFD ordered only that the CSE "develop a new IEP . . . that places the Student in a state-approved non-public school with . . . ABA methodology with discrete trials specified." *Id.* ¶¶ 27-34. It is undisputed that the IEPs issued after the FOFD did so—they placed M.T. at BBF, a non-public school that provides the ABA services the FOFD ordered Defendant to include in the IEP. Counter Rule 56.1 statement ¶ 121. The FOFD did not order the CSE to develop an IEP specifying home-based ABA. Plaintiff had complained that the Department failed to pay for the home-based ABA at the provider's prevailing rate, but it is undisputed that there are no outstanding invoices. Plaintiff complains that Defendant has no excuse for its delay in paying the $4,592.22 in pre-FOFD ABA hours, Dkt. No. 34, at 18, but those too have been paid. Finally, while the Department has not yet funded OT, that is because it is undisputed that M.H. has not identified a provider for OT. The FOFD does not require the Department to identify and pay an OT provider. It

requires the Department to "fund OT 4x45 in a sensory gym with the Parent's chosen provider." *Id.* ¶ 34.[15]

Plaintiff argues that there were two months from January of 2019 until February 2021 (September and November 2020) when there were no ABA services and suggests that it might have been because the provider was not being paid, but there is no evidence in the record to support that proposition. Tr. 24. Moreover, although Proud Moments unilaterally stopped providing ABA services after February 2021, the Department is not responsible for that decision either. As Defendant's declarations establish, "there are ample remaining hours available to M.T. for her to use for ABA." Dkt. No. 44 at 1.

Because there is no record showing that Plaintiff has used her own funds for the ABA services that the Defendant was ordered to provide in the FOFD, because Plaintiff has not shown that Defendant was responsible for M.T. not receiving the ABA services in the few months when she did not receive them, and because Defendant has indicated it "stands ready, willing and able to pay for the remaining ABA, and all of the awarded PCAT and OT

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15. Plaintiff also claims that with respect to parent counseling and training services (PCAT), Defendant has not confirmed whether or not it authorized Attentive Behavior to submit invoices for PCAT services and that until it does so, Defendant can delay Plaintiff's use of those hours. Dkt. No. 32 ¶ 232. But, the Department has confirmed that each of the 62 hours awarded remain outstanding and that it "stand[s] ready, willing, and able to pay the 62 hours" at the providers' prevailing rate once M.H. has chosen a provider. Hr'g Tr. 27; Dkt. No. 51 at 6.

services, upon the submission of invoices," Dkt. No. 51 at 7, there is no legal or equitable basis for the establishment of an escrow account for unused services. *Cf. Streck v. Bd. of Educ. of the E. Greenbush Cent. Sch. Dist.*, 408 F. App'x 411, 415 (2d Cir. 2010) (ordering escrow in order to effectuate court order awarding plaintiff two years of compensatory reading education where Department failed to comply with judgment of review officer under IDEA).

Plaintiff's second and third causes of action for equitable relief are dismissed.

CONCLUSION

Plaintiff's motion for summary judgment is GRANTED IN PART and DENIED IN PART. Defendant's cross motion for summary judgment is GRANTED IN PART and DENIED IN PART.

The Clerk of Court is respectfully directed to close Dkt. Nos. 30 and 39. Plaintiff is directed to prepare a proposed judgment consistent with this opinion after meeting and conferring with Defendant.

SO ORDERED.

Dated: October 13, 2021
New York, New York

/s/ Lewis J. Liman
LEWIS J. LIMAN
United States District Judge

APPENDIX O — J.R. MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED AUGUST 4, 2021

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

19-CV-11783 (RA)

J.R., INDIVIDUALLY AND ON BEHALF OF J.B., A CHILD WITH A DISABILITY,

Plaintiff,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant.

August 4, 2021, Decided;
August 4, 2021, Filed

MEMORANDUM OPINION & ORDER

RONNIE ABRAMS, United States District Judge:

This action was brought against the New York City Department of Education (the "DOE") by J.R., the mother of disabled child, J.B. After successfully obtaining several educational accommodations for her son through an administrative hearing before an independent hearing officer ("IHO"), Plaintiff filed the instant action for

attorneys' fees under the fee-shifting provisions of the Individuals with Disabilities Education Act, 20 U.S.C. § 1415(i)(3) (the "IDEA"). Plaintiff requests a total of $76,902.15 in fees, costs, and interest for both the underlying administrative proceeding and this federal action. The Court grants the request with modifications.

BACKGROUND

The Court draws the following facts from the declarations of the lawyers who represented the parties in this action: Andrew Cuddy ("Cuddy Decl."), Justin M. Coretti ("Coretti Decl."), Emily Goldman ("Goldman Decl."), and Darren Trotter ("Trotter Decl."), as well as the exhibits attached thereto.

Plaintiff's attorneys are from the Auburn, New York office of the Cuddy Law Firm, PLLC ("CLF"), "one of the largest private special education law firms in the country," Cuddy Decl. at 9. Plaintiff's counsel initiated the underlying administrative proceeding (the "underlying action") on Plaintiff's behalf on July 21, 2017 by filing a due process complaint ("DPC"). Coretti Decl. ¶¶ 17-19. The DPC alleged that the DOE had denied J.B. a free appropriate public education ("FAPE") during the 2015-16, 2016-17, and 2017-18 school years. Goldman Decl. ¶ 11. Plaintiff sought a host of remedies including "compensatory education, a psychiatric evaluation, funding for an independent neuropsychological evaluation, an independent functional behavioral assessment ("FBA") and if warranted, a Behavioral Intervention Plan ("BIP") by a Board Certified Behavioral Analyst ("BCBA"),

placement in a community school with a staffing ratio of 12:1:1; that the CSE reconvene; make up speech and language therapy ("SLT"), counseling and physical therapy ("PT"), and Occupational Therapy ("OT")." *Id.* Ex. F.

On August 17, 2017, Coretti moved before the IHO assigned to this case for a pendency determination and interim order. Coretti Decl. ¶ 27. On August 25, 2017, the IHO held a pendency hearing. Goldman Decl. If 11. After the hearing the IHO entered, with Defendant's consent, an interim order granting Plaintiff's requested pendency relief. Coretti Decl. ¶ 28 & Ex. D (Interim Order).

The IHO held three brief hearings on this matter on December 4, 2017, February 5, 2018, and March 1, 2018. *Id.* ¶¶ 31-35. The December 4 hearing lasted from 11:02 a.m. to 11:33 a.m., the February 5 hearing lasted from 1:10 p.m. to 2:03 p.m., and the March 1 hearing lasted from 11:06 a.m. to 11:11 a.m. for a total of about 90 minutes. *See* Goldman Decl. ¶ 13. At these hearings, Plaintiff presented 26 exhibits and three witnesses. Coretti Decl. ¶¶ 30-34; Goldman Decl. ¶ 14. Defendant did not offer any testimonial or documentary evidence. Goldman Decl. ¶ 14. At the end of the hearings, Plaintiff submitted an eight-page closing brief, outlining what was agreed to be in the IHO's final decision, identifying issues that were no longer in dispute, and arguing for the remaining relief sought. Coretti Decl. ¶ 35 & Ex. E (Closing Brief).

On May 1, 2018, the 1HO issued a Findings of Fact and Decision ("FOFD"). *Id.* ¶¶ 36-37 & Ex. F (FOFD).

The FOFD recognized that much of the case was resolved by the parties prior to the hearings, and that "[t]he only remaining issues ... to determine were the rate for the neuropsychological evaluation and the amount of compensatory educational services which the student should receive." *Id.* Ex. F (FOFD) at 3. Throughout the next five months, CLF assisted Plaintiff in getting the FOFD implemented. *Id.* ¶ 40.

On November 17, 2018, CLF submitted a fee demand to DOE. Trotter Decl. Ex. A (Fee Demand) at 2. Attached to the demand were "a billing statement with [a] summary sheet and expense report, copies of the relevant receipts, authorizations from J.R. to accept settlement, resumes from each person who had worked on the case up to that point, Mr. Coretti's closing brief, and the [IHO's] [FOFD]." *Id.; see also* Cuddy Decl. ¶¶ 27-28. The fee demand sought $49,964.30 in total, including "1.9 hours billed by A. Cuddy at a rate of $550 per hour, .6 hours billed by J. Sterne at a rate of $550 per hour, 7.1 hours billed by J Coretti at a rate of $400 per hour, 78.7 hours billed by J. Coretti at a rate of $425 per hour, 24.7 hours of J. Coretti's travel time at a rate of $212.50 per hour, and 1.2 hours billed by K. Mendillo at a rate of $450 per hour." Goldman Decl. ¶ 20; *see also* Trotter Decl. Ex. A (Fee Demand) at 2. "The request also included 21.1 hours of paralegal time at a rate of $225.00 per hour." Goldman Decl. ¶ 20; *see also* Trotter Decl. Ex. A (Fee Demand) at 2. For costs, the demand sought "expense reimbursement totaling $1,765.55 consisting of: faxes ($132.00), lodging ($391.56), meals ($137.64), mileage ($682.50), photocopying at a rate of $.50 cents per page ($151.00), Parking ($112.50), postage

($7.35), tolls ($26.00), and transportation ($125.00)." Goldman Decl. ¶ 20; *see also* Trotter Decl. Ex. A (Fee Demand) at 2. The demand was not accepted.

On December 23, 2019, CLF commenced this federal court action (the "federal action"). Dkt. 1. On September 4, 2020, CLF filed the instant motion for attorneys' fees, which sought $60,954.96 in fees, consisting of "$45,821.72 for the underlying matter (inclusive of $2,532.42 in prejudgment interest from the date of the November 17, 2018 fee demand) and $15,133.24 for the federal component (inclusive of $70.24 in prejudgment interest on the fees and costs accrued between the November 17, 2018 fee demand and the January 22, 2020 update)." Pl. Mem. at 22. On February 19, 2021, CLF submitted a revised calculation. *See* Reply Declaration of Andrew Cuddy ("Cuddy Reply Decl.") at 8- 9. Plaintiff now seeks $76,902.15 in fees, consisting of $46,469.28 for the underlying action (inclusive of $3,179.98 in prejudgment interest) and $30,432.87 for the federal action (inclusive of $287.37 in prejudgment interest). *Id.*

LEGAL STANDARD

"The IDEA grants district courts the discretion to award reasonable attorneys' fees and costs to a prevailing party." *R.G. v. N.Y.C. Dep't of Educ.*, 18-CV-6851 (VEC), 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *1 (S.D.N.Y. Sept. 26, 2019) (citing 20 U.S.C. § 1415(i)(3)(B)(i)). A plaintiff "prevails when actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a

way that directly benefits the plaintiff." *KL. v. Warwick Valley Cent. Sch. Dist.*, 584 F. App'x 17, 17-18 (2d Cir. 2014) (alterations omitted and internal quotation marks omitted). Here Defendant does not dispute that Plaintiff was the prevailing party.

"Reasonable attorneys' fees under the IDEA are calculated using the lodestar method." *Streck v. Bd of Educ.*, 408 F. App'x 411, 415-16 (2d Cir. 2010) (quoting. *A.R. v. N.Y.C. Dept of Educ.*, 407 F.3d 65, 79 (2d Cir, 2005)). To calculate the lodestar, the court must "multiply[] the attorney's reasonable hourly rate by the number of hours reasonably expended on the matter at issue." *E.F. ex rel. N.R. v. N.Y.C. Dep't of Educ., I1-CV-5243* (GBD) (FM), 2014 U.S. Dist. LEXIS 34606, 2014 WL 1092847, at *2 (S.D.N.Y. Mar. 17, 2014) (*citing Millea v. Metro-North R.R. Co.*, 658 F.3d 154, 166 (2d Cir. 2011)). In determining whether an hourly rate is reasonable, courts consider both the prevailing market rates for such legal services as well as the twelve-factor test promulgated by the Fifth Circuit in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974). The twelve *Johnson* factors are as follows:

> (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.

Lilly v. City of New York, 934 F.3d 222, 228 (2d Cir. 2019). "[T]he fee applicant bears the burden of establishing entitlement to an award." *Hensley v. Eckerhart*, 461 U.S. 424, 437, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983).

DISCUSSION

Although Plaintiff was the prevailing party and is thus entitled to attorneys' fees, the Court concludes that the fee rate sought, the hours submitted, and the costs requested do not qualify as reasonable. The Court will thus grant Plaintiff's motion for attorneys' fees and costs, but will make reductions both to the rates and hours awarded.

I. Reasonable Rate

Plaintiff seeks the following fee rates for the CLF attorneys who worked on this matter:

(1) $500 per hour for attorneys Andrew Cuddy and Jason Sterne, who at the time each had roughly 15-20 years of experience in special education law,

(2) $400 per hour for attorney Kevin Mendillo, who at the time had roughly five years of experience in special education law,

(3) $350 per hour for attorney Benjamin Kopp, who has worked at CLF for two years,

(4) $350 per hour during 2016 and $375 per hour after 2016 for Justin Coretti, who at the time had three years of experience in special education law,

(5) $150 per hour for paralegal and office administrator Shobna Cuddy, who at the time had worked at CLF for ten years,

(6) $150 per hour for paralegals Allison Bunnell, Amanda Pinchak and Dianna Gagliostro, who at the time had less than two years of experience,

(7) $150 per hour for paralegal and legal assistant Aaron Moore, who was a law student at the time, and

(8) $150 per hour for legal secretary Sarah Woodard, who at the time had over twenty years of experience.

See Trotter Decl. Ex. A 69-80; *see also* Cuddy Decl. at 9; Kopp. Decl. ¶ 17; Coretti Decl. ¶ 5. Because these rates do not comport with the prevailing rate in this area nor the *Johnson* factors, they must be reduced.

A. Prevailing Rate

The prevailing market rate for experienced, special-education attorneys in the New York area circa 2018 was

between $3 50 and $475 per hour. *See M.D. v. N.Y.C. Dept of Educ.*, 17-CV-2417 (JMF), 2018 U.S. Dist. LEXIS 156923, 2018 WL 4386086, at *3 (S.D.N.Y. Sept. 14, 2018) (collecting cases); *see also C.D. v. Minisink Valley Cent. Sch. Dist.*, 17-CV-7632 (PAE), 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *6 (S.D.N.Y. Aug. 9, 2018) (same). "For associates with three or fewer years of experience in such litigation, courts in this District have typically approved rates of $150—$275." *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *7. "Paralegals, depending on skills and experience, have generally garnered between $100 and $125 per hour in IDEA cases in this District." *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050 at *3 (collecting cases). The rates sought are thus significantly higher than the market rate in New York.

