



*The Women's Bar Association  
of the State of New York*

*presents*

*Convention 2022  
Continuing Legal Education Series*

**Special Education Law & Representatives  
of Underserved Populations**

June 3, 2022  
3:00 pm - 5:00 pm

Presenter: Adrienne Arkontaky, Esq.  
Alison Morris, Esq.

# The Basics of Special Education Law and Representing Underserved Populations

Adrienne Arkontaky, Esq.  
Vice President/Managing Attorney

Alison Morris, Esq  
Senior Attorney



400 Columbus Avenue, Suite 140S,  
Valhalla, New York 10595

914-984-2740  
[www.cuddylawfirm.com](http://www.cuddylawfirm.com)

# Cuddy Law Firm, PLLC

- Multi-state private law firm that provides legal services to families of loved ones with special needs
  - 2 New York Locations- Westchester and Auburn
  - Ohio, Pennsylvania, North Carolina
- Practice Areas:
  - Special Education Litigation/Advocacy
  - Special Needs Estate Planning
  - Guardianship
  - Special Needs Trust Administration
  - Medicaid Fair Hearings

# Role of a Special Education Attorney

- Facilitate obtaining comprehensive independent evaluations
  - Crafting an appropriate program
- Assist in locating an appropriate placement and obtaining funding
- Obtain District funded compensatory services and locate providers
- Ensure individualized education program (IEP) includes the necessary services, accommodations, and modifications

# Special Education Law 101

- Federal and State law mandate that students with special education needs must receive a free and appropriate public education (FAPE) under the Individuals with Disabilities Education Act (**IDEA**).
  - 20 U.S.C. § 1400; New York Part 200 Regulations
- If a child is eligible for special education and services under the IDEA, the student is entitled to an individualized education program (**IEP**)
  - The child is eligible when “because of mental, physical or emotional reasons, the student has been identified as having a disability and requires special services and programs approved by the department.” (Part 200.1(zz)). The child must have one of thirteen disability classifications and the child’s disability needs to impact the child’s “educational performance.” (Id.)
  - The IEP has several sections including: classification; present levels of performance; goals; related services; accommodations; class size; transition plan [once the student turns 15 in New York]; and placement (200.4(d)(2)).
  - Evaluations must be conducted at least every three years (Part 200.4(b)(4)) unless the Parent waives the evaluations.
  - The IEP must be reviewed and updated at least annually (200.4(f)).

# Important Cases

- [Andrew F. v. Douglas County School District RE-1](#) (No. 15-827) (2017), U.S. Supreme Court unanimously rejects the “de minimis” standard for one that “is markedly more demanding than the 'merely more than de minimis' test applied by the 10th Circuit.” In his opinion, Chief Justice Roberts says “a student offered an educational program providing ‘merely more than de minimis’ progress from year to year can hardly be said to have been offered an education at all.”
- [Burlington Sch. Committee v. Mass. Bd. of Ed., 471 U. S. 359 \(1985\)](#). Decision clarifies procedural safeguards, parent role in educational decision-making; tuition reimbursement for private placement; child's placement during dispute about FAPE.
- [Florence Co. Sch Dist Four v. Shannon Carter, 510 U.S. 7, \(1993\)](#). In a unanimous 9-0 decision, the Supreme Court found that if the public school fails to provide an appropriate education and the child receives an appropriate education in a private placement, the parents are entitled to be reimbursed for the child's education, even if the private school does not comply with state standards.
- [Nancy E. Connors, v. Richard Mills, Commissioner of Education; New York State Board of Regents, 300 U.S. 26 \(1998\)](#). School districts could be required to pay the tuition directly to the private school if the Burlington factors are met.
- [Jarron Draper v. Atlanta Independent School System \(11th Cir. 2008\)](#) - Affirmed District Court and ordered Atlanta Independent School System to pay tuition and expenses at a private special education school for four years or until child graduates from high school as prospective compensatory education for their failure to provide him with a free appropriate education over a period of many years.
- [R.E., M.E., et al v. NYC Dept of Education](#) (2nd Cir. 2012) - 2nd Circuit adopts the “snap-shot” rule to judge the adequacy of an IEP written in Burlington/Carter reimbursement cases; held that retrospective testimony about additional services that the also district “would have provided,” but which were not offered in the IEP, cannot be used to rehabilitate an IEP or prove its adequacy.
- [Board of Education of the Yorktown Central Sch. Dist. V. C.S. \(2<sup>nd</sup> Cir. 2021\)](#)- The Individuals with Disabilities Education Act (IDEA) does not permit a school district to amend an individualized education program (IEP) unilaterally during the thirty-day resolution period. The Act envisions the resolution period as a time for mediation and agreement, not one-sided action

