

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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NIKITA PETTIES, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 95-0148 (PLF)
)	
DISTRICT OF COLUMBIA, <u>et al.</u> ,)	
)	
Defendants.)	
_____)	

MEMORANDUM OPINION AND ORDER

This matter is before the Court on two motions by plaintiffs for attorneys’ fees and costs. The first motion covers the period from December 1, 2007 through February 29, 2008 and requests fees and costs in the amount of \$156,969.53. The second motion covers the period from March 1, 2008 through May 31, 2008 and requests fees and costs in the amount of \$141,936.90.¹ Defendants argue that fees requested in the first motion should be reduced by more than two-thirds and that the fees requested in the second motion should be reduced by more

¹ The following papers were before the Court in conjunction with these motions: Plaintiffs’ Motion for Attorneys’ Fees and Costs, filed November 4, 2009 (“First Mot.”); Plaintiffs’ Memorandum of Points and Authorities in Support of Plaintiffs’ Motion for Attorneys’ Fees and Costs (“First Mem.”); Defendants’ Opposition to Plaintiffs’ Motion for an Award of Fees and Costs, filed December 2, 2009 (“First Opp.”); Plaintiffs’ Response to Defendants’ Opposition for an Award of Fees and Costs for Period December 2007 through February 2008 (“First Rep.”); Plaintiffs’ Motion for Attorneys Fees and Costs for the Period March 1, 2008 Through May 31, 2008 (“Second Mot.”); Memorandum of Points and Authorities in Support of Plaintiffs’ Motion for Attorneys’ Fees and Costs for the Period March 1, 2008 through May 31, 2008 (“Second Mem.”); Defendants’ Opposition to Plaintiffs’ Motion for an Award of Fees and Costs (“Second Opp.”); and Plaintiffs’ Response to Defendants’ Opposition for an Award of Fees and Costs for Period March 2008 Through May 2008 (“Second Rep.”).

than half.² After careful consideration of the parties' papers, and attached exhibits, the relevant statutes and case law, and the entire history of this case, the Court will grant plaintiffs' first motion in part and deny it in part and will grant plaintiffs' second motion in its entirety.

The Court recently issued an Opinion and Order granting a motion by plaintiffs for attorneys' fees for the period from March 1, 2005 through November 30, 2007. See Opinion and Order, Dkt. No. 1694 (Oct. 20, 2009) ("October 2009 Opinion"). The relevant history of the case as well as the legal standard for an award of attorneys' fees is laid out in detail in that Opinion and need not be repeated here.³ Moreover, most of the challenges raised by defendants to plaintiffs' current requests for attorneys' fees were already resolved against the defendants in the October 2009 Opinion and Order. The Court will address these issues in turn.

With regard to the appropriate hourly rate at which plaintiffs' class counsel should be compensated, plaintiffs' request for attorneys' fees follows the guidelines of the October 2009 Opinion. They request fees based on the hourly rates established by United States Attorney's Office Laffey Matrix for 2009-10. See First Mem. at 2; Second Mem. at 2. Defendants do not challenge this hourly rate. The Court will adopt it for the purpose of these motions.

The District of Columbia argues that time spent on a number of activities for which plaintiffs billed should not be compensated because plaintiffs were not prevailing parties

² Defendants do not object to plaintiffs' request for costs. See First Opp. at 1, n.1; Second Opp. at 1, n.1.

³ In addition, the Court's recent award of attorneys' fees to plaintiffs' class counsel in the Blackman/Jones case provided the parties with additional information about the Court's views as to how attorneys' fees should be analyzed in these special education class actions. See Blackman v. District of Columbia, Civil Action No. 97-1629, 2010 U.S. Dist. LEXIS 182 (D.D.C. Jan. 4, 2010).

with regard to those activities. Among the work challenged by defendants in their opposition to plaintiffs' first motion for attorneys' fees is compensation for the time spent by plaintiffs' counsel on residency verification. See First Opp. at 4-6. The Court considered this issue in the October 2009 Opinion. See October 2009 Opinion at 11-12. Plaintiffs do not request fees for any time spent on residency issues after defendants first raised their objection to class counsel working on residency verification for class members in a meeting with the Special Master at the beginning of 2008. See First Mem. at 3; First Rep. at 8. This approach is consistent with the Court's October 2009 Opinion and Order and the Court will adopt it. See October 2009 Opinion at 12.

