

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

ELIZABETH C. BARRETT, et al.,	:	
	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 03-CV-4978
	:	
WEST CHESTER UNIVERSITY	:	
OF PENNSYLVANIA OF THE	:	
STATE SYSTEM OF HIGHER	:	
EDUCATION, et al.	:	

SURRICK, J.

MARCH 31, 2006

MEMORANDUM & ORDER

Presently before the Court is Plaintiffs’ Motion For Award Of Attorney’s Fees And Costs (Doc. No. 32). For the following reasons, Plaintiffs’ Motion will be granted in part and denied in part.

I. BACKGROUND

A. Underlying Litigation¹

On April 28, 2003, West Chester University (“WCU”),² announced its decision to eliminate its women’s gymnastics and men’s lacrosse programs. At the same time, WCU stated that it intended to add women’s golf to its athletic program. Immediately thereafter, Plaintiffs,

¹ The facts related to the underlying litigation are addressed more thoroughly in our Memorandum and Order dated November 12, 2003 (Doc. No. 18).

² In addition to WCU, Plaintiffs named the following individuals as defendants: Madeleine Wing Adler, President of WCU; Edward M. Matejkovic, Director of Athletics; and Barbara Cleghorn, Assistant Director of Athletics for Eligibility and Compliance.

eight members of the women's gymnastics team,³ began their attempts to have the team reinstated.

James Barrett, a concerned parent of one of the team members, contacted Trial Lawyers for Public Justice ("TLPJ"), a public interest law firm based in Washington, D.C., which ultimately took on the case. TLPJ contacted Hangley Aronchick Segal & Pudlin ("Hangley firm") and engaged the firm as co-counsel in the matter. TLPJ has been involved in Title IX litigation since 1985 when Arthur Bryant, the Executive Director of TLPJ, served as lead counsel in *Haffer v. Temple University*, 688 F.2d 14 (3d Cir. 1982). (Bryant Decl., Doc. No. 32 at Ex. 2.) William Hangley, a founder and shareholder of the Hangley firm, is an experienced litigator with experience in Title IX litigation, having participated in the *Haffer* case. (Hangley Decl., Doc. No. 32 at Ex. 4.) As a public interest law firm, TLPJ does not charge its clients for services rendered but does seek attorney's fees pursuant to fee-shifting statutes. (Bryant Decl., Doc. No. 32 at Ex. 2.) The Hangley firm, which does charge clients for its services, agreed to work on this case because of the "important social value in enforcing Title IX." The firm "viewed the risk of loss and the certainty that any payment would be delayed as a pro bono contribution on the firm's part." (Hangley Decl., Doc. No. 32 at Ex. 4.)

Plaintiffs' attempts to have the gymnastics team reinstated without court involvement failed, and on September 4, 2003, Plaintiffs filed the instant lawsuit along with a motion for a preliminary injunction. Plaintiffs claimed that Defendants' elimination of the women's

³ As originally filed, this lawsuit included a ninth plaintiff, Cecile Allen. Plaintiffs subsequently withdrew Allen as a Plaintiff, agreeing that she lacked the requisite standing for the preliminary injunction because she had transferred to Penn State University after West Chester University announced its decision to eliminate the gymnastics program.

gymnastics team violated Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.* Plaintiffs sought to restore the women's gymnastics team and made specific requests as to the team's funding and resources.

After the parties fully briefed the issues and following a hearing that spanned four days, we granted Plaintiffs' request for a preliminary injunction and ordered Defendants to immediately reinstate the women's gymnastics team. Following our decision, the parties agreed to a settlement which provided that the preliminary injunction would become permanent and that all claims that were not related to the discontinuance of the gymnastics team would be dismissed without prejudice. (Doc. No. 29.) The parties entered into an additional, separate agreement wherein Plaintiffs agreed not to seek a portion of the fees for work that their attorneys performed from January 1, 2004 through completion of the settlement negotiations. (Hangley Decl., Doc. No. 32 at Ex. 4 ¶ 32; McKee Decl., Doc. No. 32 at Ex. 5 ¶ 50.) Plaintiffs also agreed to forego a portion of the costs that they have incurred in preparing their fee petition. (*Id.*)

B. Fee Petition

Pursuant to 42 U.S.C. § 1988, 28 U.S.C. §§ 1821 and 1920, and Federal Rule of Civil Procedure 54, Plaintiffs presently request attorney's fees in the amount of \$207,609.50 and costs in the amount of \$12,477.82, for a total of \$220,087.32.⁴ Defendants object to these totals, contending that the number of hours spent on the litigation and the hourly rate of some of Plaintiffs' attorneys are unreasonable. Defendants contend that the costs should be reduced and suggest that a reasonable figure for attorney's fees would be \$81,858.10. (Doc. No. 35 at 55-58.)

⁴ Plaintiffs request that \$169,661.28 be awarded to the Hangley Firm and that \$50,426.04 be awarded to TLPJ.

C. Public Policy Concerns

WCU is a public university, supported by the taxpayers of Pennsylvania and federal funds. In concluding that the preliminary injunction was appropriate and ordering that the university reinstate its women's gymnastics program, we recognized the financial problems that WCU faced. *Barrett v. West Chester Univ. of Pa.*, No. Civ. A. 03-4978, 2003 WL 22803477, at *15 (E.D. Pa. Nov. 12, 2003). Like many public universities across the country in 2004, WCU was required to cut expenses as its university-wide budget was reduced.⁵ We concluded, nevertheless, that Title IX prohibited the reduction of participation opportunities for women athletes at the university. WCU complied, and Plaintiffs competed in the 2004 gymnastics season.

Presently before us is Plaintiffs' detailed request for attorney's fees and costs. Defendants agree that, pursuant to 42 U.S.C. § 1988, Plaintiffs are entitled to recover fees and costs. However, Defendants suggest that Plaintiffs' request is unreasonable and that an amount significantly less than Plaintiffs' request is appropriate. Our task is to carefully review the fee request and determine whether the evidence presented supports the request. In so doing, we will consider the public nature and financial circumstances of Defendants. *Alizadeh v. Safeway Stores*, 910 F.2d 234, 238 (5th Cir. 1990) (while the non-prevailing party's financial condition is not appropriate to consider in determining *whether* to award attorney's fees, it is appropriate to consider when determining the *amount* of the attorney's fees). In a case like this, where the award of attorney's fees will affect the public treasury and will have a direct impact on the

⁵ The yearly budget for the women's gymnastics program at WCU in 2002-2003 was \$30,000. *Barrett*, 2003 WL 22803477, at *29 n.18.

students at the university, our review must be particularly careful. *See Keyes v. Sch. Dist. No. 1, Denver, Colo.*, 439 F. Supp. 393, 415 (D. Colo. 1977) (in school desegregation case, court considers the fact that “the very entity mandated to restructure its school system . . . will have to further expend public funds for attorneys who brought the restructuring to fruition”).

II. LEGAL STANDARD

The Civil Rights Attorney’s Fees Awards Act of 1976, 42 U.S.C. § 1988, authorizes the district courts to award a reasonable attorney’s fee to prevailing parties in civil rights litigation.⁶ The purpose of § 1988 is to “ensure ‘effective access to the judicial process for persons with civil rights grievances.’” *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983) (quoting H.R. Rep. No. 94-1558, at 1 (1976)). Accordingly, a prevailing plaintiff “should ordinarily recover an attorney’s fee unless special circumstances would render such an award unjust.” *Id.* (quoting S. Rep. No. 94-1011, at 4 (1976)).