B. *Johnson* Factors

Because "the determination of fees should not result in a second major litigation," *Fox v. Vice*, 563 U.S. 826, 838, 131 S. Ct. 2205, 180 L. Ed. 2d 45 (2011) (quoting *Hensley*, 461 U.S. at 437), courts may consider the *Johnson* factors holistically, and need not apply each factor rigidly to the facts of the case. *See Green v. City of New York*, 05-CV-429 (ETB), 2010 U.S. Dist. LEXIS 2946, 2010 WL 148128, at *10 (E.D.N.Y. Jan. 14, 2010), *aff'd*, 403 F. App'x 626 (2d. Cir. 2010).

Here, applying the *Johnson* factors holistically, the Court concludes that they do not support the proposed fee rates. Plaintiff does not allege that the issues in this case were especially novel or difficult, nor does it appear

that this matter was "undesirable." *Lilly*, 934 F.3d at 228. Rather, this appears to have been a fairly standard action for special education and related services. Goldman Decl. ¶ 18. Defendant did not put on any witnesses nor present any evidence and agreed to most of Plaintiff's requests before the FOFD was issued. *Id.* ¶¶ 13-14; Coretti Decl. Ex. F (FOFD) at 3. In total, the administrative proceedings in this case took less than two hours. *See* Goldman Decl. ¶ 13. Further, there is no indication that CLF was precluded from other employment in taking this case. *Lilly*, 934 F.3d at 228.

To be sure, at least one factor does support the fees sought here. Specifically, the Court recognizes that CLF obtained for Plaintiff most, if not all, of the relief she sought for her son, Coretti Decl. Ex. F (FOFD) at 3-4, and that "the degree of success obtained by plaintiff's counsel" is "'the most critical factor in determining the reasonableness of a fee award,'" *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *11 (*citing Farrar v. Hobby*, 506 U.S. 103, 114, 113 S. Ct. 566, 121 L. Ed. 2d 494 (1992)). Yet this factor alone does not outweigh the rest, which support a reduction in the fee rate sought.

In a comparable attorneys' fees action brought by CLF, Judge Caproni found that a reasonable rate for attorneys Cuddy and Sterne was $350 per hour, while the reasonable rate for those attorneys with less special education litigation experience was $300 per hour, and the reasonable rate for paralegals was $100. *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *3. The Court will do the same here. Andrew Cuddy and Jason Sterne's

hourly rate will thus be reduced to $350 per hour. Kevin Medillo, Benjamin Kopp, and Justin Coretti's hourly rate will be reduced to $250 per hour. Shobna Cuddy, Allison Bunnell, Amanda Pinchak Dianna Gagliostro, Aaron Moore, and Sarah Woodard will be reduced to $100 per hour.

II. Reasonable Time

Plaintiff reports that the CLF attorneys and staff spent a total of 193.4 hours working on this matter. Cuddy Reply Decl. at 8-9. That time includes:

(1) 110.6 hours spent on the underlying action including: 1.90 hours by Andrew Cuddy, 0.60 hours by Jason Sterne, 85.80 hours by Justin Coretti, 1.20 hours by Kevin Mendillo, 9.30 hours by Allison Bunnell, 1.50 hours by Aaron Moore, 2.40 hours by Dianna Gagliostro, 4.60 hours by Amanda Pinchak, 1.00 hours by Sarah Woodard, and 2.30 hours by Shobna Cuddy.[1]

(2) 82.8 hours spent on the instant motion for attorneys' fees including: 9.20 hours by Andrew Cuddy, 0.20 hours by Jason Sterne, 16.30 hours by Justin Coretti, 51.30 hours by Benjamin Kopp, 1.20 hours by Allison Bunnell, 0.10 hours by Amanda Pinchak, and 4.50 hours by Shobna Cuddy.

1. This number excludes the 24.2 hours spent by Coretti travelling, which the Court will analyze below in Section III.A.

Id. These hours do not qualify as reasonable, and the court will thus reduce them by 20% in connection with the underlying action and 25% in connection with the federal action, respectively.

A. Underlying Action

In determining what number of hours is reasonable, the court "must exclude [h]ours that are excessive, redundant, or otherwise unnecessary,' allowing only those hours that are 'reasonably expended.'" *Hernandez v. Berlin Newington Assocs., LLC*, 699 F. App'x 96, 97 (2d Cir. 2017) (quoting *Kirsch v. Fleet St., Ltd.*, 148 F.3d 149, 172-73 (2d Cir. 1998)). To determine the reasonableness of hours spent on a matter, "[t]he district court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award" by a reasonable percentage. *Hensley*, 461 U.S. at 436-37; *see also McDonald ex rel. Prendergast v. Pension Plan of the NYSA-.ILA Pension Tr. Fund*, 450 F.3d 91, 96 (2d Cir. 2006) (in calculating an appropriate reduction of compensable hours "[a] district court may exercise its discretion and use a percentage deduction as a practical means of trimming fat from a fee application"). Courts in this Circuit routinely reduce hours by up to fifty percent in instances where counsel bills for excessive or unnecessary hours worked. *See E.S. v. Katonah-Lewisboro Sch. Dist.*, 796 F. Supp. 2d 421, 433 (S.D.N.Y. 2011) (collecting cases); *see also Wong v. Hunda Glass Corp.*, 09-CV- 4402 (RLE), 2010 U.S. Dist. LEXIS 90736, 2010 WL 3452417, at *4 (S.D.N.Y. Sept. 1, 2010) (applying 15% reduction where counsel performed unnecessary work and where "an experienced attorney

[w]ould not have required as much time"); *Do Yea Kim v. 167 Nail Plaza, Inc.*, 05-CV-8560 (GBD) (GWG), 2009 U.S. Dist. LEXIS 1992, 2009 WL 77876, at *6 (S.D.N.Y. Jan. 12, 2009) (applying 40% reduction where counsel expended unreasonable amount of time); *Wilson v. Nomura Sec. Int'l Inc.*, 01-CV-9290 (RWS), 2002 U.S. Dist. LEXIS 12668, 2002 WL 1560614, at *5 (S.D.N.Y. July 15, 2002) (applying fifty percent across-the-board reduction for "inefficiencies and excessive billing").

The Court finds that the hours billed here were "excessive," and thus warrant reduction. *See Kirsch*, 148 F.3d at 173. Factors that support this conclusion include the brevity of both Plaintiff's written submission and the hearings themselves, Defendant's decision not to submit evidence in opposition, and the seeming lack of complexity of this matter. *See* Coretti Decl. ¶ 35 & Ex. F (FOFD) at 3; Goldman Decl. ¶¶ 13-14. In cases of comparable complexity brought by the Cuddy Law Firm, courts in this District have reduced the firm's hours by twenty to fifty percent. *See, e.g., M.D. v. N.Y.C. Dep't of Educ.*, 20-CV-6060 (LGS), 2021 U.S. Dist. LEXIS 132930, 2021 WL 3030053, at *5 (S.D.N.Y, July 16, 2021) (reducing hours spent on administrative proceeding by 20% in a case in which Plaintiff spent 84.4 hours preparing for an uncontested hearing); *H.C. v. N.Y.C. Dep't of Educ.*, 20-CV-844 (TLC), 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *8 (S.D.N.Y. June 17, 2021) (reducing hours spent on administrative proceeding by 20% in a ease in which three hearings were held and DOE agreed to several of Plaintiff's demands prior to the first hearing); *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050 at

*3-4 (reducing hours spent on administrative proceeding by roughly 20% in a case in which four hours of hearings were held and the Government introduced one witness). The Court will thus order a twenty percent reduction in hours spent on the underlying action, from 109.9 to 87.92.

B. Federal Action

Courts in this District also routinely reduce the hours spent on attorneys' fees litigation when those actions concern only the "simple and straightforward issue" of "the reasonable amount of fees and costs that Plaintiff's attorneys should be paid for prevailing on behalf of the Plaintiff." *S.J. v. N.Y.C. Dept of Educ.*, 20-CV-1922 (LGS) (SDA), 2020 U.S. Dist. LEXIS 186435, 2020 WL 8461561, at *6 (S.D.N.Y. Oct. 3, 2020), *report and recommendation adopted* 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501 (S.D.N.Y. Jan. 12, 2021). For example, in *M.D.*, referenced above, the Court reduced the plaintiff's 76.2 hours spent on federal court litigation by 50% due to "th[e] case's low degree of complexity." 2021 U.S. Dist. LEXIS 132930, 2021 WL 3030053, at *6. In *R.G.*, the Court reduced the plaintiffs 59.9 hours spent on litigating attorneys' fees to 44.2 in light of its finding that the plaintiff's brief "discusse[d] no novel questions and contain[ed] approximately five pages [out of 13] of boilerplate language." 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050 at *5. The Court sees no reason to diverge from this precedent. Plaintiff s claim before this Court appears to be a straight-forward motion to award attorneys' fees to the prevailing party pursuant to the IDEA. The parties' briefing on this issue did not present

any complex issues or raise novel claims. The Court thus concludes that the 82.8 hours Plaintiff's counsel spent on this action was excessive. It thus reduces that number by 25% to 62.1 hours.

III. Reasonable Costs

Plaintiff seeks the following costs: $169.00 in copying at 50 cents per page, $132.00 in faxing at $2.00 per page, $391.56 in lodging, $137.64 in meals, $682.50 in mileage, $112.50 in parking, $7.35 in postage, $26.00 in tolls, $125.00 in transportation, and $400.00 in filing fees. *See* Cuddy Decl. at 10. Plaintiff also seeks a $90.00 service fee for Justin Coretti in relation to the federal action and $4,631.25 in travel fees for him, charged at a rate of $187.50 per hour (half his usual rate). *Id.* at 2, 10. The Court accepts the majority of these costs as reasonable, but will reduce several of them.

A. Travel Costs

Courts in this Circuit have previously reduced the travel costs charged by CLF in representing a client in New York City, reasoning that "it is doubtful that a reasonable client would retain an Auburn or Ithaca attorney over a New York City attorney if it meant paying New York City rates and an additional five hours in billable time for each trip." *KF. v. N.Y.C. Dep't of Educ.*, 10-CV-5465 (PKC), 2011 U.S. Dist. LEXIS 88653, 2011 WL 3586142, at *6 (S.D.N.Y. Aug. 10, 2011); *see also C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *13. This Court agrees, and so will reduce Coretti's billable travel

hours to one hour each way, or two hours total, for each trip he took to New York City in relation to this action. *See id.* (doing the same).[2]

B. Copying and Faxing Costs

The Court also agrees with the DOE that $0.50 per page for printing is excessive. *See R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050 at *6. As the Court did in *R.G.*, it will accept only 10 cents per page in copying costs. *See id.* The Court also finds Plaintiff's faxing costs non-reimbursable. "[Most modern copy machines have the ability to scan documents so that they can be emailed" at no cost. *Id.* Given this fact, the Court concludes that "no rational client would pay to fax documents" when those documents can be transmitted via email for free. *Id.*

CONCLUSION

The Court thus grants the motion for attorneys' fees and costs, as well as pre- and post-judgment interest, but with the following amendments:

(1) Plaintiff is entitled to fees at an hourly rate of $350 for Andrew Cuddy and Jason Sterne, $250 for Kevin Mendillo, Justin Coretti, and Benjamin Kopp, and $100 for Shobna Cuddy, Allison Bunnell, Amanda Pinchak Dianna Gagliostro, Aaron Moore, and Sarah Woodard;

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2. Consistent with the Court's decision on reasonable hourly fees, Coretti may only bill $125 per hour for his travel time. *See supra* § I.B.

(2) CLF must reduce its hours billed on the underlying action by 20% and on the federal action by 25%;

(3) Justin Coretti may only bill for one hour of travel time each way for his trips to New York City, and must do so at a rate of $125 per hour;

(4) Plaintiff's costs for printing are reduced to 10 cents per page;

(5) Plaintiff may not seek costs for faxing.

No later than August 10, 2021, Plaintiff shall submit to the Court a proposed judgment consistent with this decision. If Defendant objects to the proposed judgment, it shall file a letter explaining its position no later than August 14, 2021. Absent an objection from Defendant by that date, the Court will sign and docket Plaintiff's proposed judgment.

SO ORDERED,

Dated: August 4, 2021
New York, New York

/s/ Ronnie Abrams
RONNIE ABRAMS
United States District Judge

APPENDIX P — M.D. OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED JULY 16, 2021

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M.D., INDIVIDUALLY AND ON BEHALF OF L.D., A CHILD WITH A DISABILITY,

Plaintiff,

-against-

THE NEW YORK DEPARTMENT OF EDUCATION,

Defendant.

20 Civ. 6060 (LGS)

July 16, 2021, Decided;
July 16, 2021, Filed

OPINION AND ORDER

LORNA G. SCHOFIELD, District Judge:

Plaintiff brings this action pursuant to the fee-shifting provisions of the Individuals with Disabilities in Education Act ("IDEA"), 20 U.S.C. § 1415(i)(3). Plaintiff filed a motion for summary judgment seeking $67,596.73 in attorneys' fees and costs for work performed by the Cuddy Law Firm ("CLF"). Defendant New York City Department

of Education ("DOE") opposes, arguing that Plaintiff's counsel billed excessive numbers of hours at excessive rates. For the reasons set forth below, the motion is granted in part. Plaintiff's counsel is awarded $21,037.50 in attorneys' fees for the administrative proceeding before Defendant, $6,695.00 in attorneys' fees for this proceeding and $557.45 in costs.

I. BACKGROUND

Plaintiff M.D. is the parent of L.D., a child classified as a student with speech or language impairment by Defendant's Committee on Special Education ("CSE"). On October 17, 2018, CLF, a law firm specializing in cases brought under the IDEA, filed a due process complaint ("DPC") on behalf of Plaintiff, alleging that L.D. was denied a free appropriate public education ("FAPE") for the 2016-17, 2017-18 and 2018-19 school years. The DPC sought (1) neuropsychological, vocational and occupational therapy evaluations of L.D.; (2) placement of L.D. in a class of no more than twelve students; (3) a determination that L.D. was exempt from foreign language curricular requirements and (4) one-to-one instruction in post-secondary skills and speech language therapy. The case was assigned Impartial Hearing Officer Case Number 178751.

A three-hour hearing on the merits of the DPC was held on March 5, 2019. At the hearing, Plaintiff submitted fifty-four pieces of documentary evidence, presented a witness and testified in support of her claims. Defendant did not present any witnesses and submitted two pieces of

documentary evidence. The parties agreed that Plaintiff should be provided the relief sought, and Plaintiff prevailed at the hearing. Plaintiff submitted a post-hearing brief, and the IHO subsequently issued Findings of Fact and Decision granting the relief Plaintiff sought in the DPC.

On January 2, 2020, Plaintiff submitted a demand for attorneys' fees to Defendant's Office of Legal Services. Defendant did not respond, the demand was not settled and on August 4, 2020, Plaintiff filed the instant action, seeking costs, expenses and attorneys' fees for the administrative action and this action. In total, Plaintiff seeks $67,596.73 in attorneys' fees and costs, consisting of $36,780.00 for fees in the administrative proceeding, $29,665.00 for work in this proceeding and $1151.73 in costs.

