

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

F.V. and M.V., individually and on behalf of
B.V.,

Plaintiffs,

v.

CHERRY HILL TOWNSHIP BOARD OF
EDUCATION,

Defendant.

HONORABLE KAREN M. WILLIAMS

Civil Action
No. 1:21-CV-18096-KMW-SAK

ORDER

THIS MATTER having come before the Court by way of the unopposed Motion of defendant, the Cherry Hill Township Board of Education (the “Board”), for a post-judgment award of attorneys’ fees and costs against the counsel of plaintiffs F.V. and M.V., on behalf of their minor daughter, B.V. (together, “Plaintiffs”), pursuant to the Individuals with Disabilities Education Act (the “IDEA”), 20 U.S.C. § 1415(i)(3)(B)(i); and

THE COURT HAVING PREVIOUSLY FOUND that the Board is entitled to an award of attorneys’ fees under 20 U.S.C. § 1415(i)(3)(B)(i)(II)–(III)¹; and

¹ The Court has construed Plaintiffs’ failure to oppose the instant Motion as a concession that the Board is indeed entitled to an award of attorneys’ fees under subclauses (II) and (III) of the IDEA’s fee-shifting provision. (ECF No. 42 at 1–2 n.2.) However, the Court notes that an attorneys’ fees award under subclause (II) is particularly appropriate here, which is to be levied “against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation.” 20 U.S.C. § 1415(i)(3)(B)(i)(II). In its prior Opinion granting the Board’s unopposed Motion for Summary Judgment, the Court observed that Plaintiffs’ counsel had unnecessarily protracted this action and continued to litigate claims that were quite obviously moot. *See F.V. v. Cherry Hill Twp. Bd. of Educ.*, No. 21-CV-18096, 2023 WL 2662697, at *9 n.15 (D.N.J. Mar. 28, 2023). The Board thus “seeks an award of attorney fees and costs incurred since October 1, 2020, prior to which the [Board] voluntarily granted the Plaintiffs their requested relief and after which their attorney continued to prosecute a claim and appeal that he knew to be moot.” (ECF No. 36-3 at 2.)

THE COURT HAVING PREVIOUSLY FOUND that the hourly rates billed by the Board’s attorneys and paralegals in connection with the defense of this action were reasonable²; and

THE COURT NOW FINDING that the amended time sheets submitted by the Board’s counsel in furtherance of its Motion (ECF No. 44) adequately support the requested amount of fees and costs;³

IT IS this 23rd day of January 2024 hereby

ORDERED that the Board’s Motion for Attorneys’ Fees (ECF No. 36) is **GRANTED**; and it is further

² When calculating an award for attorneys’ fees under the IDEA and similar statutes, courts employ the “lodestar” method. *See T.B. v. Mount Laurel Bd. of Educ.*, No. CIV. 09-4780, 2012 WL 1079088, at *2 (D.N.J. Mar. 30, 2012). This first requires courts to evaluate the hourly rates claimed and determine whether they are reflective of “rates prevailing in the community in which the action or proceeding arose[.]” 20 U.S.C. § 1415(i)(3)(C). Once a movant makes a *prima facie* showing that the rates requested represent prevailing market rates, “the party opposing the fee award can rebut the reasonableness of the proffered hourly rate with record evidence.” *L.J. ex rel. V.J. v. Audubon Bd. of Educ.*, 373 F. App’x 294, 296 (3d Cir. 2010). Here, the hourly rates charged by the Board’s counsel were set by the School Alliance Insurance Fund—a joint insurance fund formed pursuant to state statute and comprised of local educational agencies, including the Board here. Those rates were “\$185/hour for partners and counsel, \$150/hour for associates, and \$70/hour for paralegals.” (ECF No. 36-1 at 2–3.) The Court has accepted these rates as reasonable, in part, because of Plaintiffs’ failure to contest them. *See McElligott v. McElligott*, No. 23-3175, 2023 WL 6923493, at *3 (D.N.J. Oct. 19, 2023) (accepting hourly billing rate as reasonable in the absence of opposition to motion for attorneys’ fees); *see also K.N. v. Gloucester City Bd. of Educ.*, No. 17-7976, 2022 WL 613846, at *3 (D.N.J. Mar. 2, 2022) (accepting significantly higher rates charged in IDEA-related action in identical geographic market).

³ Next, the Court must “review the time charged, decide whether the hours set out were reasonably expended for each of the particular purposes described and then exclude those that are excessive, redundant, or otherwise unnecessary.” *Evans v. Port Auth. of New York & New Jersey*, 273 F.3d 346, 362 (3d Cir. 2001) (quotation marks omitted). Here, the Board has submitted fee requests for \$70,100 for approximately 408.2 hours of work billed between October 1, 2020, and April 7, 2023 (256.4 hours for partners and counsel; 150.5 hours for associates; and 1.3 hours for paralegals), as well as \$1,138.90 in costs. (ECF No. 44.) Having reviewed the Board’s time sheets, and observing no specific objection from Plaintiffs regarding the same, the Court calculates the Board’s lodestar to be \$71,238.90, and accepts it as presumptively reasonable. *See Interfaith Cmty. Org. v. Honeywell Int’l, Inc.*, 426 F.3d 694, 711 (3d Cir. 2005) (“The court may not reduce an award *sua sponte*; rather, it can only do so in response to specific objections made by the opposing party.”).

ORDERED that Plaintiffs' counsel shall reimburse the Board for attorneys' fees and costs in the amount of **\$71,238.90**.⁴

/s/ Karen M. Williams
KAREN M. WILLIAMS
U.S. DISTRICT COURT JUDGE

⁴ The Court sees no reason to equitably adjust the Board's lodestar determination, particularly given that it has been wholly successful in its defense of this action. *See Washington v. Phila. Cty. Ct. of Com. Pl.*, 89 F.3d 1031, 1035 (3d Cir. 1996) (permitting courts to "adjust the lodestar downward if the lodestar is not reasonable in light of the results obtained").