The Supreme Court in *Hensley* noted that both the House and Senate Reports referred to the twelve factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), when describing how courts should determine the amount of a reasonable fee. *Hensley*, 461 U.S. at 430. Those factors are:

- (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill required to perform the legal service properly; (4) the preclusion of employment by the attorney due to the 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

⁶ 42 U.S.C. § 1988(b) provides: “In any action or proceeding to enforce a provision of . . . title IX of Public Law 92-318 . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney’s fee as part of the costs.”

the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

Id. at 430 n.3.

In assessing the reasonableness of attorney's fees, courts apply the "lodestar" formula, which multiplies "the number of hours reasonably expended by a reasonable hourly rate." *Maldonado v. Houstoun*, 256 F.3d 181, 184 (3d Cir. 2001). "When the applicant for fee has carried his burden of showing that the claimed rates and number of hours are reasonable, the resulting product is presumed to be the reasonable fee to which counsel is entitled." *Id.* (quoting *Pennsylvania v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546, 564 (1986)). In determining whether hours were reasonably expended, courts should "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." *Id.* (quoting *Pub. Int. Research Group of N.J., Inc. v. Windall*, 51 F.3d 1179, 1188 (3d Cir. 1995)). Thus, courts have "a positive and affirmative function in the fee fixing process, not merely a passive role." *Id.*

In calculating a reasonable hourly rate, courts look to the prevailing market rates in the relevant community. *Blum v. Stenson*, 465 U.S. 886, 895 (1984). The attorney's typical billing rate is a starting point for the court's determination, but it is not dispositive. *Windall*, 51 F.3d at 1185.

III. DISCUSSION

A. Attorney's Fees

1. Hourly Rate for the Hangley Firm

While Defendants acknowledge, and we agree, that William Hangley has an excellent reputation in the Philadelphia legal community as a litigator and an accomplished advocate, Defendants contend that Hangley's regular rate of \$500 per hour is unreasonable in this situation. In *Maldonado*, the Third Circuit observed that an attorney's normal hourly fee is a "starting point" in evaluating what is reasonable in a given case. *Maldonado*, 256 F.3d at 184-85. In *Daggett v. Kimmelman*, 811 F.2d 793 (3d Cir. 1987), the Third Circuit affirmed the district court's reduction of an attorney's hourly fee and concluded that the district court's decision was a "matter of judicial discretion." *Id.* at 800. In reaching that conclusion, the Court drew a distinction between the rates that private clients are willing to pay and the appropriate amount that one can charge his or her adversary:

While it may be appropriate for a lawyer of Mr. Hellring's standing at the bar . . . to charge his private clients \$300.00 or more per hour, there nevertheless comes a point where a lawyer's historic rate, which private clients are willing to pay, cannot be imposed on his or her adversaries. . . . [Section] 1988 use[s] the words "reasonable" fees, not "liberal" fees. Such fees are different from the prices charged to well-to-do clients by the most noted lawyers and renowned firms in a region. . . . If we were confronted with a case where a litigator of national repute charged \$1,000 per hour in the legal marketplace and nevertheless had innumerable clients waiting at his or her door to pay such rates, that extraordinary level of remuneration could not be legally imposed as a matter of course on an adversary in a prevailing party's counsel fee case.

Daggett, 811 F.2d at 799-800 (internal citations omitted); *see also Del. Valley Citizens' Council for Clean Air*, 478 U.S. at 565 (fee shifting "statutes were not . . . intended to replicate exactly

the fee an attorney could earn through a private fee arrangement with his client”). We have no doubt, considering Hangle’s stature in the legal community, that he can command—and private clients will pay—\$500 per hour for his services. However, this is not a private client. The Hangle firm agreed to assist TLPJ, a public interest law firm, in this public interest litigation. The Hangle firm admittedly considered it a pro bono contribution by the firm. Although they are entitled to be compensated for their services, we are satisfied that an adjustment in Hangle’s hourly rate is appropriate under the circumstances.

Defendants propose the Community Legal Services (“CLS”) schedule as an alternative to Hangle’s usual hourly rate. We note that in reducing an attorney’s normal rate, the Third Circuit and several courts in this District, have turned to the CLS schedule for guidance. *Maldonado*, 256 F.3d at 187; *Sheffer v. Experian Info. Solutions Inc.*, 290 F. Supp. 2d 538, 543-44 (E.D. Pa. 2003); *Reynolds v. USX Corp.*, 170 F. Supp. 2d 530, 532-33 (E.D. Pa. 2001); *Skaggs v. Hartford Fin. Group*, No. Civ. A. 99-3306, 2001 WL 1665334, at *20 (E.D. Pa. Sept. 28, 2001). Under the CLS schedule, attorneys with more than twenty-five years of experience are compensated at between \$310 and \$400 per hour. In light of Hangle’s stature in the Philadelphia legal community, we will set his hourly compensation at \$400, the highest rate on the CLS schedule.

Defendants also object to the hourly rates of the Hangle firm’s paralegals, Gisela Miller and Barbara Giordano, which are \$125 and \$140, respectively. Plaintiffs state that these rates fall within the Hangle firm’s rates for paralegals, and provide the declaration of Barbara Mather, which indicates that these rates “are well within the reasonable range charged by law firms for similar work.” (Doc. No. 32 at Ex. 6 ¶ 12.) Again, while we do not question whether the

Hangley firm's private clients would pay these rates for Miller and Giordano's services, we cannot agree that they are reasonable rates to charge in this instance. Instead, we will apply the CLS schedule for Miller and Giordano's services. According to Plaintiffs, Miller was relatively inexperienced and Giordano had "substantial litigation experience" when they worked on this case. (Doc. No. 32 at 26.) We will set Miller's rate at \$90 per hour (the highest rate in the Paralegals I and II category) and Giordano's rate at \$120 per hour (the highest rate in the Senior and Supervisory Paralegals category).

We note also that Defendants do not contest the rates requested by Sharon McKee and Shawn Weede, both attorneys at the Hangley firm. We will set their rates at \$235 per hour and \$150 per hour respectively.⁷

2. Hourly Rate for TLPJ

Defendants' primary objection with regard to the hourly rates for TLPJ attorneys involves TLPJ's use of the *Laffey* matrix,⁸ as opposed to the CLS schedule.⁹ Under the *Laffey* schedule, which is used in Washington, D.C., where TLPJ is located, Plaintiffs submit that the TLPJ hourly rates would be as follows: Bryant at \$380; Brueckner at \$335; Epstein at \$220; and Kimmel at \$335. Defendants contend that the TLPJ attorneys should be paid at the forum rate rather than

⁷ While Defendants do not challenge Weede's hourly rate, they do challenge the inclusion of Weede's time in the lodestar calculation.

⁸ The *Laffey* matrix was developed in *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983), *overruled on other grounds*, 746 F.2d 4 (D.C. Cir. 1984). The matrix is updated annually by the United States Attorney's Office for the District of Columbia. (Doc. No. 32 at Ex. 2 ¶ 44; *id.* at Ex. 2B.)

⁹ It is undisputed that the TLPJ attorneys do not have regular billing rates.

their home rate. While the Third Circuit has not articulated a bright line rule for determining the relevant market, we find the analysis in *Windall* to be instructive. In *Windall*, the court discussed the findings of a court-appointed task force, which recommended the adoption of a forum rate rule. In reaching this conclusion, the task force observed that the home rule could complicate matters for courts and could create problems in “selecting hourly rates for visiting lawyers from other parts of the country litigating in [this] forum.” *Windall*, 51 F.3d at 1186. The task force “concluded that the best rule is the ‘forum rate’ rule” and recommended deviation “only when the need for ‘special expertise of counsel from a distant district’ is shown or when local counsel are unwilling to handle the case.” *Id.* (quoting Third Circuit Task Force, *Court Awarded Attorney Fees*, 108 F.R.D. 237, 260-62 (1986)).