II. STANDARD

Under the IDEA, "the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing party who is the parent of a child with a disability," based on "rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished." 20 U.S.C. § 1415(i)(3)(B)-(C). "[T]he court may award fees for work on the fee application itself." *G.T. v. New York City Dep't of Educ.*, No. 18 Civ. 11262, 2020 U.S. Dist. LEXIS 25557, 2020 WL 1516403, at *3 (S.D.N.Y. Feb. 12, 2020) (quotation marks omitted). To calculate a "presumptively reasonable fee," a district court first determines the appropriate billable hours expended and sets a "reasonable hourly rate." *Lilly v. City of New York*, 934 F.3d 222, 229-30 (2d Cir. 2019)

(citing *Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cnty. of Albany & Albany Cnty. Bd. of Elections*, 522 F.3d 182, 190 (2d Cir. 2008)); *accord R.G. v. New York City Dep't of Educ.*, No. 18 Civ. 6851, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *2 (S.D.N.Y. Sept. 26, 2019). In making this determination, a court should step "into the shoes of the reasonable, paying client, who wishes to pay the least amount necessary to litigate the case effectively." *O.R. v. New York City Dep't of Educ.*, 340 F. Supp. 3d 357, 364 (S.D.N.Y. 2018) (quoting *Arbor Hill*, 522 F.3d at 184). However, "trial courts need not, and indeed should not, become green-eyeshade accountants. The essential goal in shifting fees . . . is to do rough justice, not to achieve auditing perfection." *C.B. v. New York City Dep't of Educ.*, No. 18 Civ. 7337, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *5 (S.D.N.Y. July 2, 2019) (quoting *Fox v. Vice*, 563 U.S. 826, 838, 131 S. Ct. 2205, 180 L. Ed. 2d 45 (2011)). "[A] district court may exercise its discretion and use a percentage deduction as a practical means of trimming fat from a fee application." *M.D. v. New York City Dep't of Educ.*, No. 17 Civ. 2417, 2018 U.S. Dist. LEXIS 156923, 2018 WL 4386086, at *4 (S.D.N.Y. Sept. 14, 2018) (quoting *McDonald ex rel. Prendergast v. Pension Plan of the NYSA-ILA Pension Tr. Fund*, 450 F.3d 91, 96 (2d Cir. 2006)).

III. DISCUSSION

Defendant does not dispute that Plaintiff is a "prevailing party" entitled to recover under the IDEA. The only issue is to determine presumptively reasonable billing rates, hours and costs for Plaintiff's counsel.

Appendix P

A. Billing Rates

The determination of a reasonable hourly rate "contemplates a case-specific inquiry into the prevailing market rates for counsel of similar experience and skill to the fee applicant's counsel, an inquiry that may include judicial notice of the rates awarded in prior cases and the court's own familiarity with the rates prevailing in the district." *Townsend v. Benjamin Enters., Inc.*, 679 F.3d 41, 59 (2d Cir. 2012) (quotation marks omitted); *accord K.L. v. Warwick Valley Cent. Sch. Dist.*, 584 Fed. App'x 17, 18 (2d Cir. 2014) (summary order). Courts may also take "judicial notice of past awards given to the same attorneys as counsel in the current case, particularly for firms active in IDEA-related matters like CLF." *C.B.*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *5.

In determining a reasonable hourly rate, courts may not rely solely on comparable cases, but must also consider the factors articulated in *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). *See H.C., v. New York City Dep't of Educ.*, No. 20 Civ. 844, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *4 (S.D.N.Y. June 17, 2021) (citing *Arbor Hill*, 522 F.3d at 190). The *Johnson* factors are:

> (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.

H.C., 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *4 (citation omitted). A court need not make specific findings as to each factor as long as it considers all of them when setting the fee award. *See id.* (citing *Lochren v. County Of Suffolk*, 344 F. App'x 706, 709 (2d Cir. 2009) (summary order)).

1. Andrew and Michael Cuddy

Plaintiff seeks a rate of $500 per hour for CLF attorneys Andrew and Michael Cuddy, arguing that their experience in special education law compares favorably to similarly-situated attorneys.[1] In support of that proposed rate, Plaintiff submits a declaration from another attorney who specializes in special education law in the Southern and Eastern Districts of New York, who states that his hourly rate is $500 to $550. Plaintiff also provides affidavits of Andrew and Michael Cuddy, stating that they typically charge $500 to $550 per hour in special

1. Plaintiff argues for $500 per hour in her memoranda of law, but supplemental submissions to her reply list a rate of $550 per hour for Andrew and Michael Cuddy. This Opinion construes Plaintiff's request to be for $500 per hour.

education cases. While these declarations are instructive, they are not "easily taken at face value," *C.B.*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *7, given that they provide no specifics of rates charged to clients in circumstances similar to this case.

Plaintiff cites several special education cases in which counsel was awarded a rate in the $450 to $500 range. The facts of those cases bear little resemblance to the circumstances here. In *C.D. v. Minisink Valley Cent. Sch. Dist.*, No. 17 Civ. 7632, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *1 (S.D.N.Y. Aug. 9, 2018), Andrew Cuddy was awarded $450 per hour for a heavily-contested due process proceeding that constituted "11 days of hearings spanning five months" and a cross-appeal to the State Review Officer ("SRO") for Defendant. In *E.F. ex rel. N.R. v. New York City Dep't of Educ.*, No. 11 Civ. 5243, 2012 U.S. Dist. LEXIS 162810, 2012 WL 5462602, at *1 (S.D.N.Y. Nov. 8, 2012), *report and recommendation adopted*, 2014 U.S. Dist. LEXIS 34606, 2014 WL 1092847 (S.D.N.Y. Mar. 17, 2014), counsel was awarded a rate of $475 per hour for a hearing that spanned fourteen days and involved an SRO appeal. By contrast, this proceeding involved a single hearing of approximately three hours, at which Defendant agreed that Plaintiff was entitled to the relief sought. Similarly, in *A.R. v. New York City Dep't of Educ.*, No. 12 Civ. 7144, 2014 U.S. Dist. LEXIS 153103, 2014 WL 5462465, at *8 (S.D.N.Y. Oct. 28, 2014), a senior attorney with over 35 years' special education experience was awarded a rate of $500 per hour -- a rate that the court noted was on the high end for comparable cases. By contrast, Andrew Cuddy has litigated special education

cases since 2001, and Michael Cuddy has practiced in the field since 2012.

The hourly rate applied in cases of similar size and complexity as this one -- in which Defendant conceded failure to provide a FAPE at the first hearing and presented no witnesses -- is generally in the $350 to $400 range for experienced attorneys like Andrew and Michael Cuddy. *See S.J. v. New York City Dep't of Educ.*, No. 12 Civ. 1922, 2020 U.S. Dist. LEXIS 194258, 2020 WL 6151112, at *4 (S.D.N.Y. Oct. 20, 2020), *report and recommendation adopted as modified*, No. 20 Civ. 1922, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501 (S.D.N.Y. Jan. 12, 2021), *modified*, No. 20 Civ. 1922, 2021 U.S. Dist. LEXIS 13366, 2021 WL 536080 (S.D.N.Y. Jan. 25, 2021) (awarding Andrew Cuddy $360 in an "essentially uncontested" proceeding); *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *2 (awarding Andrew Cuddy $350 where Defendant contested the necessity of an individualized education plan for the student at the hearing); *C.B.*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *8 (awarding Andrew and Michael Cuddy $400 where Defendant produced two witnesses in a hearing that lasted 9.8 hours); *A.D. v. New York City Dep't of Educ.*, No. 18 Civ. 3347, 2019 U.S. Dist. LEXIS 47238, 2019 WL 1292432, at *3 (S.D.N.Y. Mar. 21, 2019) (awarding $350 where Defendant did not oppose plaintiff's position at the hearing); *M.D.*, 2018 U.S. Dist. LEXIS 156923, 2018 WL 4386086, at *4 (awarding $360 where Defendant did not oppose).

The *Johnson* factors also support finding that Plaintiff's proposed hourly rate for Andrew and Michael Cuddy is unjustified. The amount of time and labor required here were relatively small due to Defendant's decision not to oppose Plaintiff's DPC. Nor did the case involve novel or difficult questions, or demand a relatively high level of skill; the issues raised were like those in many other DPC proceedings in this District in which Defendant concedes at the outset that the relief sought in a DPC is proper. *See, e.g., S.J.*, 2020 U.S. Dist. LEXIS 194258, 2020 WL 6151112, at *4. And as described above, awarded rates in similar cases are significantly lower than those proposed by Plaintiff. Although Plaintiff notes that (1) a successful outcome counsels for a higher award and (2) her counsel took measures to reduce costs by allocating work to less expensive employees, those considerations do not outweigh the other *Johnson* factors suggesting a lower rate.

In light of the affidavits from CLF and the outside attorney, the relationship between this case and the recent cases involving CLF and the *Johnson* factors, Plaintiff's requested rate of $500 per hour for Andrew and Michael Cuddy is excessive. Given the nature of Plaintiff's case and Andrew and Michael Cuddy's years of experience in special education law, a rate of $375 per hour is in line with what similar attorneys would receive in the Southern District of New York in this matter and is an amount a reasonable client would pay.

2. Britton Bouchard

Plaintiff proposes a rate of $275 per hour for junior associate Britton Bouchard. Mr. Bouchard was admitted to practice law in the State of New York in June 2020, and he prepared the Complaint and other documents in this action.[2] Plaintiff provides an affidavit from Andrew Cuddy stating that Mr. Bouchard's customary rate is $375 per hour, as well as an affidavit from a special education practitioner with three years of experience who states his standard rate is $400 per hour. As with the other declarations of standard rates submitted by Plaintiff, these declarations are not "easily taken at face value," *C.B.*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *7, because they do not provide any information regarding junior attorney rates in circumstances similar to this case. Attorneys of Mr. Bouchard's experience level are typically awarded lower rates in IDEA fee proceedings. *See S.J.*, 2020 U.S. Dist. LEXIS 194258, 2020 WL 6151112, at *4-5 (awarding $200 to a junior CLF associate who had practiced for four years and whose time was billed in connection with a motion for attorneys' fees); *M.D.*, 2018 U.S. Dist. LEXIS 156923, 2018 WL 4386086, at *3 (awarding $200 to junior CLF associates); *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *3 (awarding $150 to associate with two years of experience in special education litigation). Because Mr. Bouchard has less experience than the attorneys in those cases, a reduction in his rate is warranted.

2. Plaintiff argues for $275 per hour in her memoranda of law, but supplemental submissions to her reply list a rate of $375 per hour for Britton Bouchard. This Opinion construes Plaintiff's request to be for $275 per hour.

The parties also make the same arguments under the *Johnson* factors as they made for Andrew and Michael Cuddy. Those factors counsel toward a lower rate for Mr. Bouchard for the same reasons stated above. Based on the affidavits submitted in this case, the nature of Plaintiff's case, Mr. Bouchard's level of experience and the *Johnson* factors, a rate of $150 per hour is in line with what similar attorneys would receive in the Southern District of New York in this matter and is an amount a reasonable client would pay.

3. Shobna Cuddy, Allison Bunnell, Amanda Pinchak, Sarah Woodard, John Slaski, Raul Velez

Plaintiff requests a rate of $150 per hour for legal assistants Raul Velez and John Slaski and paralegals Shobna Cuddy, Allison Bunnell, Amanda Pinchak and Sarah Woodard. Rates for paralegal work in comparable cases in this District are typically lower than $150 per hour. "Paralegals, depending on skills and experience, have generally garnered between $100 and $125 per hour in IDEA cases in this District." *H.C.*, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *6 (quotation marks omitted).

A reasonable rate for each of the CLF assistants and paralegals is $100 per hour. Mr. Velez worked for CLF for approximately three years. Mr. Slaski worked for CLF from May 2019 to December 2019, but Plaintiff provides no information regarding his overall level of experience. Ms. Bunnell worked for CLF from 2016 to 2019, after

gaining an unspecified amount of prior experience as an administrative assistant in a state District Attorney's office. Ms. Pinchak worked for CLF from 2016 to 2019 and completed a paralegal certification in 2017. In light of these individuals' limited practical experience, $100 is a reasonable hourly rate. *See, e.g., id.* Ms. Woodard has three years of paralegal experience and nineteen years of experience as a legal assistant. Although she has many years of experience in the legal industry, her experience as a paralegal is limited, and Plaintiff does not provide any detail as to how her prior experience enhanced her qualifications as a paralegal. Similarly, Ms. Cuddy was a paralegal and office manager with CLF's predecessor and has served as CLF's office administrator since 2012, but Plaintiff provides no evidence of her specific qualifications. *See R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *3 ("When the fee-seeking party fails to explain what qualifications entitle the paralegal to a higher rate, a rate at the bottom of the range is warranted.").

In her reply brief, Plaintiff also requests $225 per hour for Shobna Cuddy and Cailin O'Donnell, both of whom participated in reply briefing. Because Plaintiff provides no details of Ms. O'Donnell's qualifications, her rate is set to $100.

B. Hours Reasonably Expended

"A fee award should compensate only those hours that were 'reasonably expended' by the attorneys on th[e] case." *S.J.*, 2020 U.S. Dist. LEXIS 194258, 2020 WL 6151112, at *5 (quoting *McDonald*, 450 F.3d at 96). "Whether a case

was 'particularly complicated' or involved any 'significant' legal issues may be considered in determining the reasonable number of hours a case requires." *Id.* (quoting *Millea v. Metro-North R.R. Co.*, 658 F.3d 154, 167 (2d Cir. 2011)). "District courts have 'ample discretion' in assessing the 'amount of work that was necessary to achieve the results in a particular case.'" *Id.* (quoting *Ortiz v. Regan*, 980 F.2d 138, 141 (2d Cir. 1992)).

1. Administrative Proceeding

Plaintiff requests compensation for 84.4 hours of CLF work on the administrative proceeding, totaling $36,780.00. Based on a review CLF's timekeeping records, an overall twenty percent reduction in hours billed is appropriate.

CLF employees collectively billed 14.8 hours of work prior to filing the DPC. Review of the time entries for the relevant dates shows that the tasks were related to preparation of the DPC, consisting of communications with Plaintiff, review of school records relevant to the DPC and drafting the DPC itself.

CLF employees collectively billed 26.1 hours in preparation for the hearing, despite time records showing that Michael Cuddy learned that Defendant would not present a case-in-chief at the hearing on December 18, 2018. While counsel of course needed to marshal arguments, exhibits and evidence, even for an uncontested hearing, the hours expended by CLF are on the high end for an unchallenged, three-hour hearing, particularly

given that (1) the DPC was short and straightforward, *see H.C.*, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *8, and (2) many tasks performed by Michael Cuddy, such as performing initial records reviews or coordinating such reviews by psychiatric evaluators, could have been delegated to an attorney with less seniority and with a cheaper rate, *see O.R.*, 340 F. Supp. 3d at 370. These factors warrant a reduction in the hours awarded.