Plaintiffs also request fees for time spent on rate-setting in both of the motions before the Court. The Court's October 2009 Opinion stated that "plaintiffs are prevailing parties with regard to rate-setting and that they therefore are entitled to attorneys' fees for their reasonable time spent on this activity." October 2009 Opinion at 10. Defendants have not raised new arguments that would cause the Court to change its conclusion that plaintiffs are due attorneys' fees for reasonable time spent on rate-setting. The Court will grant plaintiffs' fee request with regard to both of these activities.

In addition, the District challenges payment of attorneys' fees for time spent by Petties class counsel on monitoring and participating in the Blackman/Jones litigation. See First Opp. at 3-4; Second Opp. at 3-4. The Court disagrees with the District's argument that plaintiffs' class counsel should receive no compensation for time spent on Blackman/Jones. As explained by the plaintiffs, work relating to Blackman/Jones is necessary to monitor defendants' compliance with the federal law and court orders at issue in Petties. See First Rep. at 5-7. While

the Court agrees that monitoring events in the Blackman/Jones case and working with plaintiffs' class counsel in that case fall within the scope of the work for which the Petties plaintiffs are prevailing parties, class counsel in Petties must remain cognizant that their role in Blackman/Jones is, at most, secondary. The time spent by Petties class counsel on Blackman/Jones for the time period at issue in the first motion amounts to over twenty-five percent of the total fees they seek in that motion. Nowhere in their briefs regarding the first motion for fees do plaintiffs attempt to justify the *total amount* of the Blackman/Jones-related fees they seek. The Court will reduce the requested fees for work done by plaintiffs' class counsel on Blackman/Jones-related issues by thirty percent with respect to the first motion. The second motion requests significantly less for time spent on Blackman/Jones-related work and the plaintiffs' filings with respect to that motion, including the declarations from Patrick Wojahn and Bradford Johnson, have persuaded the Court that the time spent was reasonable. This second request will not be reduced.

The District also challenges work done by plaintiffs' class counsel on miscellaneous tasks that the District argues are unrelated to this case. See First Opp. at 8-9; Second Opp. at 6-7. Presumably because defendants continue to raise this argument, the plaintiffs attached a lengthy exhibit to their reply in support of their second motion responding to each of defendants' challenges to their time entries. See Second Rep., Ex. 1. The Court has reviewed the challenged time records for both motions and concludes that when read in context the vast majority of them are related to the Petties litigation. For the relatively few time entries that may have been unnecessary or unrelated, the Court concludes that deductions already taken by plaintiffs' class counsel, which are discussed below, account for any such deficiency.

In all other respects, plaintiffs' class counsel have again demonstrated that they exercised billing judgment in compiling their requests for attorneys' fees. See First Mem. at 10; Second Mem. at 7-11. Plaintiffs' class counsel reduced numerous time charges prior to generating final statements, and they excluded charges for certain billable activities that required only small amounts of time. See First Mem. at 10. Counsel at University Legal Services ("ULS"), co-counsel with the Johnson Law Group for the plaintiffs' class, do not bill for more than two staff members who have an internal conversation, telephone call, or meeting regarding Petties, nor do they bill for more than two staff members who have a conversation with an outside party or attend a meeting, dispute hearing or court hearing, even if more than two staff members participate in these activities. See Second Rep., Declaration of Patrick L. Wojahn ("Wojahn Decl.") ¶¶ 5-6. ULS also does not bill for time spent in transit to Petties-related events. See id. ¶ 6. In addition, the Johnson Law Group primarily staffs Petties matter with paralegals to reduce the total amount of attorneys' fees. See Second Rep., Declaration of Bradford P. Johnson ("Johnson Decl.") ¶ 6. ULS and the Johnson Law Group coordinate in order to divide tasks and avoid duplicating work. See Wojahn Decl. ¶ 7; Johnson Decl. ¶ 6. These billing practices are to be applauded, as reflected in the fact that class counsel excluded from billing \$14,299 in attorneys' fees or almost ten percent of the total dollar amount requested in their first motion, and they excluded approximately \$33,000 in billable fees and/or costs or more than twenty percent of the total dollar amount requested in their second motion. See First Mem. at 10; Wojahn Decl. ¶ 6; Johnson Decl. ¶ 6.

