UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-4649

SCHOOL BOARD OF LAFAYETTE PARISH,

Plaintiff-Appellant,

VERSUS

DANIEL BOYANCE, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
(6:93-CV-143)

(May 24, 1994)

Before ALDISERT,[1] REYNALDO G. GARZA, and DUHÉ, Circuit Judges.

PER CURIAM:[2]

The Lafayette Parish School Board appeals the award of attorney's fees to the parents of a disabled student under the Individuals with Disabilities Education Act (IDEA). Finding no error in the prevailing-party determination but an unexplained departure from the evidence, we remit the award of fees to $10,094.

BACKGROUND

This appeal involves attorney's fees awarded for hearings and

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[1] Circuit Judge of the Third Circuit, sitting by designation.

[2] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

a civil action relating to the educational program of a disabled teenager with behavioral disorders who currently attends a public high school in Lafayette, Louisiana. In October 1992 the school became concerned about the boy's educational placement after he committed a series of aggressive acts. After several hearings and meetings, the school and the boy's parents agreed to formulate a new Individualized Education Program (IEP) to meet the boy's specific needs. IDEA has a "stay-put provision" that requires that a student remain at his IEP pending administrative review of his current program. 20 U.S.C. § 1415(e)(3).

In January 1993 the School Board sought a temporary restraining order and preliminary injunction which would have had the effect of keeping the boy out of school. Because the boy's parents would not agree to homebound education pending formulation of a new IEP, the School Board sought to prevent the parents from invoking the "stay-put provision" and continuing to send their boy to school. After a preliminary hearing, upon the court's urging to settle the matter, the parties fashioned a mutually acceptable IEP which consists of school and community-based activities without homebound education. The district court then dismissed the Board's application for a TRO and preliminary injunction.

On the Boyances' motion for costs and attorney's fees, the district court found the Boyances to be a "prevailing party" and awarded attorney's fees of $140 per hour for 75 hours. The School Board appeals.

ANALYSIS

The School Board first challenges the district court's finding that the Boyances are a "prevailing party" under 20 U.S.C. § 1415(e)(4)(B).[3] That provision has been analogized to 42 U.S.C. § 1988, the attorney's fees provision for civil rights actions.[4] To be a "prevailing party" one must be successful on a "significant issue" in the litigation which achieves some of the benefit the party sought in pursuing the litigation.[5]

We reject the School Board's suggestion that because the Boyances were the defendants, they could not be a prevailing party. Cf. Barlow-Gresham Union High School Dist. No. 2 v. Mitchell, 940 F.2d 1280, 1285 (9th Cir. 1991) (allowing parent/defendant who established that they were "prevailing parties" to recover attorney's fees). The School Board sought injunctive relief against the Boyances, to prevent them from seeking enforcement of IDEA's "stay-put provision." The School Board sought an order keeping the boy out of school for an indeterminate time (60 days was suggested) until a new IEP could be drafted, and keeping him in the more restricted homebound education in the meantime. The parents, through their counsel, successfully resisted the School Board's initiatives. They therefore were appropriately recognized

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[3] This subpart provides,

> In any action or proceeding brought under this subsection, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents or guardian of a child or youth with a disability who is the prevailing party.

[4] Angela L. v. Pasadena Indep. School Dist., 918 F.2d 1188, 1193 (5th Cir. 1990).

[5] Id.

as prevailing parties in significant issues placed in litigation and entitled to attorney's fees.

The School Board also maintains that although attorney's fees can be recovered for legal services provided in preparation for an administrative review hearing, the Boyances should not recover attorney's fees because an administrative hearing was never held. We disagree. We have held that a prevailing party may recover attorney's fees for services performed in anticipation of an administrative hearing despite the fact that a settlement was reached before the hearing.[6] The School Board acknowledges that it sought administrative review of the boy's placement. The parents need not have initiated the administrative review in order to recover attorney's fees.

The School Board contends alternatively that the district court's award should be reduced from the rate of $140 per hour to somewhere in the range of $75-$90 per hour. This suggested range seems reasonable for the Lafayette area and the rate of $140 per hour seems high in our view. However, we review a district court's award of attorney's fees under an abuse of discretion standard, giving due deference to the judge's fact-finding role.[7] Some evidence supporting the $140 hourly rate was produced and was apparently accepted by the district court. Accordingly, we can

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[6] See Shelly C. v. Venus Indep. School Dist., 878 F.2d 862, 864 (5th Cir. 1989), cert. denied, 493 U.S. 1024 (1990).

[7] 20 U.S.C. § 1415(e)(4)(B) (court may award fees in its discretion); Cobb v. Miller, 818 F.2d 1227, 1232 (5th Cir. 1987) (reviewing factual findings as to number of hours and appropriate rate for clear error) (§ 1988 case).

find no abuse of discretion in the hourly rate awarded.

Finally, we note that the court awarded fees for 75 hours in lieu of the 72.1 hours supported by the affidavit of the parents' attorney. No explanation for this departure from the evidence is apparent from the record.[8] Accordingly, we find an abuse of discretion in awarding fees for the additional 2.9 hours not supported by the time sheets. The amount of $406 is therefore deducted from the award of $10,500, for a final award of $10,094.

AFFIRMED IN PART; and REMANDED for entry of remitture.

[8] During the fee-award hearing the court discussed the request for fees for "some 75 hours" and concluded that it would award fees for the "75 hours requested." Cf. tr. at 25 & 27. The time sheets and motion demonstrated only 72.1 hours spent.