Similarly, despite the uncontested nature of the hearing, Michael Cuddy billed 14.3 hours to prepare a closing brief. He also billed 10.1 hours to implement the relief granted by the IHO's decision, such as communications with providers of agreed-upon services for M.D. While "postdecision activities that are useful and of a type ordinarily necessary to secure the final result obtained from the litigation are compensable," because "favorable decisions are often not self-executing," *M.D.*, 2018 U.S. Dist. LEXIS 156923, 2018 WL 4386086, at *5, closing briefing is not typically required to secure a favorable decision in a case where Defendant concedes the relief sought, *see id.*; *C.B.*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *11 (declining to reduce award for post-hearing brief only because defendant contested the relief sought). These factors warrant a reduction in the hours awarded.

Plaintiff also seeks to recover fees for six hours of travel time by Michael Cuddy for the hearing. No award for travel is warranted because "it is doubtful that a reasonable client would retain an Auburn or Ithaca attorney over a New York City attorney if it meant paying

New York City rates and an additional five hours in billable time for each trip." *K.F. v. New York City Dep't of Educ.*, No. 10 Civ. 5465, 2011 U.S. Dist. LEXIS 88653, 2011 WL 3586142, at *6 (S.D.N.Y. Aug. 10, 2011) (addressing CLF attorney travel from Auburn, New York to New York City). Michael Cuddy's travel entries are deducted in full.

In light of the parties' submissions, the record in this case and the governing legal standard for reasonable hours expended, a reduction of twenty percent in CLF's hours billed in the administrative proceeding is appropriate. CLF is awarded fees at the following hours and rates:

Individual	**Hourly Rate**	**Hours**	**Total**
Andrew Cuddy	$375	1.0	$375
Michael Cuddy	$375	52.7	$19,762.50
Allison Bunnell	$100	1.7	$170
Sarah Woodard	$100	0.8	$80
Amanda Pinchak	$100	4.8	$480
Shobna Cuddy	$100	1.0	$100
John Slaski	$100	0.6	$60
Raul Velez	$100	0.1	$10
TOTAL			$21,037.50

2. Federal Court Litigation

Plaintiff requests compensation for 76.2 hours of CLF work in this proceeding, totaling $29,665.00. Based on a review of the hours billed by CLF's counsel, a fifty percent reduction is appropriate.

This litigation is limited to the issue of the reasonable amount of fees and costs that CLF's attorneys should be paid for prevailing on behalf of Plaintiff in an uncontested proceeding. This is a "simple and straightforward issue." *S.J.*, 2020 U.S. Dist. LEXIS 194258, 2020 WL 6151112, at *6 . As another court in this District persuasively observed in similar circumstances:

> Although the Court concurs with Plaintiffs' arguments that attorneys who practice in the area of IDEA and other similar civil rights areas must be adequately compensated for their time, fee-shifting statutes are not a license to soak one's opponent or to engage in a highly inefficient practice of law. In this case, a competent attorney should not have needed more than 40 hours to litigate this fee petition. The legal basis for fee petitions is well-plowed acreage, leaving the task of the attorney to marshal the facts to support the number of hours expended on the underlying matter.

B.B. v. New York City Dep't of Educ., No. 17 Civ. 4255, 2018 U.S. Dist. LEXIS 38271, 2018 WL 1229732, at *3 (S.D.N.Y. Mar. 8, 2018). In light of this case's low degree

of complexity -- Plaintiff filed the complaint, followed by service and summary judgment briefing on the straightforward issues of fees -- a reduction of attorney hours by fifty percent achieves rough justice.

In response, Plaintiff argues that Defendant unnecessarily forced this proceeding and then protracted it by failing to respond to pre- and post-Complaint settlement demands. This argument is unpersuasive, because any delay by Defendant has not rendered this proceeding unduly complex or time-intensive. *See S.J.*, 2020 U.S. Dist. LEXIS 194258, 2020 WL 6151112, at *7 (reducing billed hours by fifty percent where defendant engaged in tactics that drove up the plaintiff's billed hours). CLF is awarded fees at the following hours and rates:

Individual	**Hourly Rate**	**Hours**	**Total**
Andrew Cuddy	$375	3.8	$1,425
Britton Bouchard	$150	32	$4,800
Michael Cuddy	$375	.8	$300
Cailin O'Donnell	$100	.5	$50
Shobna Cuddy	$100	1.2	$120
TOTAL			$6,695

C. Costs

"A district court may award reasonable costs to the prevailing party in IDEA cases." *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *12 (citing 20 U.S.C. § 1415(i)(3)(B)(i)(I)). Plaintiff seeks to recover costs for lodging, faxing, mileage, parking, postage and filings.

An award of lodging expenses is not warranted. *See C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *13 ("[T]he Court will not award any costs for lodging. An attorney who was sited within a reasonable distance of the hearing location could commute daily to the hearings, obviating any need for lodging."). Though the parties do not specifically discuss the need for $20.00 in fax costs, at $2.00 per page, these costs are unreasonable. *See, e.g., R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *6 (denying fax costs when plaintiffs made no showing why communicating via fax was necessary or appropriate, especially given that "[m]odern copy machines have the ability to scan documents so that they can be emailed, a method of communication that costs virtually nothing.").

The requested transportation costs -- consisting of $145 in mileage and $100 in parking for the hearing -- are also unreasonable. Local counsel attending a hearing in New York City would likely take public transit, some sort of commuter rail, or a short car ride. *See H.C.*, 2021 U.S. Dist. LEXIS 113620, 2021 WL 2471195, at *11. A reasonable reimbursement for transportation costs is $50 each way, for a total of $100. *See id.*

Finally, Defendant acknowledges that Plaintiff's $57.45 in postage costs is reasonable and does not contest that Defendant incurred a $400 filing fee in this action. Accordingly, Plaintiff is awarded the following costs: $100 for transportation, $57.45 in postage and $400 in filing fees, for a total of $557.45.

D. Post-Judgment Interest

Plaintiff also requests an award of post-judgment interest from the date judgment is entered. "Pursuant to 28 U.S.C. § 1961, the award of post-judgment interest is mandatory on awards in civil cases as of the date judgment is entered." *S.J.*, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *5 (quoting *Tru-Art Sign Co. v. Local 137 Sheet Metal Workers Int'l Ass'n*, 852 F.3d 217, 223 (2d Cir. 2017)).

IV. CONCLUSION

For the foregoing reasons, Plaintiff is awarded $28,289.95, consisting of (1) $21,037.50 in attorneys' fees for the administrative proceeding before Defendant; (2) $6,695 in attorneys' fees for this proceeding and (3) $557.45 in costs. Plaintiff is awarded post-judgment interest on this amount, calculated at the applicable statutory rate.

Appendix P

The Clerk of Court is respectfully directed to close the motion at Docket No. 14 and the case.

Dated: July 16, 2021
New York, New York

/s/ Lorna G. Schofield
LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

APPENDIX Q — H.C. OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED JUNE 17, 2021

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

20-CV-844 (JLC)

H.C., INDIVIDUALLY AND ON BEHALF OF J.C., A CHILD WITH A DISABILITY,

Plaintiffs,

-v-

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant.

OPINION & ORDER

JAMES L. COTT, United States Magistrate Judge.

Before the Court is a motion by Plaintiffs, pursuant to the fee-shifting provisions of the Individuals with Disabilities Education Act, for attorneys' fees and costs for work performed by attorneys and paralegals at the Cuddy Law Firm. Defendant, the New York City Department of Education, opposes the motion, arguing that both the requested hourly rates and the number of hours expended are excessive and unreasonable. For the reasons set forth below, the Court grants the motion to the extent that it awards attorneys' fees and costs in the amount of $38,951.31, plus post-judgment interest.

Appendix Q

I. BACKGROUND

A. Factual Background

Plaintiff H.C. is the parent of Plaintiff J.C., a child classified as a student with autism by the DOE's Committee on Special Education ("CSE"). Complaint ("Compl."), Dkt. No. 1 ¶¶ 5, 10. On May 15, 2018, the Cuddy Law Firm ("CLF"), a law firm specializing in cases brought under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400, *et seq.*, filed a Due Process Complaint ("DPC") on behalf of Plaintiffs, alleging that J.C. was denied a Free Appropriate Public Education ("FAPE") during the 2016-17 and 2017-18 school years in violation of the IDEA. *Id.* ¶¶ 11, 13; *see also* Declaration of Kevin M. Mendillo dated October 16, 2020 ("Mendillo Decl."), Ex. A, Dkt. No. 25-1 at 1. The DPC requested that the DOE (1) provide J.C.'s complete educational records, (2) conduct six types of evaluations and assessments, (3) convene the CSE in order to consider the results and recommendations set forth the evaluations, and (4) provide various compensatory services. Mendillo Decl. Ex. A at 6-8. The case was assigned Impartial Hearing Office Case Number 173407. Compl. ¶ 12.

A resolution session was held on June 1, 2018, during which the DOE agreed to perform four of the requested evaluations. Mendillo Decl. ¶ 20; *see also* Declaration of Emily R. Goldman dated November 19, 2020 ("Goldman Decl."), Dkt. No. 35, ¶ 7. Pre-hearing conferences were held on June 27, 2018, July 11, 2018, and August 7, 2018.

Mendillo Decl. ¶¶ 21-23; Goldman Decl. ¶¶ 8-10.[1] During these pre-hearing conferences, the DOE declined to adopt a position as to whether and to what extent it would put on a defense. Mendillo Decl. ¶¶ 21-23; *see also* Goldman Decl. Ex. A, Dkt. No. 35-1, at 7, 9; Goldman Decl. Ex. B, Dkt. No. 35-2, at 20; Goldman Decl. Ex. C, Dkt. No. 35-3, at 34, 36-37, 40.

A hearing on the merits was held on September 28, 2018. Goldman Decl. Ex. D, Dkt. No. 35-4. The hearing lasted from 10:38 a.m. until 10:46 a.m. *Id.* at 45, 55. Kevin Mendillo of CLF appeared for Plaintiffs and introduced four exhibits. *Id.* at 46. The transcript reflects that Mendillo planned to offer a total of 22 exhibits, but withheld those exhibits because the parties had resolved a number of outstanding issues shortly before the hearing commenced. *Id.* at 46-48; Mendillo Decl. ¶ 25. The DOE appeared at the hearing but did not offer any evidence. Goldman Decl. ¶ 11.

On October 11, 2018, the Impartial Hearing Officer ("IHO") issued Findings of Fact and Decision ("FOFD") granting the relief Plaintiffs sought in their DPC. *See* Mendillo Decl. Ex. C, Dkt. No. 25-3. The IHO ordered the DOE to fund an independent neuropsychological evaluation and authorize sessions for occupational, physical, and speech-language therapy. *Id.* at 4-5. The DOE had until

1. The June 27, 2018 conference lasted 15 minutes, the July 11, 2018 conference lasted six minutes, and the August 7, 2018 conference lasted 16 minutes. *See* Goldman Decl. Ex. A, Dkt. No. 35-1, at 1, 16; Goldman Decl. Ex. B, Dkt. No. 35-2, at 18, 26; Goldman Decl. Ex. C, Dkt. No. 35-3, at 28, 43.

October 26, 2018 to locate service providers. *Id.* The DOE did not appeal. Goldman Decl. ¶ 13.

Between October 2018 and November 2018, H.C. expressed concern regarding the individualized education program ("IEP") developed for J.C. by the DOE's Committee on Special Education. Mendillo Decl. ¶ 40. Specifically, H.C. was of the view that the IEP did not conform with the recommendations made by the independent neuropsychological evaluator, Dr. Jeanne Deitrich. *Id.* Mendillo communicated H.C.'s concerns to the DOE representative who appeared at the first administrative hearing, but the parties were unable to resolve them. *Id.* ¶¶ 40-41.

On November 28, 2018, Plaintiffs filed a second Due Process Complaint seeking an impartial hearing, contending that the DOE failed to provide J.C. a FAPE for the 2018-19 school year, and alleging nine separate violations of the IDEA. Mendillo Decl. ¶¶ 42, 43; *see also* Mendillo Decl. Ex. D, Dkt. No. 25-4. As relief, Plaintiffs requested that the IHO direct the DOE to amend J.C.'s IEP to include the recommendations set forth by Dr. Dietrich and place J.C. in a non-public New York State-approved school. Mendillo Decl. Ex. D at 7-8 . The case was assigned Impartial Hearing Office Case Number 179886. Goldman Decl. ¶ 15.

Pre-hearing conferences were held on February 14, 2019, February 26, 2019, and April 1, 2019. Goldman Decl.

¶¶ 17-19.[2] During the conferences on February 14th and February 26th, the DOE took no position on settlement and did not state whether or to what extent it would defend the case. *See* Goldman Decl. Ex. E, Dkt. No. 35-5, at 11; Goldman Decl. Ex. F, Dkt. No. 35-6. During the April 1, 2019 pre-hearing status conference, the DOE stated that it would be defending J.C.'s IEP program for the 2018-19 school year. Goldman Decl. Ex. G at 22-23.

A merits hearing was held on April 9, 2019 and lasted from 1:28 p.m. to 1:41 p.m. Goldman Decl. Exh. H., Dkt. No. 35-8. Plaintiffs entered 12 exhibits into the record. *Id.* at 27-28; *see also* Mendillo Decl. ¶ 52. The DOE objected to only one of Plaintiffs' exhibits. Goldman Decl. Exh. H at 30. Despite indicating at the April 1, 2019 status conference that it intended to defend the case, the DOE offered no exhibits and chose to defer its opening statement to the next scheduled hearing date. *Id.* at 32.

On April 16, 2019, the second and final day of the hearing, Plaintiffs entered three additional exhibits and two affidavits into the record and called Dr. Jeanne Dietrich as a witness. Goldman Decl. Ex. I, Dkt. No. 35-9, at 44. During this hearing, the DOE advised the IHO that it would not defend the case and waived cross-examination of H.C. *Id.* at 46. Following the conclusion of the hearing (and per the request of the IHO), Plaintiffs submitted a

2. The February 14, 2019 conference lasted 13 minutes, the February 26, 2019 conference lasted three minutes, and the April 1, 2019 conference lasted three minutes. Goldman Decl. Ex. E, Dkt. No. 35-5, at 1, 13; Goldman Decl. Ex. F, Dkt. No. 35-6 at 15-18; Goldman Decl. Ex. G, Dkt. No. 35-7, at 20, 24.

closing brief requesting compensatory services and the placement of J.C. in a New York State-approved non-public school. *Id.* at 62-63; *see also* Mendillo Decl. ¶ 54.

