

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

ZACHARY HARR, a minor, by  
his parents, J. HUGH HARR  
and KATHLEEN K. HARR

CIVIL ACTION

V.

NESHAMINY SCHOOL DISTRICT

NO.00-CV-4853

ORDER

AND NOW, this 21 day of August, 2002 upon consideration of plaintiffs' Motion for Counsel's Fees (Docket #16), the defendant's Answer to Plaintiffs' Motion for Counsel Fees, and the plaintiffs' Supplemental Memorandum, it is hereby ordered and decreed that the plaintiffs' motion is GRANTED and attorney's fees are awarded to the plaintiffs in the amount of \$15,000.00.

The plaintiffs requested \$18,239.46 in fees and costs. The defendant does not dispute that the prevailing party in an administrative proceeding under the IDEA may recover reasonable attorney's fees. The defendant objected to the amount of the fees on the following grounds: (1) the plaintiffs have not produced evidence to support the \$150 hourly rate they request; (2) certain entries do not describe the tasks performed by counsel with sufficient specificity; and (3) the plaintiffs had

only limited success during the administrative process.

In response to the defendant's objections, the Court asked the plaintiffs to submit additional information with respect to the requested hourly rate and the tasks performed in connection with some entries. The Court also asked the plaintiffs to respond to the defendant's argument that the fees should be reduced in light of the plaintiffs' limited success at the administrative stage.

Having reviewed all the materials carefully, the Court concludes that \$15,000 represents reasonable attorney's fees. First, the plaintiffs have adequately supported the \$150 hourly rate. They presented the affidavit of a lawyer who has practiced for over 25 years in the geographical area in which the plaintiffs' counsel practices, who states that "experienced trial counsel would customarily charge \$200.00 per hour for their services." Plaintiffs' Supplemental Memorandum, Exhibit A. The affiant has known the plaintiffs' counsel since 1981 and states that the \$150 hourly rate is modest.

Second, the plaintiffs have submitted additional information with respect to the entries challenged by the defendants. The Court concludes that the plaintiffs have adequately described the tasks performed in connection with the various time entries.

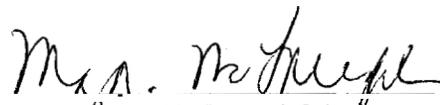
The third and final objection by the defendant is that the fees should be reduced because the plaintiffs had only limited success during the administrative process. Pennsylvania's Special Education Due Process Appeals Panel found that Zachary Harr had been denied a free and appropriate public education (FAPE) because his individualized education plan (IEP) did not include a behavior management plan or provide for counseling despite the fact that it was very clear that Zachary's behavior problems were interfering with his ability to learn. Defendant's Answer, Exhibit B at 5-7. The Appeals Panel also concluded, albeit with reservations, that The Learning Studio was an appropriate placement. Id. at 6-7. Finally, the Panel found that the plaintiffs and the defendant shared responsibility for the lack of progress toward providing Zachary with a FAPE. Id. at 7.

The plaintiffs sought full tuition reimbursement, reimbursement for transportation to The Learning Studio, the designation of The Learning Studio as Zachary's placement, and reimbursement for psychological services for the entire 1996-97 school year. Defendant's Answer, at 8. After balancing the equities, the Appeals Panel awarded the plaintiffs 50% tuition **reimbursement for the 1997-98 school year at The Learning Studio,** as well as reimbursement for one psychological visit which took

place after the defendant should have known about Zachary's mental health issues. Id. at 7.

The fact that the plaintiffs did not obtain all **of** the relief they sought, including only being reimbursed for 50% of the cost of Zachary's private school tuition, does not mean that they were only 50% successful. The plaintiffs prevailed on the central issue in this special education case, namely whether Zachary was provided with a free, appropriate public education. The fact **that** the Appeals Panel sided with the plaintiff on this question entitled Zachary to services that he needed in order to learn; as the plaintiffs argue, this constituted a substantial non-monetary remedy.

BY THE COURT:

  
Mary A. McLaughlin, J.

2 8/5/02:

7. M. Kettle, Esq.  
2. Mashburn Williams, Esq.  
7. Wiley, Esq.