While courts have applied the home rate of attorneys when special expertise or inability to find local counsel has been demonstrated, we are not persuaded that there is a need to do so here. *Cf. Church of the Am. Knights of the Ku Klux Klan v. City of Erie*, No. Civ. A. 98-337, 2000 WL 33201872, at *6-7 (W.D. Pa. Nov. 24, 1998); *Charles Q. v. Houstoun*, No.1: CV-95-280, 1997 WL 827546, at *3 (M.D. Pa. Sept. 30, 1997). It is clear that TLPJ is among the most experienced public interest organizations in dealing with Title IX litigation. However, we are not convinced that the Hanglely firm and/or other members of the Philadelphia legal community would have been unwilling or unable to handle this case without TLPJ’s expertise. *See Playboy Enters., Inc. v. Universal Tel-A-Talk, Inc.*, No. Civ. A. 96-6961, 1999 WL 712580, at *3 (E.D. Pa. Sept. 10, 1999) (applying forum rate where there has been no showing of special skill or expertise and no showing that Philadelphia attorneys are unwilling or unable to represent Playboy). This case was litigated in Philadelphia and involved Philadelphia-area defendants.

Defendants were represented by the Office of the Attorney General of Pennsylvania. There is nothing, other than TLPJ's location, that would tie this case to the Washington, D.C. market.

In support of their claim that the TLPJ attorneys offered expertise that justifies applying the Washington, D.C. rates, Plaintiffs cite the district court decision in *Cohen v. Brown University*, Civ. A. No. 92-197, 2001 U.S. Dist. LEXIS 22438, at *134 (D.R.I. Aug. 10, 2001). In *Cohen*, the district court found that Bryant and Brueckner's expertise was of the sort that could not be found in the Providence, Rhode Island legal community in 1991 when Title IX litigation was a relatively new phenomenon. As stated above, the TLPJ attorneys are leaders in the field of Title IX litigation, and we do not doubt that TLPJ played a significant role in representing Plaintiffs. However, unlike the plaintiffs in the *Cohen* case, Plaintiffs here were able to retain very competent local counsel with experience in litigating Title IX cases. (Hangley Aff., Doc. No. 32 at Ex. 4 ¶ 2.) Plaintiffs have not demonstrated a need to import special expertise nor have they shown an inability to find local counsel with the required experience. Accordingly, we conclude that the forum rate, as established in the CLS schedule, should govern TLPJ's hourly rates.

Under Philadelphia's CLS schedule, Bryant, who has more than twenty years of experience, would be compensated between \$270 and \$310 per hour. Defendants acknowledge that Bryant is at the top of the range and should receive \$310 per hour. Brueckner (sixteen years experience) and Kimmel (nineteen years experience) fall in the \$250-\$270 range. Defendants submit that Brueckner should be compensated at \$260 and Kimmel at \$270. Defendants do not object to the requested hourly rate of \$220 for Epstein, who has between six and ten years of experience (Doc. No. 32 at 29), which correlates to \$200-\$250 on the CLS schedule. We will

therefore approve of the requested rates. These figures are a fair and accurate application of the CLS schedule. Thus, with respect to the hourly rates of the members of Plaintiffs' legal team, we will apply the following rates:

Hangley:	\$400
McKee:	\$235
Weede:	\$150
Miller:	\$90
Giordano:	\$120
Bryant:	\$310
Brueckner:	\$260
Kimmel:	\$270
Epstein:	\$220

3. Hours Expended

When reviewing the number of hours spent by each member of Plaintiffs' legal team, we examine the requested fees for redundancy and excessiveness. *Hensley*, 461 U.S. at 434. The Supreme Court points out that "cases may be overstaffed . . . Counsel for the prevailing party should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary." *Id.* Plaintiffs seek attorney's fees for seven attorneys and two paralegals, who spent a combined total of 694.45 hours on this case. We will examine these hours in five time-frames: (1) the period encompassing the beginning of the case through the July 25, 2003 demand letter, (2) the period during which the Complaint and Motion for Preliminary Injunction were filed, (3) the period of preparation for the hearing on the Preliminary Injunction Motion, (4) the hearing itself, and (5) the period after the hearing.

Hours Through the July 25, 2003 Demand Letter

Defendants seek to exclude all hours claimed in June 2003 because Plaintiffs did not officially retain counsel until the end of June or beginning of July. *Barrett*, 2003 WL 22803477, at *1 n.4. We recognize, however, that “[i]nterviews, correspondence, and meetings with a potential plaintiff may yield factual information which will be utilized in pursuing the litigation so that the time billed for those activities can be considered time expended on the litigation.” *ACLU of Ga. v. Barnes*, 168 F.3d 423, 436 (11th Cir. 1999); *see also Schlimgen v. City of Rapid City*, 83 F. Supp. 2d 1061, 1071 (D.S.D. 2000) (“Attorney’s fees may be granted for investigative work that was used for and, in fact, gave rise to the pending [civil rights] action.” (citing *McDonald v. Armontrout*, 860 F.2d 1456, 1461-62 (8th Cir. 1988))). We find it perfectly reasonable that TLPJ and the Hangle firm would preliminarily gather facts and research before agreeing to represent Plaintiffs and that they would use this information during the course of the litigation. Therefore, we will not eliminate these hours across the board, but will look at the individual entries for redundancy and excessive hours.

Defendants contend that all of Bryant’s time in June should be excluded because it was before TLPJ took the case. However, as mentioned above, time spent on a potential plaintiff may be included in a fee award. Bryant’s 0.9 hours in June were reasonable and properly billed to Defendants.

In addition to Bryant, Rebecca Epstein of TLPJ also spent significant time on this matter in June and July. Defendants contend that 2.49 hours of Epstein’s time was spent on administrative matters relating to the relationship between TLPJ and the plaintiffs and that this time should not be charged to Defendants. We agree that WCU should not have to pay for Epstein’s time spent on formalizing the attorney-client relationship and the relationship between

TLPJ and the Hangley firm attorneys. *Role Models Am., Inc. v. Brownlee*, 353 F.3d 962, 973 (D.C. Cir. 2004) (“The [Defendant] should not have to pay for administrative matters relating to the formal relationship between [Plaintiff] and its attorneys.”). We calculate that Epstein spent 2.32 hours during this phase working on the retainer agreement.¹⁰ Accordingly, we will deduct these hours from the lodestar figure. Contrary to Defendants contention, however, we find that Epstein’s 3.09 hours spent on preparing the demand letter was not excessive and was a reasonable expenditure of time for the task, as was McKee’s 0.6 hours spent speaking with Epstein and reviewing the draft demand letter. We will not exclude that time.

