

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ROBERT WARREN, a minor by and	:	
through LORI ORLANDO, his parent	:	
and natural guardian,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	CIVIL ACTION
READING SCHOOL DISTRICT, GERALDINA	:	
SEPULVEDA, in her individual and	:	97-4064
official capacity as Principal of	:	
the 10 <sup>th</sup> and Green Elementary	:	
School, and JAMES A. GOODHART, in	:	
his individual and official	:	
capacity as Superintendent of the	:	
Reading School District,	:	
	:	
Defendants.	:	

**MEMORANDUM**

**JOYNER, J.** **JANUARY** **, 2000**

This action was brought on behalf of plaintiff Robert Warren, alleging claims under Title IX, 20 U.S.C. § 1681, et seq., and other federal and state claims. Plaintiff's claims are based on allegations of sexual abuse by Plaintiff's school teacher, Harold Brown. A jury trial was held, and the jury returned a verdict against Reading School District on Plaintiff's Title IX claim, awarding \$400,000 in damages. Plaintiff filed a Motion for Attorneys' Fees, which is currently before the Court. For the following reasons, Plaintiff's Motion is granted.

**Background**

The facts of this case have been discussed in this Court's previous memoranda on this case.

**Discussion**

## I. SEPARATION OF CLAIMS

Defendant argues that Plaintiff should not recover attorneys' fees for claims on which Plaintiff was not the "prevailing party." Defendant argues that some of the fees requested by Plaintiff represent time spent prosecuting claims on which Plaintiff ultimately did not prevail at trial, and that these fees should be deducted from the fee award. Defendant's argument is based on the Third Circuit's decision in Rode v. Dellarciprete, 892 F.2d 1177, 1183-84 (3d Cir. 1990), which in turn relies on the Supreme Court case Hensley v. Eckerhart, 461 U.S. 424 (1983).

In Hensley the Supreme Court addressed the situation "[w]here the Plaintiff has failed to prevail on a claim that is distinct in all respects from his successful claims..." Hensley at 440. The Court held that where the claims involve a common core of facts, the district court's fee determination should focus on the overall relief obtained by the plaintiff's. The Court stated that "[w]here a Plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee....In these circumstances the fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit." Id. at 435. "The courts have been disinclined to parse out hours spent on unsuccessful claims where such claims and their more successful counterparts rest upon a common core of facts or on related legal theories." Fletcher v. O'Donnell, 729 F.Supp. 422, 430 (E.D.Pa. 1990) (citations omitted).

In this case, the jury awarded Plaintiff \$400,000, which represents a clear vindication of Plaintiff's civil rights claim.

As all of the claims in this case are based on a common core of facts, and as the verdict obtained was clearly a success, Defendant is not entitled to a subdivision of the fee based on a separation of Plaintiff's individual claims. See Failla v. City of Passaic, 146 F.3d 149, 160 n.15 (3d Cir. 1998) (noting that a \$143,000 jury verdict for civil rights claims represented "a significant vindication of civil rights," and that therefore "the district court was not required to reduce the lodestar to reflect any 'limited' success.").

## II. CONTINGENCY MULTIPLIER

Plaintiff seeks an upward adjustment to compensate for the contingency nature of its case. Defendant opposes Plaintiff's request by pointing out that Plaintiff failed to satisfy the evidentiary requirements of Rode v. Dellarciprete, 892 F.2d 1177, 1184 (3d. Cir. 1990). Under Rode, an applicant for an award of attorneys' fees must submit affidavits or other evidence establishing:

(1) how the market treats contingency fee cases as a class differently from hourly fee cases; (2) the degree to which the relevant market compensates for contingency; (3) that the amount determined by the market to compensate for contingency is not more than would be necessary to attract competent counsel both in the relevant market and in its case; and (4) that without an adjustment for risk the prevailing party would have faced substantial difficulties in finding counsel in the local or other relevant market.