On June 28, 2019, the IHO issued a FOFD ordering the DOE to place J.C. in a non-public school and to provide 300 hours of applied behavioral analysis tutoring services to J.C. over the next three years. Mendillo Decl. Ex. F, Dkt. No. 25-6, at 13. The DOE had 30 days to effectuate this placement. *Id.; see also* Mendillo Decl. ¶ 58. However, the DOE was unable to achieve J.C.'s placement by that date, and as a result Mendillo attempted to resolve the issue with the DOE over the course of the next several months. Mendillo Decl. ¶ 60.

On December 28, 2018, CLF submitted a request to the DOE for $30,697.25 for attorneys' fees and costs incurred for work performed in connection with Case No. 173407. Declaration of Andrew Cuddy dated October 16, 2020 ("Cuddy Decl."), Dkt. No. 26, ¶ 31; Goldman Decl. ¶ 24. The parties engaged unsuccessfully in settlement discussions until December 16, 2019. Cuddy Decl. ¶ 33; Goldman Decl. ¶ 24. Plaintiffs did not make a formal demand for attorneys' fees and costs incurred for work performed in connection with Case No. 179886. Cuddy Decl. ¶ 34.

B. Procedural History

On January 31, 2020, Plaintiffs commenced this action seeking attorneys' fees and costs incurred in connection with the two administrative proceedings and bringing

claims under 42 U.S.C. § 1983 for the DOE's failure to comply with the IHO's FOFD in Case No. 179886. Mendillo Decl. ¶ 66; Compl. ¶¶ 36-55. On August 19, 2020, the parties settled the claims relating to the DOE's failure to implement the FOFD, thereby resolving the third and fourth causes of action set forth in the Complaint. Mendillo Decl. ¶ 71. On October 7, 2020, the DOE served Plaintiffs' counsel with an Offer of Settlement pursuant to 20 U.S.C. § 1415(i)(3)(D) in the amount of $40,000.01 to satisfy all claims for fees, costs, and expenses incurred or accrued in connection with the two administrative proceedings as well as this action. Declaration of Lillian Wesley dated November 19, 2020 ("Wesley Decl."), Ex. A, Dkt. No. 34-1, at 2. Plaintiffs rejected that offer and were unable to come to a resolution in subsequent discussions with the DOE. Reply Declaration of Kevin M. Mendillo dated December 1, 2020 ("Mendillo Reply Decl."), Dkt. No. 39, ¶¶ 5-13.[3]

Plaintiffs moved for summary judgment on October 16, 2020. Dkt. Nos. 24- 31. The DOE filed opposition papers on November 19, 2020. Dkt. Nos. 34-38. Plaintiffs filed their reply papers on December 1, 2020. Dkt Nos. 39-40.[4] In total, Plaintiffs seek $92,531.19 in attorneys' fees and costs. Cuddy Decl. ¶ 55; Mendillo Reply Decl. Ex. A, Dkt. No. 39-1, at 1.

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3. The parties also participated in a settlement conference with the Court on March 8, 2021, which was also unsuccessful. Dkt. No. 43.

4. The parties have consented to my jurisdiction for all purposes under 28 U.S.C. § 636(c). Dkt. No. 17.

II. DISCUSSION

A. Applicable Law

The IDEA grants district courts the discretion to award "reasonable attorneys' fees" and costs to a "prevailing party." 20 U.S.C. § 1415(i)(3)(B)(I). Its fee-shifting provisions are interpreted in the same manner as other civil rights fee-shifting statutes. *See A.R. ex rel. R.V. v. N.Y.C. Dep't of Educ.*, 407 F.3d 65, 73 (2d Cir. 2005). When determining whether to award attorneys' fees under a federal fee-shifting statute such as the IDEA, a court must undertake a two-pronged inquiry. *See, e.g., A.B. v. N.Y.C. Dep't of Educ.*, No. 20-CV-3129 (SDA), 2021 U.S. Dist. LEXIS 47573, 2021 WL 951928, at *2 (S.D.N.Y. Mar. 13, 2021). First, the court must determine "whether the party seeking the award is in fact a prevailing party." *Id.; see also Mr. L. v. Sloan*, 449 F.3d 405, 407 (2d Cir. 2006). "If the party is a prevailing party, the court must then determine whether, under the appropriate standard, that party should be awarded attorneys' fees." *A.B.*, 2021 U.S. Dist. LEXIS 47573, 2021 WL 951928, at *2.

A district court may award attorneys' fees if they are "reasonable" and "based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of the services furnished." 20 U.S.C. § 1415(i)(3)(B)-(C); *see also A.R.*, 407 F.3d at 79. To determine the amount of a prevailing party's fee award, a court calculates a "presumptively reasonable fee, reached by multiplying a reasonable hourly rate by the number of reasonably expended hours." *Bergerson v. New York State*

Office of Mental Health, Central New York Psychiatric Center, 652 F.3d 277, 289 (2d Cir. 2011) (internal citation omitted); *see also Lilly v. City of New York*, 934 F.3d 222, 230 (2d Cir. 2019).

Here, the DOE does not dispute that Plaintiffs are "prevailing part[ies]" entitled to recover reasonable fees and costs under 20 U.S.C. § 1415(i)(3)(B) for the work performed in the two administrative proceedings. Defendant's Memorandum of Law in Opposition ("Def. Mem."), Dkt. No. 36, at 1. Accordingly, the Court turns to an analysis of the presumptively reasonable fee for Plaintiffs' counsel.

B. Analysis

1. Hourly Rates

When determining a reasonable hourly rate for an attorney or paralegal, courts consider both the prevailing market rates for such legal services as well as the case-specific factors articulated in *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). *See Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cty. Of Albany*, 522 F.3d 182, 190 (2d Cir. 2008). The *Johnson* factors are:

> (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.

G.B. ex rel. N.B. v. Tuxedo Union Free Sch. Dist., 894 F. Supp. 2d 415, 428 (S.D.N.Y. 2012) (citation omitted). A court does not need to make specific findings as to each factor as long as it considers all of them when setting the fee award. *See E.F. ex rel. N.R. v. N.Y.C. Dep't of Educ.*, No. 11-CV-5243 (GBD) (FM), 2014 U.S. Dist. LEXIS 34606, 2014 U.S. Dist. LEXIS 34606, 2014 WL 1092847, at *3 (S.D.N.Y. Mar. 17, 2014) (citations omitted); *see also Lochren v. Cty. Of Suffolk*, 344 F. App'x 706, 709 (2d Cir. 2009) ("*Arbor Hill* did not hold that district courts must recite and make separate findings as to all twelve *Johnson* factors.").

The DOE objects to the hourly rates sought by Plaintiffs' counsel and seeks to reduce them based upon the *Johnson* factors. Def. Mem. at 7-13. The Court considers below the hourly rates for each of Plaintiffs' timekeepers.[5]

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5. Plaintiffs submit several affidavits from other attorneys that purport to establish the prevailing market rates for attorneys practicing special education law in this District. Dkt. Nos. 27-29. Courts in this District have determined that these types of affidavits are of limited value if they do not also provide the context necessary

Appendix Q

a. Kevin Mendillo ("Mendillo")

Mendillo was lead counsel in the two administrative proceedings and is lead counsel in this action. Mendillo Decl. ¶ 1. Mendillo was admitted to practice in the State of New York in June 2011 and has practiced litigation since that time. *Id.* ¶¶ 3-4. In 2014, Mendillo joined CLF (previously Cuddy Law Firm, PC). *Id.* ¶ 4. He presently specializes in special education law and has so specialized since joining CLF. *Id.* Plaintiffs seek a $400 hourly rate for Mendillo. Cuddy Decl. ¶¶ 51, 55. Plaintiffs also seek a $200 hourly rate for Mendillo's travel time. *Id.* ¶ 55. The DOE argues that Mendillo should be awarded an hourly rate of $280 per hour. Def. Mem. at 11.

The appropriate hourly rate for CLF attorneys has been litigated many times in this District in recent years. In *C.D. v. Minisink Valley Central School District*, for example, Judge Engelmayer awarded an hourly rate of $300 per hour to a CLF attorney who had been practicing law for more than 10 years but who only began specializing in special education law six years prior. No. 17-CV-7632 (PAE), 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *6-7 (S.D.N.Y. Aug. 9, 2018). Judge Engelmayer noted

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to properly apply the *Johnson* factors. *See, e.g., R.G. v. N.Y.C. Dep't of Educ.*, No. 18-CV-6851 (VEC), 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *2 n.4 (S.D.N.Y. Sept. 26, 2019); *M.D. v. N.Y.C. Dep't of Educ.*, No. 17-CV-2417 (JMF), 2018 U.S. Dist. LEXIS 156923, 2018 WL 4386086, at *3 n.2 (S.D.N.Y. Sept. 14, 2018). Because the attorney affidavits submitted by Plaintiffs do not provide enough context to apply the *Johnson* factors, the Court declines to accord them any weight.

that although the attorney had only six years of special education and IDEA litigation experience, the attorney's generalist legal experience warranted a higher hourly rate than is typically awarded to junior associates in IDEA litigation (between $150 -$275 per hour). 2018 U.S. Dist. LEXIS 134646, [WL] at *7. Like the attorney in *C.D.*, Mendillo has been practicing law for more than 10 years, but only began specializing in special education law in 2014. While Mendillo may have fewer years of IDEA litigation experience than the senior attorneys at CLF, his years of general litigation experience warrant an hourly rate higher than that of a junior associate.

Having considered all the *Johnson* factors, the Court finds that it is appropriate to assign a $300 hourly rate to Mendillo's work in this matter. Additionally, the Court assigns a $150 hourly rate for Mendillo's travel time. *See C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *10 ("Courts generally approve fees, at 50% of an attorney['s] usual rate, for reasonable travel conducted in service of ongoing litigation."); *see also S.J. v. N.Y.C. Dep't of Education*, No. 20-CV-1922 (LGS) (SDA), 2020 U.S. Dist. LEXIS 194258, 2020 WL 6151112, at *4 (S.D.N.Y. Oct. 20, 2020), *adopted as modified by* 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501 (S.D.N.Y. Jan. 12, 2021).[6]

6. The Court is not aware of any other decisions that have considered Mendillo's hourly rate, and the parties have not cited to any.

b. Michael J. Cuddy, Andrew Cuddy, and Jason Sterne

Plaintiffs seek a $500 hourly rate for three senior attorneys: Michael J. Cuddy ("M. Cuddy"), Andrew Cuddy ("A. Cuddy"), and Jason Sterne. Cuddy Decl. ¶¶ 51, 55. The DOE argues that M. Cuddy, A. Cuddy, and Sterne should be awarded an hourly rate of $350. Def. Mem. at 11.

"[T]he prevailing market rate for experienced, special-education attorneys in the New York area *circa* 2018 is between $350 and $475 an hour." *R.G. v. N.Y.C. Dep't of Educ.*, No. 18-CV-6851 (VEC), 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *2 (S.D.N.Y. Sept. 26, 2019); *see also M.D. v. N.Y.C. Dep't of Educ.*, No. 17-CV-2417 (JMF), 2018 U.S. Dist. LEXIS 156923, 2018 WL 4386086, at *3 (S.D.N.Y. Sept. 14, 2018); *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *6.

In *M.D.*, which involved relatively straightforward administrative proceedings, Judge Furman awarded hourly rates of $360 per hour for senior CLF attorneys. *M.D.*, 2018 U.S. Dist. LEXIS 156923, 2018 WL 4386086, at *3. In *C.D.*, Judge Engelmayer determined that A. Cuddy, who had been litigating IDEA cases since 2001, was entitled to $400 per hour, noting that he had been awarded $375 per hour in 2011. *See C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *6 (citing *K.F. v. N.Y.C. Dep't of Educ.*, No. 10-CV-05465 (PKC), 2011 U.S. Dist. LEXIS 88653, 2011 WL 3586142, at *1 (S.D.N.Y. Aug. 10, 2011)). However, unlike the instant case, the proceedings in *C.D.* were heavily contested and took place over the course of 11 hearing days. *See* 2018 U.S. Dist. LEXIS 134646, [WL] at *2.

Appendix Q

In *R.G.*, which involved a contested hearing that occurred over the course of three sessions totaling four hours, Judge Caproni awarded A. Cuddy and Sterne, who has been litigating IDEA cases since 2005, an hourly rate of $350. *See R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *2-3. In *C.B. v. N.Y.C. Dep't of Educ.*, Judge McMahon awarded a $400 hourly rate to A. Cuddy. No. 18-CV-7337 (CM), 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *6 (S.D.N.Y. July 2, 2019). In doing so, she distinguished the "$350-per hour and $360-per hour awards" in "essentially uncontested" cases from the case before her, in which "the DOE produced two of its own witnesses and submitted its own evidence in a proceeding that lasted 9.8 hours." 2019 U.S. Dist. LEXIS 111636, [WL] at *8. In *S.J.*, which involved an uncontested proceeding lasting less than two hours, Judge Schofield awarded A. Cuddy and M. Cuddy, who has been litigating IDEA cases since 2009, an hourly rate of $360. *S.J.*, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *3-4.

Having considered the parties' arguments, evidentiary submissions, and the *Johnson* factors, the Court finds that senior attorneys M. Cuddy, A. Cuddy, and Sterne be awarded a $360 hourly rate. Here, Plaintiffs filed two DPCs, leading to two administrative proceedings that spanned more than a year. However (and notwithstanding the DOE's non-committal stance on whether and to what extent it would defend the case), the proceedings were ultimately minimally contested, with the DOE objecting only to one exhibit and declining to offer testimony. Therefore, an hourly rate in line with the rates awarded in *M.D., R.G.*, and *S.J.* is more appropriate than the rates awarded in *C.D.* and *C.B* and is consistent with *Arbor Hill*,

which requires a determination of "the cheapest hourly rate an effective attorney would have charged." *O.R. v. N.Y.C. Dep't of Educ.*, 340 F. Supp. 3d 357, 364 (S.D.N.Y. 2018) (citing *Arbor Hill*, 522 F.3d at 184).

c. Charles Rooker

Rooker was an associate at CLF from May 2018 to June 2019. Cuddy Decl. ¶ 12. Rooker was admitted to practice law in 2009 and practiced general litigation from 2009 until joining CLF in 2018, when he began working on IDEA litigation. *Id.* "For associates with three or fewer years of experience in [IDEA] litigation, courts in this District have typically approved rates of $150-$275." *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *3 (quotation omitted). In *R.G.*, Judge Caproni assigned an hourly rate of $150 to a junior associate who graduated law school in 2015 and joined CLF in 2016. *Id.* However, unlike the junior associate in *R.G.*, Rooker has more than 10 years of general litigation experience, and the Court finds that background as a basis for adjusting Rooker's hourly rate somewhat higher. *See S.J.*, 2021 U.S. Dist. LEXIS 6180, 2020 WL 6151112, at *4 (adjusting hourly rate for junior associate higher when general litigation experience was relevant to work performed). Having considered the parties' arguments, evidentiary submissions, and the *Johnson* factors, the Court assigns an hourly rate of $200 for work performed by Rooker.[7]

7. As with Mendillo, the Court is not aware of other cases that have considered the appropriate hourly rate for Rooker, and the parties have not cited to any.

d. Joanna Fox

Both Plaintiffs and the DOE agree that the hourly rate for Joanna Fox, an associate at CLF, should be $100 per hour. Cuddy Decl. ¶¶ 51, 55; Wesley Decl. Ex. B, Dkt. No. 34-2, at 1. As a result, the Court will not analyze the appropriate hourly rate for Fox.

e. Paralegals

Plaintiffs also seek fees for work performed by several paralegals: Allison Bunnell, Amanda Pinchak, Sarah Woodard, Shobna Cuddy, Burhan Meghezzi, John Slaski, and Cailin O'Donnell. Cuddy Decl. ¶ 55. Paralegals, depending on skills and experience, have "generally garnered between $100 and $125 per hour in IDEA cases in this District." *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050 at *3 (citations omitted).