With regard to William Hangley, he spent 1.6 hours on this matter in July. Defendants contend that his entry for one hour on July 8, 2003, which simply states, “Rebecca Epstein,” should be excluded for vagueness. We agree and will strike that hour for failure to provide more precise information as to how the time was spent. *See Washington v. Phila. County Ct. Com. Pl.*, 89 F.3d 1031, 1038 (3d Cir. 1996) (an attorney’s submissions should “provide[] enough information as to what hours were devoted to various activities and by whom for the district court to determine if the claimed fees are reasonable”).

a. July 26 – September 4, 2003 (Filing Complaint and Motion)

During this period of the litigation, Plaintiffs conducted factual and legal research, unsuccessfully attempted to negotiate a settlement agreement with Defendants, and prepared the Complaint and Motion for Preliminary Injunction. Plaintiffs seek fees for a total of 197.59 hours

¹⁰ Epstein spent time on the retainer agreement on 6/25, 7/15, 7/16, 7/17, 7/21, 7/22, and 7/28. (Doc. No. 32 at Ex. A.) *See infra* Part III.A.3.b. for additional discussion of time spent on the retainer agreement by Brueckner and Epstein.

for five attorneys and two paralegals during this phase of the litigation. Defendants claim that this number is “grossly unreasonable.” (Doc. No. 35 at 24.) Plaintiffs submit that the fifteen-page Complaint took McKee 11.0 hours to draft on August 10th and August 29th.¹¹ (Doc. No. 32 at Ex. A.) However, in comparing Plaintiffs’ Complaint with the one filed in *Favia v. Indiana University of Pennsylvania*, 812 F. Supp. 578 (W.D. Pa. 1992), we note that the two documents are strikingly similar, with entire passages that are almost exactly the same. (Doc. No. 35 at Ex. D.) We also note that Plaintiffs’ Complaint dedicates two full pages to “Class Action Allegations.” Class certification was never pursued. Under the circumstances, we conclude that McKee’s time for drafting the Complaint should be reduced from 11.0 hours to 8.0 hours.

Defendants also assert that the number of hours spent on drafting and revising the Motion for Preliminary Injunction was unreasonable. In total, between August 11, 2003 and September 4, 2003, McKee spent 69.6 hours preparing the Motion for Preliminary Injunction.¹² Defendants contend that this is unreasonable. However, the hours are supported by the time sheets and explanatory notes, and we cannot conclude that it would be unreasonable for an attorney to devote this kind of time to a thirty-page motion that included 161 pages of exhibits.

However, we will review specific entries for excessiveness, vagueness, and redundancy. First, on September 1, 2003, McKee spent 4.8 hours revising the declaration of expert witness Christine Grant. We note that much of Grant’s declaration is word-for-word the same as her declaration in the *Favia* case. In fact, the first six and one-half pages of the eleven-page

¹¹ Research was listed as separate entries on Plaintiffs’ counsel’s time sheets.

¹² McKee actually spent 70.6, but as discussed *infra*, we will strike the 1.0 hour entry for Cecile Allen’s declaration.

declaration is almost exactly the same. The remaining pages follow the same model as used in the *Favia* case, and simply insert facts specific to the instant case. In light of this, we will reduce the time by 2.0 hours.

In addition, we review a number of Hangle's entries, which Defendants contend should be excluded for vagueness. Hangle submitted two time entries for September 4, 2003. The first, for 1.8 hours, states: "Review materials, declarations as filed." The entry does not provide enough information for the Court to make a full evaluation of the time, but it seems to pertain to a review of the motion, after it was filed. We cannot agree that it was necessary or reasonable for Hangle to spend this time reviewing the documents after they were filed. We will exclude this entry. *See Role Models Am.*, 353 F.3d at 973 (excluding time spent reviewing summary of argument by Plaintiff's lead attorney after oral argument). The second entry, for 2.0 hours, states: "Various re filed suit." We find this entry to be vague and conclude that it does not adequately support the request of the corresponding fee. We will strike this entry (2.0 hours). Accordingly, we deduct 3.8 hours from Hangle's time during this period.

Defendants also object to the time spent by counsel on Cecile Allen's declaration. Our decision of November 12, 2003 concluded that because Allen had transferred to Pennsylvania State University, she lacked standing as a Plaintiff to this lawsuit. We will deduct the hour spent by McKee on Allen's declaration. *See Rode v. Dellarciprete*, 892 F.2d 1177, 1183 (3d Cir. 1985) (courts can reduce the hours claimed by the number of hours "spent litigating claims on which the party did not succeed and that were 'distinct in all respects from' claims on which the party did succeed" (quoting *Institutionalized Juveniles v. Sec'y of Pub. Welfare*, 758 F.2d 897, 919 (3d Cir. 1985))).

In addition, Defendants also object to the time spent by Brueckner and Epstein on the retainer agreement during this time frame. As previously discussed, we will not permit time associated with drafting retainer agreements. Plaintiffs contend that such time is compensable, and cite to *Bailey v. District of Columbia*, 839 F. Supp. 888, 891 (D.D.C. 1993). However, we conclude that this activity does not constitute time “reasonably expended on the litigation.” *Webb v. Bd. of Educ. of Dyer County, Tenn.*, 471 U.S. 234, 242 (1985) (quoting *Hensley*, 461 U.S. at 433); *see also Role Models Am.*, 353 F.3d at 973 (excluding time spent on drafting and revising the firm’s the engagement letter with Role Models). Accordingly, we will deduct the 0.60 hours for retainer work submitted by Brueckner on August 25 and August 26, 2003, and the 0.17 hours submitted by Epstein for filing the completed retainers on July 28, 2003.

b. Hearing Preparation (September 5 – September 28, 2003)

During this phase of the litigation, Plaintiffs spent a total of 206.50 hours preparing for the preliminary injunction hearing. Defendants contend that this amount of time is unreasonably excessive, as compared to the hearing itself, which lasted approximately twenty-four hours over the course of four days. Defendants contend that a two-thirds reduction in the number of hours is appropriate. The Third Circuit has found that the court “may reduce the number of hours prong of the lodestar only ‘if the adverse party has . . . raised a material fact issue as to the accuracy of representations as to hours spent, or the necessity for their expenditure.’” *Rainey v. Phila. Hous. Auth.*, 832 F. Supp. 127, 129 (E.D. Pa. 1993) (quoting *Bell v. United Princeton Props.*, 884 F.2d 713, 719 (3d Cir. 1989)). The Court has wide discretion to reduce fees in light of objections. *Id.* *Rainey* points out that, “the higher the allowed hourly rate commanded based on skill and experience, the shorter the time it should require an attorney to perform a particular task.” *Id.* In

the instant case, McKee devoted at least 100 hours to preparations for the hearing. At least 90 of those hours were delineated for general “preparation for hearing” or “revising outlines.” The Hangley firm is a highly skilled, experienced law firm and, at the time of the hearing, McKee was a seventh-year associate with the firm. (McKee Decl., Doc. No. 32. at Ex. 5 ¶ 4.) We agree that the amount of time spent by McKee on general preparation for the hearing is unreasonable. We will reduce the number of general preparation hours by 25%, deducting 22.5 hours from McKee’s time.

In addition to McKee’s hours, Defendants also object to the time spent by Gisela Miller, one of the Hangley paralegals, on the preparations for the preliminary injunction hearing, the depositions, and the witness preparation. During this time frame, Miller spent at least 4.9 hours on purely administrative calls, letters, and faxes. She consistently spent 18 minutes or more on calls to the clerk of court or to the court reporting service to schedule depositions. We find these time submissions to be excessive for the listed tasks and will therefore deduct 2.5 hours from Miller’s overall time spent in this phase of the litigation.

We also note that during the hearing-preparation phase, Plaintiffs’ counsel devoted time to preparing Cecile Allen for the hearing. As discussed above, Allen was never called as a witness. Accordingly, we will deduct this time from Plaintiffs’ request—specifically, 1.6 hours spent by McKee preparing Cecile Allen for the hearing.