# The Legal Standards required under the Regulations

- The legal standard is the IEP must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances,” which is “markedly more demanding than the ‘merely more than *de minimis*.’” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999-1000 (2017).
- Parents have the right to be meaningful participants in IEP meetings (Part 200.5(d)); *See, e.g. J.E. and C.E. ex rel. D.E. v. Chappaqua Cent. Sch. Dist.*, 116 LRP 27979 (S.D.N.Y. 06/28/16) (“Predetermination of a child’s IEP amounts to a procedural violation of the [IDEA] if it deprives the student’s parents of meaningful participation in the IEP process. ... The core of the statute is that the development of the IEP be a cooperative process between the parents and the district, and predetermination by a district of a child’s IEP undermines the IDEA’s fundamental goal to give parents a voice in the educational upbringing of their children.”)(internal citations omitted).
- The child has the right to remain in school through age 21 (20 U.S.C. § 1412 (a)(1)(A)).
- 2 year SOL, with some exceptions (20 U.S.C. § 1415(f)(3)(c)) to bring claims against a school district.

## What Should An IEP Include?

- Classification and school placement.
- Present levels of performance considerations: Academic, Social/ Emotional/Behavioral, Physical, and Management Needs (Part 200.1(w)(3); Part 200.4(2)(i)).
- Goals:
  - Academic and functional goals (20 U.S.C. § 1414 (d)(1)(a)(i)(II)).
  - Measurable (Part 200.4(2)(iii)).
  - Based on and tailored to the student's needs (Part 200.4(2)(iii)).
- Related Services – speech-language therapy, occupational therapy, physical therapy, feeding therapy, applied behavior analysis (ABA), counseling, social skills services, equine therapy, art therapy.
- Accommodations – a one-to-one aide; assistive technology; a scribe; breaks; sensory diet.
- Class Size –general education; integrated co-teaching; resource room; 15:1; 12:1:1, 6:1:1, a mix.
- A transition plan the year the student will turn 15: looking at post-secondary goals and needs relating to education, employment, and independent living (200.4(d)(2)(ix)).
- Placement – in district; out of district; approved private school, and consideration of a right to sue for private school tuition.

THESE ARE ALL BASED ON WHAT THE STUDENT NEEDS! MUST BE TAILORED.....

# Important Considerations in Assessing a Special Education Matter

- Compliant IEP team- who should be at your child's IEP meeting?
- If the Parent is not an English speaker- what should the IEP team provide for them?
- What evaluations and reports are being used? Does the Parent have access?
- Was an IEP provided after the meeting?
- Was the IEP followed? Related service encounter attendance records
- Identifying special education "red flags".

# Litigation Process in NYC and Suburbs- Two-Tiered System

- Impartial Hearing Office- Brooklyn, NY
  - How is this working during COVID-19?
- State Review Office- Albany, NY
- Southern District of NY or Eastern District of NY
- 2<sup>nd</sup> Circuit

# What Have We Seen?

- Child Find- failure to identify a Student with a disability and develop an IEP
- High School Student with Kindergarten reading levels- being passed along without the proper supports
- Failure to implement the IEP- no special education teacher in an ICT class, failure to provide occupational therapy as the provider was on leave,
- No evaluations or evaluations from when the Student was 5 and is now 14
- Students sitting at home without a placement
- Students in public school who require a residential placement
- Failure to translate documents or interpret at IEP

# Typical Case Structure

- Intake/Records Request
- Department Evaluations v. Independent Evaluations
- Compensatory Services
- Appropriate Placement
  - Approved Non-Public School v. Non-Approved Private School
  - Day Treatment Center, Residential Placement
- Implementation
- Fee Claim

# Types of Cases

- Single issue case: failure to provide assistive technology, private transportation, outside tutoring
- Multiple year denial of FAPE
  - Relief can include: independent evaluations, new appropriate placement, compensatory services (tutoring, speech and language, music therapy, vision services, feeding therapy, and more), transportation to compensatory services, transportation to a new placement, translated documents, appointment of a transition coordinator, parent training, and more
- Tuition For Private School
  - Carters (Tuition Reimbursement) v. Connors (Direct Funding)