The Court finds that $100 per hour is a reasonable hourly rate for each of the CLF paralegals in this case. Bunnell worked as a paralegal at CLF from 2016 to 2019 after having served as an administrative assistant for an unspecified amount of time. Cuddy Decl. ¶ 18. Because Bunnell only has three years of paralegal experience, a $100 per hour is a reasonable hourly rate. Pinchak worked as a paralegal at CLF from 2016 to 2019 and completed a paralegal certificate program in 2017. *Id.* ¶ 19. Although Pinchak completed a certification program, $100 is a reasonable hourly rate for a paralegal with Pinchak's level of practical experience. Meghezzi holds a bachelor's degree in psychology and worked as a paralegal at

CLF from October 2019 to June 2020. *Id.* ¶ 21. Given Meghezzi's limited experience as a paralegal, $100 per hour is a reasonable hourly rate. Similarly, both Slaski and O'Donnell are recent graduates with limited practical experience, and therefore $100 is a reasonable hourly rate. Cuddy Decl. ¶¶ 20, 22. Woodard worked as a paralegal at CLF from 2015 to 2019 after working as a legal assistant for nearly two decades. *Id.* ¶ 17. Although Woodard has many years of experience in the legal industry, her experience as a paralegal is relatively limited, and there is no evidence upon which the Court may infer that Woodard had anything beyond entrylevel qualifications. *See, e.g., C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *7 (lack of evidence regarding paralegal's qualifications warrants approval of hourly rate towards bottom end of $100 to $125 range). Therefore, $100 per hour is a reasonable rate for Woodard. Lastly, Shobna Cuddy was a paralegal and office manager at CLF from 2007 to 2012, and since 2012 has served as the firm-wide office administrator. Cuddy Decl. ¶ 15. As with Woodard, while Plaintiffs have offered evidence regarding Cuddy's years of experience as a paralegal, there is no evidence as to Cuddy's qualifications. Therefore, $100 per hour is a reasonable rate for Cuddy. *See, e.g., C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *7 (finding that $100 hourly rate is reasonable for S. Cuddy).

* * *

In sum, while the Court is mindful of the arguments that Plaintiffs have made to support their proposed rates, *Arbor Hill* held that a court must "step[] into the shoes

of the reasonable, paying client, who wishes to pay the *least amount necessary to litigate the case effectively*." *O.R.*, 340 F. Supp. 3d at 364 (quoting *Arbor Hill*, 522 F. 3d at 184). In other words, as Magistrate Judge Gorenstein recently observed, "whether the attorneys on this case properly command the rates they seek in the marketplace is not dispositive of the rate they are to be awarded." *Id.* Until the Second Circuit modifies the directives set forth in *Arbor Hill*, this Court is constrained to determine, as it has done here, the cheapest hourly rate an effective attorney would have charged.

2. Hours Reasonably Expended

Having determined the hourly rates for each timekeeper, the Court will now analyze the number of hours reasonably expended.

A fee award should compensate only those hours that were "reasonably expended" by the attorneys on this case. *See, e.g.*, *McDonald ex rel. Prendergast v. Pension Plan of the NYSA-ILA Pension Trust Fund*, 450 F.3d 91, 96 (2d Cir. 2006). "In determining the number of hours reasonably expended for purposes of calculating the lodestar, the district court should exclude excessive, redundant or otherwise unnecessary hours." *Quaratino v. Tiffany & Co.*, 166 F.3d 422, 425 (2d Cir. 1999) (internal citation omitted). Whether a case was "particularly complicated" or involved any "significant" legal issues may be considered in determining the reasonable number of hours a case requires. *Millea v. Metro-North R.R. Co.*, 658 F.3d 154, 167 (2d Cir. 2011). District courts have "ample

discretion" in assessing the "amount of work that was necessary to achieve the results in a particular case." *K.L. v. Warwick Valley Cent. Sch. Dist.*, No. 12-CV-6313 (DLC), 2013 U.S. Dist. LEXIS 126933, 2013 WL 4766339, at *10 (S.D.N.Y. Sept. 5, 2013) (quoting *Ortiz v. Regan*, 980 F.2d 138, 141 (2d Cir. 1992)), *aff'd*, 584 F. App'x 17 (2d Cir. 2014).

Ultimately, "'trial courts need not, and indeed should not, become green-eyeshade accountants. The essential goal in shifting fees . . . is to do rough justice, not to achieve auditing perfection.'" *C.B.*, 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *5 (quoting *Fox v. Vice*, 563 U.S. 826, 838, 131 S. Ct. 2205, 180 L. Ed. 2d 45 (2011)). To calibrate an appropriate award, "[t]he district court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award" by a reasonable percentage. *Hensley v. Eckerhart*, 461 U.S. 424, 436-37, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983); *see also McDonald*, 450 F.3d at 96 ("A district court may exercise its discretion and use a percentage deduction as a practical means of trimming fat from a fee application.") (internal quotation marks and citation omitted). With this background in mind, the Court considers first the hours expended in connection with the administrative proceedings and then the hours expended in connection with this action.

a. First Administrative Proceeding (Case No. 173407)

Plaintiffs seek $29,625.00 in fees for 121.4 hours of attorney and paralegal time spent on the first administrative proceeding (Case No. 173407). Cuddy

Decl. ¶ 55. The DOE argues that the hours billed should be reduced by 35% because the pre-hearing conferences and hearing itself were brief and generally uncontested, and because Plaintiffs' attorneys spent excessive hours on hearing preparation and administrative tasks. Def. Mem. at 14. Plaintiffs contend that a reduction of hours billed is inappropriate because the hours expended were reasonable. Plaintiffs' Memorandum of Law in Support of Motion for Summary Judgment ("Pl. Mem."), Dkt. No. 31 at 21-24. Plaintiffs also argue that a reduction of hours is inappropriate because the DOE unreasonably protracted the final resolution of the proceeding by (1) failing to offer any substantive relief at the resolution session held on June 1, 2018; (2) failing to adopt a consistent position on whether the DOE would defend the case; and (3) delaying implementation of the FOFDs. Pl. Mem. at 10-11; *see also* 20 U.S.C. § 1415(i)(3)(G).

As an initial matter, the Court finds that any protraction on the DOE's part did not rise to the level of being "unreasonable." In *S.J.*, the plaintiffs argued that the DOE unreasonably protracted the resolution of the DPC because the DOE's representative was unresponsive, leading to significant delays in the administrative proceedings. *See* Plaintiffs' Memorandum of Law in Support of Summary Judgment at 6-8, in *S.J. v. N.Y.C. Dep't of Educ.*, No. 20-CV-1922 (LGS) (SDA), 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501 (Jan. 12, 2021), Dkt. No. 36. Similarly, in *R.G.*, the plaintiffs argued that the DOE unreasonably protracted the resolution of the DPC because the DOE representative made initial representations that it wished to settle the

case and further delayed the hearing by arriving late and unprepared. *See* Plaintiffs' Memorandum of Law in Support of Summary Judgment, at 5-6, in *R.G. v. N.Y.C. Dep't of Educ.*, No. 18-CV-6851 (VEC), 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050 (S.D.N.Y. Sept. 26, 2019), Dkt. No. 26. In both *S.J.* and *R.G.*, the court found that the DOE did not unreasonably protract the final resolution of the action. *See S.J.*, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *4; *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *1 n.2.

Here, any actions on the part of the DOE that may have prolonged or delayed the resolution of the DPCs are no less reasonable than the DOE's actions in *R.G.* and *S.J.* While the DOE did not fully resolve the DPC at the June 1, 2018 resolution session, it did agree to perform several of the evaluations Plaintiffs requested. Mendillo Decl. ¶ 20; Goldman Decl. ¶ 7. At subsequent pre-hearing conferences, it was not unreasonable for the DOE to request more time to investigate and review the results of those evaluations.[8]

The Court has reviewed the hours billed by Plaintiffs' counsel in connection with the first administrative

8. As the parties are well aware, attorneys' fees litigation pursuant to the IDEA has become increasingly common in this District (at least with respect to Plaintiffs' counsel). The Court strongly encourages the DOE to avail itself of the resolution sessions to actually resolve DPCs (or at the very least, provide clarity on its position in the case), thereby reducing the amount of attorneys' fees and expenses incurred (and potentially reducing the number of IDEA attorneys' fees lawsuits as well).

proceeding as well as the DOE's challenges, and concludes that a 20% reduction of hours expended is appropriate here. *See* Cuddy Decl. Ex. A, B, C, Dkt. Nos. 26-1, 26-2, 26-3; *see also* Def. Mem. at 13-22.

First, the hours spent on preparing the DPC were excessive. The DOE urges the Court to rely on *R.G.* in reducing the hours spent preparing the DPC, Def. Mem. at 15, but unlike in *R.G.*, Plaintiffs have offered evidence indicating that the records in this case were voluminous.[9] However, the DPC consisted of only eight pages and mostly constituted a chronological recitation of J.C.'s educational history.[10]

Next, several hours billed by Mendillo, Pinchak, and Bunnell were for tasks that were administrative and/or secretarial in nature (such as scheduling correspondence and saving records), further warranting a modest reduction. Def. Mem. at 16; *see also O.R.*, 340 F. Supp. 3d

9. Dkt. No. 26-1 at 4 (01/18/2018 and 01/22/2018 entries).

10. The DOE also contends that it was unnecessary to have two attorneys (Fox and Mendillo) work on the DPC and then have two senior attorneys (Cuddy and Sterne) review the DPC. Def. Mem. at 15-16. However, the Court is of the view (and most would agree) that writing benefits from an editor. *See, e.g.*, *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *4 n.6 (not unreasonable for attorney to review and edit another attorney's work). Moreover, the Court finds it justifiable that Fox, who bills at a substantially lower rate than Mendillo, Cuddy, and Sterne, did most of the reviewing of documents and drafting while the more experienced attorneys reviewed her work and offered specialized expertise when needed. *See, e.g.*, *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *9.

at 368 (reducing hours for tasks that were secretarial or clerical).

The DOE also seeks a reduction for attorney and paralegal hours billed for preparing and reviewing billing statements. Def. Mem. at 16. While time spent preparing a fee submission (including compiling time entries) is compensable, attorney and paralegal time spent reviewing and editing the billing statement for clarity should not be compensated. *See, e.g.*, *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *4 (allowing hours for fee-memo preparation and time entry compilation, but disallowing fees for time spent on "administrative clean-up" of time entries). The DOE also contends that "the IDEA disallows any award spent preparing for a resolution session meeting (RSM)." Def. Mem. at 17. However, in *M.K. v. Arlington Central School District*, Judge Román found that this prohibition applied only to time spent at the resolution session itself, rather than any time spent preparing for the session. No. 16-CV-5751 (NSR), 2019 U.S. Dist. LEXIS 1129, 2019 WL 92004, at *7 (S.D.N.Y. Jan. 3, 2019) (citing *D.D. ex rel. Davis v. District of Columbia*, 470 F. Supp. 2d 1, 2 (D.D.C. 2007)). A 20% reduction of the hours expended accounts for any hours billed for these tasks.

In addition, the Court finds that, with a 20% reduction, CLF spent a reasonable number of hours preparing for the September 28, 2018 hearing and any post-hearing briefing. The DOE contends that CLF's time spent on these tasks was excessive because the hearing was "uncontested" and "lasted under an hour." Def Mem. at 17; Goldman Decl.

¶ 14. However, Plaintiffs correctly note that the hearing only became "uncontested" at the eleventh hour, and therefore it was reasonable for Mendillo to spend a number of hours on preparation. Mendillo Decl. ¶ 26. At the time of the hearing preparation, Mendillo was uncertain whether the DOE would be putting on a case and had prepared to introduce 22 exhibits in order to secure the requested relief. Goldman Decl. Ex. D at 46.

With respect to travel time, the DOE argues that Mendillo's 15 hours billed to travel should be reduced to one hour each way (for a total of four hours over two trips), pursuant to *C.D. v. Minisink Valley Central School District.* Def. Mem. at 17; Wesley Decl. Ex. B at 1. However, in *C.D.*, the IHO hearings were held in Slate Hill, New York, and only required CLF attorneys to travel approximately three hours and 15 minutes from the firm's headquarters in Auburn, New York. 2018 U.S. Dist. LEXIS 134646. 2018 WL 3769972, at *10. Here, Mendillo made the trip from Auburn to Brooklyn, a trip that, by the Court's calculation, takes approximately five hours in each direction.[11] Accordingly, this warrants an adjustment from Judge Engelmayer's calculation in *C.D.*, and the Court finds that Mendillo's travel time should be reduced in half to 2.5 hours in each direction, for a total

11. The Court takes judicial notice under Rule 201 of the Federal Rules of Evidence of the fact that, according to Google Maps, Auburn is approximately five hours from Brooklyn. *See Deutch v. United States*, 367 U.S. 456, 470, 81 S. Ct. 1587, 6 L. Ed. 2d 963 (1961) ("tak[ing] judicial notice of the fact that Ithaca is more than one hundred and sixty-five miles from Albany"); *Logan v. Matveevskii*, 57 F. Supp. 3d 234, 265 n.10 (S.D.N.Y. 2014) (taking judicial notice of distance between two places according to Google Maps).

of 10 hours of travel time spent on the two trips for the first administrative proceeding.[12]

b. Second Administrative Proceeding (Case No. 179886):

Plaintiff seeks reimbursement for 94.1 hours spent on the Second Administrative Proceeding. Cuddy Decl. ¶ 55. The DOE argues a 20% reduction of these hours is appropriate, and the Court agrees with that assessment. Def. Mem. at 18. The DPC for the second hearing contained much of the same information as the DPC for the first hearing. *Compare* Mendillo Decl. Ex. A, Dkt. No. 25-1 *with* Mendillo Decl. Ex. D, Dkt. No. 25-4. In addition, both Mendillo and Pinchak billed time for tasks that were seemingly administrative or secretarial in nature, further supporting a reduction of hours billed.[13] While the Court disagrees with the DOE's contention that the second hearing was "uncontested," the Court finds that the relatively narrower scope of the second hearing and the more limited nature of Plaintiffs' case (demonstrated by the fewer number of exhibits and the presentation of only one witness) warrants a modest reduction in the hours billed.