Defendants also claim that time spent by McKee (0.10) and Miller (1.10) on September 10th and September 12th concerning Brueckner’s application for admission *pro hac vice* is not compensable. Defendants cite to *Sheffer*, 290 F. Supp. 2d at 552, which states that *pro hac vice*

fees are not recoverable under § 1920. However, we assess fees in this case under § 1988 and not § 1920. Under § 1988, a court may award costs that are appropriately billed to Plaintiff's client. *Hensley*, 461 U.S. at 434. In *P.R. Hall v. Lowder Realty Co., Inc.*, 263 F. Supp. 2d 1352, 1369-70 (M.D. Ala. 2003), the court concluded that *pro hac vice* fees are recoverable under § 1988 when the fees are of the kind that would normally be charged to a fee-paying client. As will be discussed below, we conclude that *pro hac vice* fees are recoverable as costs and find that the hours spent on Plaintiffs' application for admission *pro hac vice* should likewise be covered in the fees application.

c. The Hearing (September 29 – October 6, 2003)

During this phase of the litigation, Plaintiffs seek compensation for 131.9 hours spent at the four-day hearing on their motion for a preliminary injunction. (Doc. No. 32 at 44.) The hearing took place for half a day on September 29, 2003, for two full days on September 30 and October 1, and for half a day on October 6, 2003. (Doc. No. 35 at 31.) Defendants do not propose across-the-board reductions during this stage of the litigation, but do object to specific entries. (Doc. No. 35 at 35.)

First, Defendants object to Miller's phone calls to court personnel to obtain transcripts. Defendants contend that transcripts were unnecessary at this stage of the litigation. We disagree. We find that Plaintiffs' measures to prepare for an anticipated appeal were reasonable. We approve the time spent on ordering transcripts after the hearing.

Defendants also object to time entries by Hangley and McKee for the last day of the hearing, October 6, 2003. Defendants correctly point out that the hearing lasted approximately

3.5 hours on that day.¹³ Hangle's entry lists 8.0 hours on that day for "Hearing and Closing Argument. Cleanup." (Doc. No. 32 at Ex. 5A.) While Hangle's time spent on the hearing and closing argument are reasonable, the term "cleanup" is not specific enough to permit us to determine whether the hours were reasonably spent. We therefore deduct 4.4 hours from Hangle's claims for that day. Because McKee lists 4.3 hours for "Preliminary Injunction Hearing" on that day, we deduct 0.7 hours from her claim. (*Id.*)

Defendants also protest Brueckner's 20.5 hours for attendance at the hearing on September 29th, September 30th, and October 1st.¹⁴ Defendants argue that this time was wholly unnecessary because Plaintiffs were already represented by a senior partner and a seventh-year associate throughout the hearing. (Doc. No. 35 at 37.) Plaintiffs argue that Brueckner's participation at the hearing was appropriate because she brought special Title IX expertise to the team. In *Lanni v. New Jersey*, 259 F.3d 146, 151 (3d. Cir. 2001), the Court approved the finding that the presence of two named partners at trial was excessive and disallowed the claimed hours of the second partner. *Id.* The Court explained that "trial courts should not accept passively the submission of counsel to support the lodestar amount. . . . For example, where three attorneys are present at a hearing when one would suffice, compensation should be denied for the excess time." *Id.* (quoting *Rendine v. Pantzer*, 661 A.2d 1202, 1226 (N.J. 1995)); see also *Apple Corps. v. Int'l Collectors Soc'y*, 25 F. Supp. 2d 480, 489 (D.N.J. 1998) ("In certain cases, the attendance of additional counsel representing the same interests as the attorney actually participating in a

¹³ The hearing on October 6, 2003 began at 9:00 a.m. and ended at 12:35 p.m. (3.6 hours).

¹⁴ Defendants do not object to Brueckner's 0.5 hours spent arguing before the Court on October 1, 2003 but contest all of the rest of her time spent in attendance at the hearing.

hearing is wasteful and should not be included in a request for counsel fees from an adversary.” (internal quotation omitted)). While Defendants argue that Brueckner’s Title IX expertise surpasses that of Hangley or McKee, Plaintiffs could have chosen another combination of attorneys to be present at the hearing at all times. Ms. Brueckner testified and presented her Oral Arguments on October 1, 2003. We find that it was reasonable for her to be present for the full day of the hearing (8.5 hours) because she did not know when she would be called upon to present. However, we find that the remainder of the 20 hours is not reasonable. Accordingly, we deduct 12.0 hours from Brueckner’s time, finding her presence on the first two days to be duplicative.

In addition to the time spent at the preliminary injunction hearing, this phase of the litigation also includes time spent on Plaintiffs’ reply and sur-reply briefs in opposition to Defendants’ Motion to Dismiss. Defendants object to the amount of time Brueckner spent responding to Defendants’ Motion to Dismiss. Plaintiffs respond that the reply and sur-reply briefs involved a novel issue of Title IX law, because Defendants moved to dismiss the action on the basis of *Alexander v. Sandoval*, 532 U.S. 275 (2002), arguing that there was no private right of action for disparate impact claims under Title IX. This motion was of critical importance to Plaintiffs. Had we accepted Defendants’ argument, it would have negated Plaintiffs’ claim and set a precedent with which future Title IX plaintiffs would have had to contend. In addition, the second factor in the *Hensley* twelve-factor test is the “novelty and difficulty of the questions.” *Hensley*, 461 U.S. at 430. We agree with Plaintiffs that the *Sandoval* issue presented novel issues of Title IX law that justified significant time. Therefore, we approve the time spent by Brueckner on this issue.

In addition to Brueckner's time spent on the Motion to Dismiss, Defendants also object to McKee's 6.3 hours spent reading, reviewing, and revising Plaintiffs' sur-reply brief. Defendants argue that "in view of the large of amounts of time Ms. Brueckner seeks to be paid for completing this brief, and in view of the fact that Mr. Hangle's time for 10/3 was partly devoted to editing the brief" these hours were duplicative. (Doc. No. 35 at 36.) We agree. Accordingly, we deduct McKee's 6.3 hours spent working on this brief.

d. Post-hearing (October 7 – December 31, 2003)¹⁵

The post-hearing phase of the litigation consisted of time spent by Plaintiffs monitoring Defendants' compliance with the preliminary injunction and preparing for Defendants' eventual appeal. In addition, this phase also included time spent preparing for and attending settlement conferences. Plaintiffs do not seek fees for any time spent after the new year, nor do they seek fees for time spent on the fee application itself, which also occupied their time during this phase. Defendants, however, contend that "almost none" of the 73 hours Plaintiffs request during this period should be included in Plaintiffs' lodestar figure. (Doc. No. 35 at 39.)

Defendants object to numerous time entries by Miller. First, Defendants argue that Miller's time spent securing transcripts was not necessary. We have already determined that this is a reasonable expense because Plaintiffs needed the transcripts for use on appeal. As such, we approve the time spent by Miller on this task. Defendants also contend that Miller's time (0.3 hours on October 8th) spent to obtain the court's docket was unreasonable because Plaintiffs could have obtained a copy of the docket from PACER in several minutes. We agree and deduct

¹⁵ Plaintiffs do not seek reimbursement for time spent in 2004.

0.3 hours from Miller's time. Finally, Defendants point to Miller's entry on November 11th and argue that the notation "telephone call" is too vague. We agree and strike the 0.3 hours of Miller's time.

In addition, Defendants contend that none of Weede's time (6.4 hours) was reasonable or necessary because the work was in anticipation of an appeal. (Doc. No. 35 at 40.) We note that Plaintiffs have considerably reduced the number of Weede's hours for which they seek payment because many of those hours were spent on the fee petition. However, some of those hours also involve research on a potential appeal and were nevertheless deducted. Plaintiffs argue that the research on appeals that was not deducted was necessary and reasonable because Defendants did, in fact, file a notice of appeal of the Court's November 12, 2003 decision. (McKee Decl., Doc. No. 32 at Ex. 5 ¶ 46.) Attorneys cannot always predict precisely how litigation will unfold. *See Graham v. Johnson*, No. Civ. A. 02-7794, 2003 WL 22352729, *2 (E.D. Pa. Oct. 15, 2003) ("[T]his Court does not require counsel to sit on his hands waiting for a ruling when he should be actively preparing his case."). We conclude that time spent preparing for a potential appeal is reasonable and recoverable from Defendants. We find Weede's 6.4 hours to be reasonable.