Rode at 1184 (citations omitted). Plaintiff did submit an affidavit with its Motion, but this affidavit did not establish the evidence required by Rode.

But more importantly, this aspect of the Rode decision has been effectively overruled by the Supreme Court in Burlington v. Dague, 505 U.S. 557 (1992). In Dague, the Supreme Court overruled Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 483 U.S. 711 (1987), which is the case on which Rode

relies.<sup>1</sup> The Court held that contingency multipliers should not be used where fee shifting is authorized by federal statute. See Daque at 567.<sup>2</sup> Although the Daque case concerns a different fee shifting statute than the present case, the Supreme Court states in its opinion that its reasoning of what is a "reasonable fee" applies to all federal fee shifting statutes, including 42 U.S.C. §§ 1988. See Id. at 562. The Daque decision has been recognized by the Third Circuit. See In re: Prudential Ins. Co. America Sales Practice Litig. Actions, 148 F.3d 283, 341 n.121 (3d Cir. 1998) (stating that "the Supreme Court has held risk enhancements are inappropriate in the statutory fee-shifting context."). As Plaintiff's fee request is based on federal statute, the Court cannot award a contingency multiplier in this case.

### III. REASONABLENESS OF TIME ENTRIES

Defendant argues that some of Plaintiff's time entries are "not sufficiently specific, duplicative or, on their face, excessive." Defendant's Memorandum at 4. However, the time entries questioned by Defendant are reasonable, and not duplicative in any inappropriate way. Defendant raises issue with documents that were reviewed by both attorneys, but that is not inappropriate as the attorneys were working together on the case and both needed to be aware of key evidence. After reviewing Plaintiff's entire billing record for this case, the

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<sup>1</sup> The Court notes that Defendant included this overruled case in a citation in its Memorandum at 4.

<sup>2</sup> The Court left open the possibility that a contingency multiplier is appropriate in common fund cases where the theory of fee recovery is not based on federal statute. See, e.g., In re Thirteen Appeals Arising out of the San Juan Dupont Plaza Hotel Fire Litigation, 56 F.3d 295, 305 (1st Cir. 1995).

Court finds that Plaintiff's attorneys were reasonable both in the time that they allocated to individual tasks, as well as to the case as a whole, and that a reduction in its hours billed is therefore not appropriate.

#### **CONCLUSION**

Plaintiff's Title IX claim arises out of a common core of facts from its other claim on which it did not prevail. Accordingly, as the jury verdict in this case represents a significant vindication of Plaintiff's civil rights, Plaintiff is entitled to an award of attorneys' fees for all time expended on this case, not just for time expended on the Title IX claim. However, a contingency multiplier is inappropriate in this case, as the fee shift in this case comes from federal statute, and the Supreme Court has held that in such cases a contingency multiplier may not be applied. Finally, Plaintiff's time records were reasonable for this case, so no adjustment of individual entries is necessary. Defendant does not challenge the billing rates of Plaintiff's attorneys, and they do not appear unreasonable to this Court. Plaintiff is therefore entitled to attorneys' fees for 190.45 hours of David R. Dautrich's time at \$200 /hour, and for 554.10 hours of Michael D. Dautrich's time at \$120 /hour. The total fee award is \$104,582.00.

An appropriate Order follows.

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the 10 <sup>th</sup> and Green Elementary	:	
School, and JAMES A. GOODHART, in	:	
his individual and official	:	
capacity as Superintendent of the	:	
Reading School District,	:	
	:	
Defendants.	:	

**ORDER**

AND NOW, this            day of January, 2000, upon consideration of Plaintiff's Motion for Attorneys' Fees (Document No. 64), and the responses of the parties thereto, it is hereby ORDERED, in accordance with the foregoing memorandum, that the Motion is GRANTED. Defendant shall, within thirty (30) days of this Order, pay to Plaintiff attorneys' fees in the amount of \$104,582.00.

BY THE COURT:

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J. CURTIS JOYNER, J.