# Types of Evaluations

- Psychoeducational, Psychological, Neuropsychological
- Speech and Language, Feeding, Assistive Technology
- Functional Behavior Assessment, Behavior Intervention Plan, Applied Behavior Analysis (ABA) skills assessment
- Vocational Assessment
- Occupational Therapy, Physical Therapy, Art Therapy, Music Therapy
- Tutoring Assessments

# Burlington-Carter Test in Tuition Reimbursement/Connors Cases

- Did the District provide the Student with a FAPE?
- Is the private placement appropriate?
- Do the equities favor the Parent?

\*The default is tuition reimbursement, if you want direct funding- that is an extra component you need to prove

Direct payment cases- rationale of a Connors case.

# Pendency

- “during the pendency of any proceedings...unless the local board of education and the parent otherwise agree, the student shall remain in the then current placement of such student.” Regulations of the Commissioner of Education Part 200.5(m)(1).
  - Last Agreed Upon IEP
  - Last Unappealed Decision
  - Substantially Similar

## Compensatory Service Claims

- The IDEA empowers the courts to grant the relief that they determine to be appropriate. *Burlington Sch. Comm. v. Massachusetts Dep't of Educ.*, U.S. 1925. (citing 20 U.S.C. §1415(i)(2)(C)(iii).
- An award of additional services should aim to place the Student in the position he or she would have been in had the district complied with its obligation under the IDEA. *P. ex el. Mr. and Mrs. P. v. Newington Bd. of Ed.*, 546 F.3d 111, 123.

### Types of Services:

- Tutoring
- Applied Behavior Analysis (ABA)
- Speech services
- Occupational therapy services
- Parent Counseling and Training (PCAT)
- And more..

# A School District's Obligations For Preparing A Student For Life After High School?

**A school district is required to prepare students for life after high school via--- transition planning!**

- Preparing the student for life after graduation – what does a school district and parent need to do to assist the student to be as independent as possible once they graduate (20 U.S.C. § 1414(d)(1)(a)(i)(VIII)); (200.4(d)(2)(ix)).
  - NY – transition planning must be part of a student's IEP no later than the year the student turns **15**.
- The focus is on creating goals for the student and taking into consideration the following:
  - Education - Does the student want to go to a 2 year or 4 year college, and if so is the goal realistic? If realistic, what steps need to be taken to give the student the greatest chance of success.
  - Employment - What are the student's job aspirations? Are they realistic? Does the student need to be taught job skills? Does the student need to be in a program that focuses on / works on those skills?
  - Independent living skills post-school (daily living skills)
    - Money and budgeting?
    - Self-advocacy – setting alarms, taking medicine, alerting others when the individual is sick or hungry?
    - Safety?
    - Travel training?
    - Hygiene?
    - Dressing?
    - Laundry / cooking?
    - Social and communication skills?
    - Special issues – i.e. if the student is in wheelchair- the student must be able to access accommodations.

The school SHOULD also talk to your clients at the appropriate time about life planning (which we will talk about) such as OPWDD, guardianship, independent decision making (powers of attorney, health care proxies etc.) BUT, if the school doesn't, make sure your clients are aware of and addressing the above issues. The assistance of a special needs planning/special education attorney may be needed.

# Life Planning for Individuals with Disabilities

- **Apply for OPWDD Services**
  - OPWDD- Office for Persons with Developmental Disabilities
  - Eligibility:
    - Developmental disability, manifestation before 22, indefinite, and “causes a substantial handicap to a person’s ability to function normally in society.”
  - Application:
    - Cover page, psychological with IQ score no more than 3 years old with an adaptive behavior assessment, social history/psychosocial no more than 1 year old, medical report no more than 1 year old, and accompanying documents (IEPs, prior evaluations), potential interview.
  - Someone to oversee the process, i.e. Parent, sibling:
    - Finding and approving community habilitation providers?
    - Finding and approving a day habilitation program?
    - Will both of you be the emergency contact?
    - Finding job sites or a potential job?
    - Making sure places are paid and then you are reimbursed, such as for recreational programs?
  - Self Direction?