Defendants' primary objection during this phase is to the time Hangle and McKee devoted to the case after the hearing. Defendants claim that as of the November 26, 2003 follow-up status conference with the Court, Defendants had "made clear their desire to settle" (Doc. No. 35 at 41) and argue that only time that facilitated this result should be charged to Defendants. Plaintiffs argue that the "fact that it took six months for the parties to reach agreement demonstrates on its face that settlement was not a done deal when Defendants indicated interest on November 26, 2003." (Doc. No. 38 at 17.) While we will scrutinize Plaintiffs' hours during

this phase in accordance with Defendants' objections, we consider time spent to facilitate a settlement agreement to be recoverable.

With this in mind, we will deduct a number of hours from Hangle's time because of vague descriptions which prevent the Court from determining the nature of the activity and its reasonableness. We deduct 1.0 hour of Hangle's time on October 13th because the entry "Update" is indeterminate; 1.0 hour of Hangle's requested 4.0 hours on November 12th because the task "Make various arrangements" is vague; 1.0 hour from Hangle's time on November 21st ("Various details and emails."); and 1.5 hours of Hangle's time on November 24th because Plaintiffs have agreed to forego fees on the fee petition and this entry deals specifically with the fee petition.

Defendants object to time spent by McKee and Hangle on preparation for settlement conferences and on status and phone conferences with the Court. Defendants argue that McKee's 8.0 hours spent preparing Plaintiffs' settlement conference memorandum on December 18th and 19th is an excessive amount of time. We disagree and find this time to be reasonable considering the importance of this document in reaching an acceptable settlement and considering the detailed nature of the end product. In addition, Defendants object to the presence of both Hangle and McKee for the November 20th status conference and the November 26th and December 5th follow-up telephone conferences, arguing that Hangle's time is duplicative.¹⁶ We agree that Hangle's time on those dates was unnecessary and duplicative and will therefore

¹⁶ Defendants agree that the presence of Hangle and McKee at the settlement conference on December 23rd was not duplicative because of the complexity of discussions at that meeting. (Doc. No. 35 at 42.)

strike 0.6 hours from Hangle's time to account for this. *See Evans v. Port Auth. of N.Y. & N.J.*, 273 F.3d 346, 362 (3d Cir. 2001) (remanding to District Court to determine whether the hours set out could have reasonably been completed by one attorney).¹⁷

e. Fee Calculation Table

The following table provides the Court's calculation of the lodestar figure, including each attorney's and paralegal's reasonable hourly rate, the number of hours deducted by the Court, the resulting number of hours per person, and the total amount recoverable by each member of Plaintiffs' team.

Attorney/ Paralegal	Hourly Rate	Hours Deducted by the Court	Resulting Hours	Lodestar
Hangle	\$ 400	14.3	129.3	\$ 51,720.00
McKee	\$ 235	37.1	297.3	\$ 69,865.50
Weede	\$ 150	0	6.4	\$ 960.00
Giordano	\$ 120	0	9.3	\$ 1,116.00
Miller	\$ 90	3.1	46.3	\$ 4,167.00
Bryant	\$ 310	0	3.6	\$1,116.00
Brueckner	\$ 260	12.6	109.3	\$28,418.00
Kimmel	\$ 270	0	7.8	\$ 2,106.00
Epstein	\$ 220	2.49	15.56	\$ 3,423.20

¹⁷ Plaintiffs contend that it was more effective to have both Hangle and McKee present for those conferences than to have one attorney attend and then spend extra time updating the other. However, we conclude that given Hangle's high hourly rate, the more cost-effective approach would be for McKee to attend the conferences and then quickly summarize and update them for Hangle. We conclude that their dual presence was duplicative and unnecessary.

Total Fees for Hangley firm: \$ 127,828.50

Total Fees for TLPJ: \$ 35,063.20

Total Overall Fees: \$ 162,891.70

B. Costs and Expenses

Plaintiffs seek a total of \$12,477.82 in costs and expenses. Many of Defendants' original objections to these costs were remedied when the Hangley firm withdrew several requests in Plaintiffs' Reply Memorandum.¹⁸ We will address only those objections that remain. First, Defendants claim that TLPJ's expenses should be disallowed because they are only generally supported by Bryant's declaration and because "[t]here is no supporting documentation whatsoever." (Doc. No. 35 at 56). It is well established that under § 1988 a prevailing party may recover reasonable costs and expenses that would normally be charged to fee-paying clients. *Hensley*, 461 U.S. at 429 (1983). However, such requests must be properly documented. *Loughner v. Univ. of Pittsburgh*, 260 F.3d 173, 181 (3d Cir. 2001). In the instant case, TLPJ lists their expenses in their original Motion. Specifically, TLPJ seeks \$471.18 for duplicating and telephone expenses, \$205.71 for computer research, \$62.67 for messenger and delivery services, and \$897.98 for travel expenses. In response to Defendants' objections, Plaintiffs' Reply Brief includes TLPJ's list of expenses with amounts and dates specified along with invoices, receipts, and affidavits in support thereof. (Doc. No. 38 at Ex. 1.) Because Defendants object to all of TLPJ's costs, we will review them individually.

¹⁸ In total, Plaintiffs withdrew \$2,707.54 in costs.

It is clear that TLPJ's costs for delivery, phone calls, duplicating, and research fees are reasonable given the facts of this case. TLPJ's telephone and duplicating costs are one of the few expenses not well-documented. However, these costs, which consist of \$67.18 for telephone charges, \$382.00 for duplication, and \$22.00 for facsimiles, are reasonable in light of the extent of involvement that TLPJ has had with this lawsuit. In support of its Federal Express charges totaling \$62.67, TLPJ provides invoices documenting the three mailings.¹⁹ While Defendants question the use of overnight delivery, we note that two of the packages were sent in the weeks leading up to Plaintiffs' decision to file its Motion for a Preliminary Injunction, and the third was sent less than two weeks before the hearing began. We conclude that the Federal Express charges are reasonable given that Plaintiffs were attempting to resolve the matter quickly so the team could be reinstated before January. TLPJ's Westlaw charges are also well-documented and corroborated by invoices. Accordingly, we will permit these charges as reasonable.

TLPJ's travel expenses relate to Brueckner's trips from Washington, D.C. to Philadelphia. Brueckner made her first trip on August 27, 2003, when she and McKee met with WCU representatives. Defendants do not dispute that Brueckner's presence at that meeting was necessary. We find the costs associated with this trip, including travel, gas, and food, to be reasonable expenses and adequately documented by corresponding receipts.²⁰

¹⁹ Plaintiffs explain that the Federal Express packages contained Title IX resources for McKee.