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12. Mendillo traveled to Brooklyn twice during the first administrative proceeding: on June 27, 2018 for the pre-hearing conference and on September 28, 2018 for the merits hearing. Mendillo Decl. ¶¶ 32, 34.

13. Cuddy Decl. Ex. B, Dkt. No. 26-2 (entries for 12/4/18, 12/7/18, 12/12/18, 12/20/18, 1/8/19, 1/29/19, 1/31/19, 2/1/19, 2/5/19, 2/6/19, 2/11/19, 2/27/19, 3/12/19, 3/13/19, 3/18/19, 4/3/19, 4/4/19, 4/8/19, 4/10/19, 4/12/19, 5/20/19, 5/31/19).

Appendix Q

With respect to Mendillo's travel time in connection with the second hearing, as discussed above, 2.5 hours of time in each direction is reasonable here, for a total travel time of 5.0 hours spent for the second administrative proceeding.

In sum, after careful consideration of the record before the Court and applying the relevant legal standards, the Court awards attorneys' fees to Plaintiff's counsel for the two administrative hearings as follows:

Case No. 173407

Timekeeper:	**Hourly Rate**:	**Hours**:	**Total**:
A.Cuddy	$360	2.72	$979.20
M. Cuddy	$360	0.96	$345.60
K. Mendillo	$300	33.52	$10,056.00
K. Mendillo (travel)	$150	10.00	$1,500.00
J. Sterne	$360	0.56	$201.60
J. Fox	$100	26.64	$2,664.00
A. Bunnell	$100	4.16	$416.00
A. Pinchak	$100	12.88	$1,288.00
S. Woodard	$100	0.8	$80.00
S. Cuddy	$100	2.8	$280.00
B. Meghezzi	$100	0.08	$8.00
TOTAL FEES			**$17,818.40**

Appendix Q

Case No. 179886

Timekeeper:	**Hourly Rate**:	**Hours**:	**Total**:
A. Cuddy	$360	1.04	$374.40
K. Mendillo	$300	25.52	$7,656.00
K. Mendillo (travel)	$150	5.00	$750.00
C. Rooker	$200	30.88	$6,176.00
J. Sterne	$360	0.24	$86.40
A. Bunnell	$100	2.32	$232.00
A. Pinchak	$100	6.64	$664.00
S. Cuddy	$100	0.8	$80.00
J. Slaski	$100	1.44	$144.00
TOTAL FEES			**$16,162.80**

c. Federal Court Litigation

Plaintiffs seek an award of fees for 67.1 hours billed for the federal court litigation by A. Cuddy, Mendillo, Justin Coretti (an attorney who served process on DOE), and paralegals S. Cuddy and O'Donnell. Mendillo Reply Decl. Ex. A at 1.[14] The DOE contends that the hours billed

14. Plaintiffs seek to recover for an amount billed by Coretti for service of process. However, it is inappropriate to charge attorney time for service of process. *See, e.g.*, *S.J.*, 2020 U.S. Dist. LEXIS 194258, 2020 WL 6151112, at *6 n.11 (declining to credit time billed by attorney for serving process). Therefore, the Court will not award any fees for the time billed by Coretti for serving process.

in connection with the federal court litigation should be reduced by 25%. Def. Mem. at 21. The Court acknowledges the DOE's arguments that CLF used the same template for its complaint and summary judgment motion papers that it has used in other cases. Nonetheless, several facts warrant a slightly more modest reduction of the hours expended. Unlike many of CLF's other IDEA fee-litigations, CLF's complaint in this case was not confined to the issue of attorneys' fees, but also sought equitable relief under 42 U.S.C. § 1983. Therefore, a more modest reduction of hours is appropriate on this basis. *Compare* Compl. ¶¶ 41-54 *with* Complaint, *R.G. v. N.Y.C. Dep't of Educ.*, No. 18-CV-6851 (VEC), 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050 (S.D.N.Y. Sept. 26, 2019), Dkt. No. 1 (complaint three pages long and confined to issue of attorneys' fees). However, these substantive claims were resolved shortly after the filing of the complaint, leaving the attorneys' fees award as the only remaining issue to be addressed. Mendillo Decl. ¶ 71. As a result, the Court finds that the hours billed to prepare the motion was excessive, and therefore a 20% reduction in the number of hours billed to the federal litigation is appropriate.

The DOE also contends that no fees should be awarded for work performed after October 7, 2020, the date of the DOE's $40,000.01 Offer of Settlement. Def. Mem. at 23-24. The IDEA's fee-shifting provisions prohibit an award of fees and costs for work performed after a written offer of settlement is made within 14 days before the date set for trial but not accepted within 10 days if "the court . . . finds that the relief finally obtained by the parents is not more favorable to the parents than the offer." 20 U.S.C.

§ 1415(i)(3)(D)(i). In *O.R.*, Magistrate Judge Gorenstein declined to award fees and costs incurred after the Offer of Settlement date because, after applying reductions to the attorneys' hourly rates and hours expended, the fees and costs plaintiff was entitled to through the Offer of Settlement date was less than the offered settlement amount. 340 F. Supp. 3d at 371. Conversely, in *C.B.*, Judge McMahon found that the fees and costs plaintiff was entitled to through the DOE's Offer of Settlement date exceeded the offered settlement amount, and therefore awarded fees for work performed after that date (though at a significantly reduced rate). 2019 U.S. Dist. LEXIS 111636, 2019 WL 3162177, at *11-12.

Here, by the Court's calculations and applying the reductions discussed above, Plaintiffs were entitled to $37,984.40 in attorneys' fees and costs through October 7, 2020.[15] Because this amount is less than the $40,000.01 the DOE offered on October 7, 2020, the Court will not award any fees or costs incurred after that date.

In sum, after reviewing the record and applying the relevant legal standards, the Court awards attorneys' fees to Plaintiffs' counsel for the federal action as follows:

15. To calculate this total, the Court looked to the final invoice for the federal action. *See* Mendillo Reply Decl. Ex A. The Court then subtracted any hours billed after October 7, 2020, and applied the hourly rate and hours expended reductions as discussed above.

Appendix Q

Timekeeper:	**Hourly Rate**:	**Hours**:	**Total**:
A. Cuddy	$360	0.32	$115.02
K. Mendillo	$300	10.8	$3,240
J. Coretti	$90	0	$0.00
S. Cuddy	$100	1.44	$144.00
C. O'Donnell	$100	1.04	$104.00
TOTAL FEES			**$4,003.20**

d. Costs/Expenses

"A district court may award reasonable costs to the prevailing party in IDEA cases." *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *12 (citing 20 U.S.C. § 1415(i)(3)(B)(i)(1)). The DOE argues that Plaintiffs' counsel is not entitled to mileage, lodging, or parking costs stemming from their travel from Auburn to Brooklyn. Def. Mem. at 23. The DOE also contends that Plaintiff's fax and printing expenses are excessive. *Id.*

The Court declines to award any lodging expenses. *See R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *6; *see* also *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *13 ("[T]he Court will not award any costs for lodging. An attorney who was sited within a reasonable distance of the hearing location could commute daily to the hearings, obviating any need for lodging."). "A reasonable client, in the Court's judgment, could not agree to pay in-district attorney rates while also paying for extensive lodging expenses necessitated

by out-of-district attorneys' travel." *C.D.*, 2018 U.S. Dist. LEXIS 134646, 2018 WL 3769972, at *13; *see also K.F.*, 2011 U.S. Dist. LEXIS 88653, 2011 WL 3586142, at *6 ("[I]t is doubtful that a reasonable client would retain an Auburn or Ithaca attorney over a New York City attorney if it meant paying New York City rates and an additional five hours in billable time for each trip."). Accordingly, the Court deducts all of Mendillo's lodging entries ($604.40 and $231.33). Cuddy Decl. ¶ 55.

The Court also concludes that the requested transportation costs are unreasonable. Mendillo billed $408.75 and $145.00 for mileage in connection with the two administrative proceedings. Cuddy Decl. ¶ 55. Local counsel attending a hearing in Brooklyn would likely take public transit or some form of commuter rail or a short car ride. *See, e.g.*, *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050 at *6. The Court finds $50 each way to be reasonable reimbursement for transportation costs. The Court also deducts Mendillo's $90.00 and $45.00 parking costs. Cuddy Decl. ¶ 55.

The Court agrees with the DOE that $0.50 per page for photocopying is excessive. Def. Mem. at 23. District courts in New York "routinely reduce [] requests for photocopying reimbursement to 10-15 cents per page." *Febus v. Guardian First Funding Grp., LLC*, 870 F. Supp. 2d 337, 341 (S.D.N.Y. 2012); *see also R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *6. While there has undoubtedly been some inflation since 2012, district courts continue to find that $0.10 per page is an "entirely reasonable compensation for printing costs,

absent any indication in the record why the copies in this case are exceptionally expensive." *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *6. The reasonable cost of printing 1,835 pages for the first administrative hearing (Case No. 173407) and 747 pages for the second administrative hearing (Case No. 179886) is therefore $183.50 and $74.70, respectively.[16] Though the parties do not specifically discuss the $34.00 and $24.00 fax costs, the Court finds that these costs are unreasonable. *See, e.g.*, *R.G.*, 2019 U.S. Dist. LEXIS 166370, 2019 WL 4735050, at *6 (denying fax costs when plaintiffs made no showing why communicating via fax was necessary or appropriate, especially given that "[m]odern copy machines have the ability to scan documents so that they can be emailed, a method of communication that costs virtually nothing.").

In light of the above, the Court awards Plaintiffs' counsel $996.91 in costs, as summarized below:

Case No. 173047

Expense:	**Total**:
Copying @ $0.10 per page	$183.50
Travel @ $50.00 per direction	$200.00
Postage	$0.94
TOTAL:	**$384.44**

16. By the Court's calculation, Plaintiffs photocopied 1,835 pages in connection with Case No. 173047 and 747 pages in connection with Case No. 179886. *See* Cuddy Decl. ¶ 55.

Appendix Q

Case No. 179886

Expense:	**Total**:
Copying @ $0.10 per page	$74.70
Travel @ $50.00 per direction	$100.00
Postage	$7.77
TOTAL:	**$182.47**

Federal Action:

Expense:	**Total**:
Filing Fee	$400.00
TOTAL:	**$400.00**

e. Post Judgment Interest

Lastly, Plaintiffs seek post-judgment interest on the award granted. Pl. Mem. at 25. Plaintiffs' request for post-judgment interest is granted. *See S.J.*, 2021 U.S. Dist. LEXIS 6180, 2021 WL 100501, at *6 (pursuant to 28 U.S.C. § 1961, "the award of post-judgment interest is mandatory on awards in civil cases as of the date judgment is entered.").

III. CONCLUSION

For the reasons set forth above, Plaintiffs are awarded a total of $38,951.31 in attorneys' fees and costs, plus post-judgment interest. The Clerk of Court is respectfully directed to enter judgment in Plaintiffs' favor for that amount, terminate all open motions, and close this case.

SO ORDERED.

Dated: June 17, 2021
New York, New York

/s/ James L. Cott
James L. Cott
United States Magistrate Judge

APPENDIX R — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, FILED JULY 25, 2023

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 25th day of July, two thousand twenty-three,

Before: Dennis Jacobs,
Steven J. Menashi,
Sarah A. L. Merriam,
Circuit Judges.

ORDER

Docket No. 21-1582

H.C., INDIVIDUALLY, AND ON BEHALF OF J.C., A CHILD WITH A DISABILITY,

Plaintiff-Appellant,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant-Appellee.

Appendix R

Appellee Name New York City Department of Education having filed a petition for panel rehearing and the panel that determined the appeal having considered the request,

IT IS HEREBY ORDERED that the petition is DENIED.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court

/s/ Catherine O'Hagan Wolfe

APPENDIX S — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, FILED JULY 25, 2023

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 21-1961

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 25th day of July, two thousand twenty-three,

Before: Dennis Jacobs,
Steven J. Menashi,
Sarah A. L. Merriam,

Circuit Judges.

M.D., INDIVIDUALLY AND ON BEHALF OF L.D., A CHILD WITH A DISABILITY,

Plaintiff-Appellant,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant-Appellee.

ORDER

Appendix S

Appellee Name New York City Department of Education having filed a petition for panel rehearing and the panel that determined the appeal having considered the request,

IT IS HEREBY ORDERED that the petition is DENIED.

For The Court:

Catherine O'Hagan Wolfe,
Clerk of Court

/s/ Catherine O'Hagan Wolfe

APPENDIX T — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, FILED JULY 25, 2023

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 21-2130

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 25th day of July, two thousand twenty-three,

Before: Dennis Jacobs,
Steven J. Menashi,
Sarah A. L. Merriam,

Circuit Judges.

J.R., INDIVIDUALLY AND ON BEHALF OF J.B.,
A CHILD WITH A DISABILITY,

Plaintiff-Appellant,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant-Appellee.

ORDER

Appendix T

Appellee Name New York City Department of Education having filed a petition for panel rehearing and the panel that determined the appeal having considered the request,

IT IS HEREBY ORDERED that the petition is DENIED.

For The Court:

Catherine O'Hagan Wolfe,
Clerk of Court

/s/ Catherine O'Hagen Wolfe

APPENDIX U — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, FILED JULY 24, 2023

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 21-2744

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 24th day of July, two thousand twenty-three,

Before: Dennis Jacobs,
Steven J. Menashi,
Sarah A. L. Merriam,

Circuit Judges

M. H., INDIVIDUALLY AND ON BEHALF OF M.T., A CHILD WITH A DISABILITY,

Plaintiff-Appellant,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant-Appellee.

ORDER

Appellee having filed a petition for panel rehearing and the panel that determined the appeal having considered the request,

Appendix U

IT IS HEREBY ORDERED that the petition is DENIED.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court

/s/ Catherine O'Hagan Wolfe

APPENDIX V — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, FILED JULY 24, 2023

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 21-2848

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 24th day of July, two thousand twenty-three,

Before: Dennis Jacobs,
Steven J. Menashi,
Sarah A. L. Merriam,
Circuit Judges.