With respect to the second motion only, defendants challenge plaintiffs' class counsel's billing judgment with respect to the requested attorneys' fees for time spent on

fees-related issues. See Second Opp. at 8. During the time period for which this motion requests fees, the standard practice by which plaintiffs and defendants had reached agreed upon fee awards had broken down and, for the first time in the Court's recollection, the District did not consent to plaintiffs' motion for fees. It is not surprising, therefore, that the amount of time spent by plaintiffs' class counsel in attempting to recover attorneys' fees would be much greater than in prior periods. See Second Rep. at 10-11. To the extent that this costs the District of Columbia more money now and in the future, this is a self-inflicted wound. In addition, as Mr. Johnson states, plaintiffs do not bill for time spent preparing fee requests because such work is largely administrative, but they do bill for time spent responding to the District's challenges and objections to their fee requests. See Johnson Decl. ¶ 6. The Court will award the full amount of fees requested for time spent on fees-related issues.

Defendants again challenge the adequacy of plaintiffs' billing records based on Role Models v. Brownlee, 353 F.3d 962 (D.C. Cir. 2004). They ignore entirely the Court's prior decision in which the Court concluded that the current case provides a "stark[] contrast" with the factors that led to the court of appeals' decision in Role Models. October 2009 Opinion at 13-14; see also Blackman v. District of Columbia, Civil Action No. 97-1629, 2010 U.S. Dist. LEXIS 182 at *44-46. The Court has reviewed the challenged time records and concludes that they provide sufficient detail so that the Court can determine "'with a high degree of certainty' that the hours billed were actually and reasonably expended, that the hourly rate charged was reasonable, and that the matter was appropriately staffed to do the work required efficiently and without duplicative billing." Watkins v. Vance, 328 F. Supp. 2d 23, 26 (D.D.C. 2004) (quoting In re Olson, 884 F.2d 1415, 1428-29 (D.C. Cir. 1989) (emphasis in original)).

Finally, defendants again raise the so-called fee cap issue and challenge payment of any fee award of more than \$4,000. See First Opp. at 11-12; Second Opp. at 10-11. Defendants acknowledge that the Court has already resolved this issue and note that they raise it again only to preserve the issue for appeal. The Court will once again reject defendants' argument for the reasons it has previously stated. See Blackman v. District of Columbia, Civil Action No. 97-1629, 2010 U.S. Dist. LEXIS 182 at *47-48; Petties v. District of Columbia, 538 F. Supp. 2d 88, 96 (D.D.C. 2008).

For the reasons stated above, it is hereby

ORDERED that plaintiffs' motion for attorneys' fees for the period December 1, 2007 through February 29, 2008 [1703] is granted in part and denied in part. It is granted in all respects, except that the amount of fees awarded for time spent by class counsel working on and monitoring the Blackman/Jones case shall be reduced by thirty percent from the requested amount; it is

FURTHER ORDERED that plaintiffs' motion for attorneys's fees for the period March 1, 2008 through May 31, 2008 [1724] is granted in full.

FURTHER ORDERED that the parties shall submit a joint proposed order awarding fees consistent with this Memorandum Opinion and Order on or before February 18, 2010.

SO ORDERED.

/s/ _____
PAUL L. FRIEDMAN
United States District Judge

DATE: February 4, 2010