²⁰ Defendants object to the fact that Brueckner purchased an Amtrak business-class ticket, for \$108 one-way, as opposed to a coach ticket. Brueckner then traveled back to Washington with a friend, saving the cost of a return ticket. We find this cost to be reasonable. Defendants also object to Brueckner's request for gas reimbursement for \$13.32 because the receipt is dated August 26, 2003, the day before the trip. However, it is reasonable to fill one's gas tank the day before a trip. Defendant's also object to Brueckner's food-related expenses during this trip. We

TLPJ's second travel-related costs relate to Brueckner's attendance at the hearing before this Court, which took place from September 29 to October 1, 2003.²¹ TLPJ requests reimbursement for Brueckner's four nights in a Philadelphia hotel (September 28th to October 1st). Defendants object to these costs, claiming that Brueckner's presence at the hearing was unnecessary. As previously discussed, we determined that Brueckner's presence was duplicative on the first two days of the hearing, but obviously necessary on the day in which she argued before the Court regarding Defendants' Motion to Dismiss, October 1, 2003.²² Accordingly, we will permit Brueckner's hotel and related expenses for her participation on October 1, 2003 only.²³ After a thorough analysis of TLPJ's affidavits, invoices, and expense summary, we conclude that TLPJ has reasonably and adequately supported a request for costs in the amount of \$1,094.37.

With regard to the costs submitted by the Hangley firm, Defendants primarily object to Plaintiffs' duplicating costs, suggesting that they are inflated. Specifically, Defendants contend that over 5,000 pages of photocopying (at \$0.20 per page, for a total of more than \$1,000) is

conclude that Brueckner's request for \$21.10, for meals during her trip on August 27, 2003, is reasonable and adequately documented by corresponding receipts. *Becker v. ARCO Chem. Co.*, 15 F. Supp. 2d 621, 637 (E.D. Pa. 1998) ("In order for counsel to receive reimbursement for the cost of meals, the expense must be adequately documented and reasonable.").

²¹ The hearing concluded on October 6, 2003, but Brueckner was not in attendance.

²² *See supra* Part III.A.3.d.

²³ According to the invoice that TLPJ has submitted, those costs, which total \$214.49, include the following: guest room, \$139.00; state tax, \$9.73; city tax, \$9.73; overnight parking charge, \$22.00; and dinner on September 29, 2003, \$34.03.

excessive.²⁴ The Hangley firm initially requested \$1,261.71 in duplicating and telephone expenses, but subsequently withdrew \$116.00 in velobinding costs and \$40.50 in outside duplicating costs, bringing the total duplicating and telephone charges to \$1,105.21. Of that amount, Plaintiffs contend that \$21.01 was spent in long distance telephone charges, and \$1,084.20 in duplicating.

Plaintiffs explain that the Hangley firm made four copies of the pleadings and briefs, (filing, courtesy, Defendant, and time-stamp for file). Plaintiffs also made five copies of the trial exhibits (witness, the Court, defense counsel, McKee, and Hangley). Plaintiffs contend that these copies totaled 5,979 pages. (Doc. No. 38 at 22.) At \$0.20 per page, the copying fees for these documents alone total \$1,195.80. Plaintiffs seek \$1,084.20. Based on the foregoing, we cannot agree with Defendants' contention that the amount is excessive.

Plaintiffs also seek \$617.65 in outside duplicating for expenses related to the videotape that was used during the course of the hearing. (Doc. No. 32 at 48.) Defendants object to this cost as unnecessary and contend that Plaintiffs have failed to explain this expense. We disagree. Plaintiffs state that the costs were for the editing and copying of the tape that accompanied the testimony of Plaintiff Stephanie Hermann. In addition, Plaintiffs provide the invoices for these services, which total \$617.65. Accordingly, we will permit the charge.

Defendants object to Plaintiffs' request for \$3,216.31 in legal research costs, claiming that Plaintiffs failed to provide explanatory documentation. In response, Plaintiffs reduced this expense by \$1,486.82, leaving a balance of \$1,729.49. Plaintiffs provide supporting invoices for

²⁴ Defendants also objected to outside duplicating costs, but the Plaintiffs subsequently withdrew that expense.

all of these charges. Accordingly, we conclude that this adjusted sum is reasonable and adequately supported.

Defendants also contend that Brueckner's *pro hac vice* admission fee is not compensable. As discussed above, *pro hac vice* admission costs are recoverable under § 1988 when the fees are of the kind that would normally be charged to a fee-paying client. *P.R. Hall*, 263 F. Supp. 2d at 1369-70. Accordingly, we will allow Plaintiffs' *pro hac vice* admission fee to be included in the cost calculation.

In addition, Defendants contest the \$1,368.88 that was spent on trial transcripts, claiming that the transcripts were unnecessary in the instant litigation.²⁵ Plaintiffs claim that they ordered the transcripts in anticipation of Defendants' appeal. After we issued our decision on November 12, 2003, Defendants did in fact appeal. (Notice of Appeal, Doc. No. 24.) As was previously discussed, we are persuaded that the transcripts were a necessary expense, and we note that all of the transcript fees are properly supported by invoices.

Finally, Defendants object to Plaintiffs' request of \$2,000 for Christine Grant's expert witness fees. Defendants object to this fee because they claim there is insufficient documentation and explanation provided for Grant's \$100 hourly rate and the 20 hours she devoted to the case. We agree that this fee is impermissible, but on other grounds. In *West Virginia University Hospitals, Inc. v. Casey*, 499 U.S. 83 (1991), the Supreme Court concluded that the term "attorney's fees" in § 1988 did not include fees for experts' services. *Id.* at 97. The Court explained that "Congress could easily have shifted 'attorney's fees and expert witness fees,' or

²⁵ The total costs submitted for transcripts is \$3,809.43. However, Defendants object only to the trial transcript expenses, not the deposition transcripts.

‘reasonable litigation expenses,’ as it did in contemporaneous statutes; it chose instead to enact more restrictive language, and we are bound that restriction.” *Id.* at 99. The Court concluded that “§ 1988 conveys no authority to shift expert fees. When experts appear at trial, they are of course eligible for the fee provided by § 1920 and § 1821.” *Id.* at 102.

In response to this decision, in 1991, Congress amended the Civil Rights Act, providing in 42 U.S.C. § 1988(c) that expert fees may be included as part of the attorney’s fee in actions brought under 42 U.S.C. §§ 1981 and 1981a. 42 U.S.C. § 1988(c). Congress made a similar change to Title VII of the Civil Rights Act of 1964 in 42 U.S.C. § 2000e-5(k) and incorporated the same remedy into the Americans with Disabilities Act. *See BD v. DeBuono*, 177 F. Supp. 2d 201, 206 (S.D.N.Y. 2001). However, Title IX did not benefit from such an amendment and thus lacks explicit authorization for an award of expert fees. As such, the holding in *Casey*, which was superseded in some statutes by Congress’s 1991 amendments, still applies to Title IX, making expert fees unavailable under that statute. *See* Gordon J. Beggs, *Novel Expert Evidence in Federal Civil Rights Litigation*, 45 Am. U. L. Rev. 1, 7 n.38 (1995) (“Title IX of the Educational Amendments of 1972, 20 U.S.C. § 1681 . . . lack[s] explicit authorization for an award of expert fees, and such awards appear to be unavailable under [this] provision[] at present.” (citing *Casey*, 499 U.S. at 96-97)). Accordingly, we conclude that the \$2,000 expert fee for Grant cannot be recovered from Defendants.

Despite this conclusion, Plaintiffs may recover standard witness fees for Grant under 28 U.S.C. § 1821. Section 1821 provides, “a witness shall be paid an attendance fee of \$40 per day for each day’s attendance. A witness shall also be paid the attendance fee for the time necessarily occupied in going to and returning from the place of attendance at the beginning and end of such

attendance or at any time during such attendance.” 28 U.S.C. § 1821(b). Plaintiffs contend and we agree that Grant is entitled to fees for two days of attendance, totaling \$80. (Doc. No. 32 at 49.)

After thorough analysis, we conclude that the total sum recoverable by Plaintiffs for their costs and expenses is \$1,094.37 for TLPJ and \$8,920.28 for the Hangley firm.