A.G., INDIVIDUALLY, A.G., ON BEHALF OF R.P., A CHILD WITH A DISABILITY,

Plaintiffs-Appellants,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant-Appellee.

ORDER

Appellee having filed a petition for panel rehearing and the panel that determined the appeal having considered the request,

Appendix V

IT IS HEREBY ORDERED that the petition is DENIED.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court

/s/ Catherine O'Hagan Wolfe

APPENDIX W — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, DATED JULY 24, 2023

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 22-259

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 24th day of July, two thousand twenty-three,

Before: Dennis Jacobs,
Steven J. Menashi,
Sarah A. L. Merriam,
Circuit Judges

D.P., individually and on behalf of S.P.,
a child with a disability,

Plaintiff-Appellant,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant-Appellee.

Appendix W

ORDER

Appellee having filed a petition for panel rehearing and the panel that determined the appeal having considered the request,

IT IS HEREBY ORDERED that the petition is DENIED.

For The Court:

Catherine O'Hagan Wolfe,
Clerk of Court

APPENDIX X — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, FILED JULY 25, 2023

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 22-290

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 25th day of July, two thousand twenty-three,

Before: Dennis Jacobs,
Steven J. Menashi,
Sarah A. L. Merriam,
Circuit Judges.

S.H., INDIVIDUALLY, AND ON BEHALF OF K.H.,
A CHILD WITH A DISABILITY,

Plaiontiff-Appellant,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant-Appellee.

Appendix X

ORDER

Appellee New York City Department of Education having filed a petition for panel rehearing and the panel that determined the appeal having considered the request,

IT IS HEREBY ORDERED that the petition is DENIED.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court

/s/_____

APPENDIX Y — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, DATED JULY 25, 2023

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 22-315

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 25th day of July, two thousand twenty-three,

Before: Dennis Jacobs,
Steven J. Menashi,
Sarah A. L. Merriam,
Circuit Judges.

V.W., Individually and on behalf of A.H.,
a child with a disability,

Plaintiff-Appellant,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant-Appellee.

Appendix Y

ORDER

Appellee New York City Department of Education having filed a petition for panel rehearing and the panel that determined the appeal having considered the request,

IT IS HEREBY ORDERED that the petition is DENIED.

For The Court:

Catherine O'Hagan Wolfe,
Clerk of Court

APPENDIX Z — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, DATED JULY 25, 2023

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 22-422

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 25th day of July, two thousand twenty-three,

Before: Dennis Jacobs,
Steven J. Menashi,
Sarah A. L. Merriam,
Circuit Judges.

L. L., individually and on behalf of S.L.,
a child with a disability,

Plaintiff-Appellant,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant-Appellee.

Appendix Z

ORDER

Appellee New York City Department of Education having filed a petition for panel rehearing and the panel that determined the appeal having considered the request,

IT IS HEREBY ORDERED that the petition is DENIED.

For The Court:

Catherine O'Hagan Wolfe,
Clerk of Court

APPENDIX AA — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, DATED JULY 25, 2023

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 25th day of July, two thousand twenty-three,

Before: Dennis Jacobs,
Steven J. Menashi,
Sarah A. L. Merriam,

Circuit Judges.

H.W., INDIVIDUALLY AND ON BEHALF OF M.W., A CHILD WITH A DISABILITY,

Plaintiff-Appellant,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant-Appellee.

Appendix AA

ORDER
Docket No. 22-568

Appellee New York City Department of Education, having filed a petition for panel rehearing and the panel that determined the appeal having considered the request,

IT IS HEREBY ORDERED that the petition is DENIED.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court

/s/_____

APPENDIX AB — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, DATED JULY 25, 2023

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 22-586

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 25th day of July two thousand twenty-three,

Before: Dennis Jacobs,
Steven J. Menashi,
Sarah A. L. Merriam,

Circuit Judges

H.A., individually, and on behalf of M.A.,
a child with a disability,

Plaintiff-Appellant,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant-Appellee.

Appendix AB

ORDER

Appellee New York City Department of Education, having filed a petition for panel rehearing and the panel that determined the appeal having considered the request,

IT IS HEREBY ORDERED that the petition is DENIED.

For The Court:

Catherine O'Hagan Wolfe,
Clerk of Court

APPENDIX AC — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, DATED JULY 25, 2023

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 25th day of July two thousand twenty-three,

Before: Dennis Jacobs,
Steven J. Menashi,
Sarah A. L. Merriam,

Circuit Judges.

N.G.B., INDIVIDUALLY, AND ON BEHALF OF J.B., A CHILD WITH A DISABILITY,

Plaintiff-Appellant,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant-Appellee.

ORDER
Docket No. 22-772

Appendix AC

Appellee New York City Department of Education, having filed a petition for panel rehearing and the panel that determined the appeal having considered the request,

IT IS HEREBY ORDERED that the petition is DENIED.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court

/s/_____

APPENDIX AD — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, DATED JULY 25, 2023

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 22-855

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 25th day of July, two thousand twenty-three,

Before: Dennis Jacobs,
Steven J. Menashi,
Sarah A. L. Merriam,
Circuit Judges.

A. W., Individually and on behalf of E.D,
a child with a disability,

Plaintiff-Appellant,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant-Appellee.

Appendix AD

ORDER

Appellee New York City Department of Education having filed a petition for panel rehearing and the panel that determined the appeal having considered the request,

IT IS HEREBY ORDERED that the petition is DENIED.

For The Court:

Catherine O'Hagan Wolfe,
Clerk of Court

APPENDIX AE — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, DATED JULY 24, 2023

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 22-977

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 24th day of July, two thousand twenty-three,

Before: Dennis Jacobs,
Steven J. Menashi,
Sarah A. L. Merriam,
Circuit Judges

R. P., individually and on behalf of E.H.P.,
a child with a disability,

Plaintiff-Appellant,

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant-Appellee.

Appendix AE

ORDER

Appellee having filed a petition for panel rehearing and the panel that determined the appeal having considered the request,

IT IS HEREBY ORDERED that the petition is DENIED.

For The Court:

Catherine O'Hagan Wolfe,
Clerk of Court

APPENDIX AF — RELEVANT STATUTORY PROVISIONS

20 U.S.C. § 1400

§ 1400. Short title; findings; purposes

(a) Short title

This chapter may be cited as the "Individuals with Disabilities Education Act".

* * *

(c) Findings

Congress finds the following:

* * *

(6) While States, local educational agencies, and educational service agencies are primarily responsible for providing an education for all children with disabilities, it is in the national interest that the Federal Government have a supporting role in assisting State and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law.

* * *

(8) Parents and schools should be given expanded opportunities to resolve their disagreements in positive and constructive ways.

(9) Teachers, schools, local educational agencies, and States should be relieved of irrelevant and unnecessary paperwork burdens that do not lead to improved educational outcomes.

* * *

(d) Purposes

The purposes of this chapter are—

(1) (A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

(B) to ensure that the rights of children with disabilities and parents of such children are protected; and

* * *

Appendix AF

20 U.S.C. § 1415

§ 1415. Procedural Safeguards

(a) Establishment of procedures

Any State educational agency, State agency, or local educational agency that receives assistance under this subchapter shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education by such agencies.

(b) Types of procedures

The procedures required by this section shall include the following:

* * *

(5) An opportunity for mediation, in accordance with subsection (e).

(6) An opportunity for any party to present a complaint—

(A) with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child; and

(B) which sets forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for presenting such a complaint under this subchapter, in such time as the State law allows, except that the exceptions to the timeline described in subsection (f)(3)(D) shall apply to the timeline described in this subparagraph.

(7)(A) Procedures that require either party, or the attorney representing a party, to provide due process complaint notice in accordance with subsection (c)(2) (which shall remain confidential)—

(i) to the other party, in the complaint filed under paragraph (6), and forward a copy of such notice to the State educational agency; and

(ii) that shall include—

(I) the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;

(II) in the case of a homeless child or youth (within the meaning of section 11434a(2) of title 42), available contact information for the child and the name of the school the child is attending;

(III) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and

(IV) a proposed resolution of the problem to the extent known and available to the party at the time.

(B) A requirement that a party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements of subparagraph (A)(ii).

(c) Notification requirements

* * *

(2) Due process complaint notice

* * *

Appendix AF

(B) Response to complaint

(i) Local educational agency response

(I) In general

If the local educational agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice, such local educational agency shall, within 10 days of receiving the complaint, send to the parent a response that shall include—

(aa) an explanation of why the agency proposed or refused to take the action raised in the complaint;

(bb) a description of other options that the IEP Team considered and the reasons why those options were rejected;

(cc) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

(dd) a description of the factors that are relevant to the agency's proposal or refusal.

* * *

(ii) Other party response.

Except as provided in clause (i), the non-complaining party shall, within 10 days of receiving the complaint, send to the complaint a response that specifically addresses the issues raised in the complaint.

(C) Timing.

The party providing a hearing officer notification under subparagraph (A) shall provide the notification within 15 days of receiving the complaint.

(D) Determination.

Within 5 days of receipt of the notification provided under subparagraph (C), the hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements of subsection (b)(7)(A), and shall immediately notify the parties in writing of such determination.

(E) Amended complaint notice.

(i) In general.

* * *

(II) the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than 5 days before a due process hearing occurs.

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* * *

(d) Procedural safeguards notice

(1) In general

(A) Copy to parents

A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only 1 time a year, except that a copy also shall be given to the parents—

(i) upon initial referral or parental request for evaluation;

(ii) upon the first occurrence of the filing of a complaint under subsection (b)(6); and

(iii) upon request by a parent.

* * *

(2) Contents

The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner, available under this section and under

regulations promulgated by the Secretary relating to—

(A) independent educational evaluation;

(B) prior written notice;

(C) parental consent;

(D) access to educational records;

(E) the opportunity to present and resolve complaints, including—

(i) the time period in which to make a complaint;

(ii) the opportunity for the agency to resolve the complaint; and

(iii) the availability of mediation;

(F) the child's placement during pendency of due process proceedings;

* * *

(H) requirements for unilateral placement by parents of children in private schools at public expense;

(I) due process hearings, including requirements for disclosure of evaluation results and recommendations;

(J) State-level appeals (if applicable in that State);

(K) civil actions, including the time period in which to file such actions; and

(L) attorneys' fees.

(e) Mediation

(1) In general

Any State educational agency or local educational agency that receives assistance under this subch171apter shall ensure that procedures are established and implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a complaint pursuant to subsection (b)(6), to resolve such disputes through a mediation process.

(2) Requirements

Such procedures shall meet the following requirements:

(A) The procedures shall ensure that the mediation process—

(i) is voluntary on the part of the parties;

(ii) is not used to deny or delay a parent's right to a due process hearing under subsection

(f), or to deny any other rights afforded under this subchapter; and

(iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

* * *

(D) Costs—

The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).

* * *

(f) Impartial due process hearing

(1) In general

(A) Hearing

Whenever a complaint has been received under subsection (b)(6) or (k), the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.

(B) Resolution session

(i) Preliminary meeting

Prior to the opportunity for an impartial due process hearing under subparagraph (A), the local educational agency shall convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint—

(I) within 15 days of receiving notice of the parents' complaint;

(II) which shall include a representative of the agency who has decisionmaking authority on behalf of such agency;

(III) which may not include an attorney of the local educational agency unless the parent is accompanied by an attorney; and

(IV) where the parents of the child discuss their complaint, and the facts that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint,

unless the parents and the local educational agency agree in writing to waive such meeting, or agree to use the mediation process described in subsection (e).

(ii) Hearing

If the local educational agency has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this subchapter shall commence.

(iii) Written settlement agreement

* * *

(2) Disclosure of evaluations and recommendations

(A) In general

Not less than 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party's evaluations, that the party intends to use at the hearing.

(B) Failure to disclose

A hearing officer may bar any party that fails to comply with subparagraph (A) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

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(3) Limitations on hearing

* * *

(C) Timeline for requesting hearing

A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this subchapter, in such time as the State law allows.

(D) Exceptions to the timeline

The timeline described in subparagraph (C) shall not apply to a parent if the parent was prevented from requesting the hearing due to—

(i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or

(ii) the local educational agency's withholding of information from the parent that was required under this subchapter to be provided to the parent.

(E) Decision of hearing officer

* * *

Appendix AF

(g) Appeal.

* * *

(h) Safeguards.

Any party to a hearing conducted pursuant to subsection (f) or (k), or an appeal conducted pursuant to subsection (g), shall be accorded—

> (1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
>
> (2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;
>
> (3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and

* * *

(i) Administrative procedures

(1) In general

* * *

(2) Right to bring civil action

(A) In general

Any party aggrieved by the findings and decision made under subsection (f) or (k) who does not have the right to an appeal under subsection (g), and any party aggrieved by the findings and decision made under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States, without regard to the amount in controversy.

(B) Limitation

The party bringing the action shall have 90 days from the date of the decision of the hearing officer to bring such an action, or, if the State has an explicit time limitation for bringing such action under this subchapter, in such time as the State law allows.

(C) Additional requirements

In any action brought under this paragraph, the court—

(i) shall receive the records of the administrative proceedings;

(ii) shall hear additional evidence at the request of a party; and

(iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(3) Jurisdiction of district courts; attorneys' fees

(A) In general

The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.

(B) Award of attorneys' fees

(i) In general

In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs—

(I) to a prevailing party who is the parent of a child with a disability;

(II) to a prevailing party who is a State educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause

of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(III) to a prevailing State educational agency or local educational agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

* * *

(C) Determination of amount of attorneys' fees

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. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

(D) Prohibition of attorneys' fees and related costs for certain services

(i) In general

Attorneys' fees may not be awarded and related costs may not be reimbursed in any

action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if—

(I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

(II) the offer is not accepted within 10 days; and

(III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(ii) IEP team meetings

Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e).

(iii) Opportunity to resolve complaints

A meeting conducted pursuant to subsection (f)(1)(B)(i) shall not be considered—

(I) a meeting convened as a result of an administrative hearing or judicial action; or

(II) an administrative hearing or judicial action for purposes of this paragraph.

(E) Exception to prohibition on attorneys' fees and related costs

Notwithstanding subparagraph (D), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(F) Reduction in amount of attorneys' fees

Except as provided in subparagraph (G), whenever the court finds that—

(i) the parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(iv) the attorney representing the parent did not provide to the local educational agency the appropriate information in the notice of the complaint described in subsection (b)(7)(A),

the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.

(G) Exception to reduction in amount of attorneys' fees

The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

(j) Maintenance of current educational placement

Except as provided in subsection (k)(4), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child, or, if applying for initial admission to a public school, shall, with

the consent of the parents, be placed in the public school program until all such proceedings have been completed.

(k) Placement in alternative educational setting

* * *

(4) Placement during appeals.

* * *

(l) Rule of construction

Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973 [29 USCS §§ 790 et seq.], or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this subchapter.

* * *