C. Defendants’ Contention That Plaintiffs Did Not Fully Prevail.

Defendants argue that the Court should adjust the lodestar downward because Plaintiffs did not fully prevail on their claims. (Doc. No. 35 at 54.) Defendants acknowledge that Plaintiffs prevailed on their central claim: reinstating the WCU women’s gymnastics team. However, they point to Plaintiffs’ Complaint which sought additional relief for all present and future WCU female students and requested that the Court “prohibit Defendants from eliminating any West Chester University-funded intercollegiate athletic team unless, both before and after the elimination, male and female students are provided equal opportunities to participate in West Chester University-funded intercollegiate athletics.” (Doc. No. 1 at 14.) Defendants argue that because Plaintiffs never pursued class certification despite having initially filed this case as a class action, they did not fully prevail on all of their claims—in particular, the claim originally brought on behalf of all present and future WCU female students.

It is not at all clear that class certification would have enabled Plaintiffs to succeed any more than they did. The reinstatement of the women’s gymnastics team benefitted all women students at WCU, not merely named Plaintiffs. Moreover, none of the time for which Plaintiffs seek payment was expended on class certification. In addition, the injunction granted by the

Court and made permanent by the settlement provides Plaintiffs with full funding as an intercollegiate team, a coaching staff and all of the facilities necessary to train and compete. In determining whether a party is a “prevailing party” under § 1988, “the proper focus is whether plaintiff has been successful on the central issue as exhibited by the fact that he has acquired the primary relief sought.” *Taylor v. Sterrett*, 640 F.2d 663, 669 (5th Cir. 1981). The Supreme Court in *Hensley* stated: “Where 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.” *Hensley*, 461 U.S. at 435. In the instant case, Plaintiffs have clearly obtained “excellent results” and succeeded on the central issue: reinstatement of WCU women’s gymnastics team. Their victory was a complete victory. Accordingly, we will not reduce the lodestar based upon a failure to fully prevail.

D. Reduction of the Lodestar

Having determined the lodestar, we now consider whether the overall sum is reasonable or whether downward adjustment is appropriate. In holding that WCU violated Title IX, we noted that WCU received warnings of this violation from its own internal committees and chose not to heed the warnings. This choice resulted in this very costly litigation. Nevertheless, it is appropriate to consider the financial circumstances of these defendants. WCU is a public university with limited funds. At the beginning of 2003, the university anticipated a five percent cut in state funding, which ultimately materialized as a budget cut totaling \$256,019 in 2004 for the Division of Student Affairs. (Tr. Ex. Pl. 9.) The financial condition of the non-prevailing party in § 1988 cases is a factor that courts may consider when determining the amount of an

award for attorney's fees. *See Alizadeh*, 910 F.2d at 238 (stating that while the non-prevailing party's financial condition is not appropriate to consider in determining *whether* to award attorney's fees, it is appropriate to consider when determining the *amount* of the attorney's fees); *Knighton v. Watkins*, 616 F.2d 795, 799 (5th Cir. 1980) (explaining that defendant's ability to pay may be a factor in determining attorney's fees); *Hughes v. Repko*, 578 F.2d 483, 488 (3d Cir. 1978) (it is within district court's discretion whether to consider defendant's ability to pay attorney's fees). It is a matter of public knowledge that WCU's financial circumstances are even more difficult today than they were in 2004. The Pennsylvania Legislature has not been particularly understanding of the plight of its state universities. It is appropriate to consider WCU's financial condition in determining what are reasonable attorney's fees here.

In addition to considering WCU's financial circumstances, we are also mindful that in this case, the award of attorney's fees will not only affect the taxpayers of Pennsylvania, it will also have a direct impact on the students of WCU. While the Supreme Court, in *Hutto v. Finney*, 437 U.S. 678, 692-96 (1978), acknowledged Congress's intent that "defendant state governmental bodies, rather than prevailing parties . . . bear the burden of civil rights litigation, even when budgets are small," *Knighton*, 616 F.2d at 799-800, we cannot overlook "the fact that the public fisc must bear the financial burden." *Keyes*, 439 F. Supp. at 415; *see id.* (in school desegregation case, court considers fact that "the very entity mandated to restructure its school system . . . will have to further expend public funds for attorneys who brought the restructuring to fruition"); *see also Foley v. City of Lowell, Mass.* 948 F.2d 10, 18 (1st Cir. 1991) ("At least where public funds are involved or the public interest is otherwise implicated, the court has a duty to consider the application critically to ensure overall fairness."); *Oliver v. Kalamazoo Bd.*

of Educ., 73 F.R.D. 30, 48 (W.D. Mich. 1976), *rev'd on other grounds*, 576 F.2d 714 (6th Cir. 1978) (“[T]he court is aware that this fee award will draw upon public funds at a time when financial resources are especially dear. While this does not diminish petitioners’ right to recover just compensation, it is a factor which the court feels may properly be considered in determining what amount is reasonable.”). In fact, because WCU is a public university, we “have a special responsibility . . . to ensure that taxpayers are required to reimburse prevailing parties for only those fees and expenses actually needed to achieve the favorable result.” *Role Models Am.*, 353 F.3d at 975.

Finally, fee awards under § 1988 were never intended to “produce windfalls to attorneys.” *Riverside v. Rivera*, 477 U.S. 561, 580 (1986) (quoting S. Rep. No. 94-1011 at 6 (1976)). A prevailing party in a civil rights action is entitled to only *reasonable* attorney’s fees. *Hensley*, 461 U.S. at 429. A party “is not entitled needlessly to accumulate exorbitant legal fees with the expectation that the losing party will be called upon to pick up the entire tab.” *Planned Parenthood of Minn. v. Citizens for Cmty. Action*, 558 F.2d 861, 871 (8th Cir. 1977). Courts must “exercise vigilance and pare down needless and unconscionably high legal fees.” *Id.*

Considering the fact that this is public interest litigation, that TLPJ and the Hanglely firm became involved in this matter as a public service, that the attorney’s fees here will be paid by the taxpayers and will directly reduce the funds available to West Chester University to educate its students and that the university is already experiencing financial difficulty, we are satisfied that a reduction of the lodestar calculation by a figure of fifteen percent (15%) is fair, reasonable, and appropriate. Accordingly, we will award attorney’s fees and costs to TLPJ and the Hanglely firm as follows.

Attorney's Fees:

Hangley firm: \$108,654.22

TLPJ: \$29,803.72

Costs and Expenses:

Hangley firm: \$8,920.28

TLPJ: \$1,094.37

Total: \$148,472.59

An appropriate Order follows.

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

ELIZABETH C. BARRETT, et al.,	:	
	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 03-CV-4978
	:	
WEST CHESTER UNIVERSITY	:	
OF PENNSYLVANIA OF THE	:	
STATE SYSTEM OF HIGHER	:	
EDUCATION, et al.	:	

ORDER

AND NOW, this 31st day of March, 2006, upon consideration of Plaintiffs' Motion for Award of Attorney's Fees and Costs (Doc. No. 32), it is ORDERED that Plaintiffs are awarded counsel fees and costs as follows:

Hangley, Aronchik, Segal & Pudlin fees:	\$108,654.22
Trial Lawyers for Public Justice, P.C. fees:	\$ 29,803.72
Hangley, Aronchik, Segal & Pudlin costs:	\$ 8,920.28
Trial Lawyers for Public Justice, P.C. costs:	\$ 1,094.37

IT IS SO ORDERED.

BY THE COURT:

S/ R. Barcaly Surrick
U.S. District Court Judge