# Fee Shifting Provision

- The Individual with Disabilities Education Act (IDEA) contains a fee shifting provision which “award(s) reasonable attorneys’ fees...to a prevailing party who is a parent of a child with a disability.” (20 U.S.C. § 1415(i)(3)(B)(i)(II)).
- In any action or proceeding brought under the IDEA, a federal district court may award reasonable attorneys’ fees as part of the costs to a “prevailing party” who is the parent of a child with a disability (20 U.S.C. § 1415(i)(3)(B)(i) and 34 C.F.R. § 300.517(a)(1)(i)).\*
- “Proceedings” brought under the IDEA include administrative proceedings, such as a hearing before an Impartial Hearing Officer (IHO) or State Review Officer (SRO). (see A.R. v. New York City Dept. of Educ., 407 F.3d 65 (2d Cir. 2005); *Strek v. Bd. of Educ. Of East Greenbush Cent. Sch. Dist.*, 408 Fed Appx. 411, 2010 WL 4847481 (2d Cir. 2010).
- \*Under the IDEA and its implementing regulations a parent is defined to include a guardian. 34 C.F.R. § 300.30

# Fee Claim

- Submit fee demand to school district
- Negotiate → Settlement
- If no settlement → Federal Court
- Issue becomes the rate and the standard is what is reasonable in the community/complexity of matter/experience of the attorney (*Lodestar Method*- multiply the number of hours reasonably spent by trial counsel by a reasonable hourly rate)
- Importance of contemporaneous time keeping in fee shifting cases

# Johnson Factors

## (*Johnson*, 714 F.2d at 717-19)

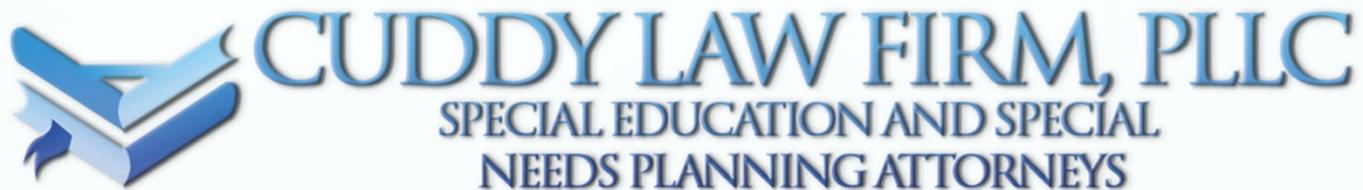
1. Time and Labor required
2. Novelty and difficulty of the issues in the case
3. Skill requisite to perform legal services properly
4. Preclusion of other employment by the attorney due to acceptance of the case
5. Customary fee charged for those services in the relevant community
6. Whether the fee is fixed or contingent
7. Time limitations imposed by the client or the circumstances
8. Amount involved and the results obtained
9. Experience, reputation, and ability of the attorneys
10. Undesirability of the case
11. Nature and Length of the professional relationship with the client
12. Awards in similar cases

# Resources

- Regulations of the Commissioner of Education:  
<http://www.p12.nysed.gov/specialed/lawsregs/documents/regulations-part-200-201-oct-2016.pdf>
- SEAL HOUSE: Special Education Advocacy Learning House:  
<https://www.sealhouse.us>
- Wrightslaw: <https://www.wrightslaw.com/>
- Council of Parent Attorneys and Advocates: <https://www.copaa.org>
- Special Education Committee of the Elder Law Section and Special Needs Law Section of NYSBA: <https://nysba.org/committees/elder-law-special-needs-section/>



The Cuddy Law Firm is dedicated to serving individuals with disabilities and their families in special education and special needs planning matters in NY, PA, NC, & OH.



Contact us at 914-984-2740 or email:

[aarkontaky@cuddylawfirm.com](mailto:aarkontaky@cuddylawfirm.com)

[amorris@cuddylawfirm.com](mailto:amorris@cuddylawfirm.com)

Thank you!

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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Y. G., et al.,  
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Plaintiffs,  
:  
-against-  
:  
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NEW YORK CITY DEPARTMENT OF  
EDUCATION,  
:  
:  
Defendant.  
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**OPINION & ORDER**  
**GRANTING SUMMARY**  
**JUDGMENT**

21 Civ. 641 (AKH)

ALVIN K. HELLERSTEIN, U.S.D.J.:

Plaintiffs, a child with a disability and his parent, initiated this action pursuant to the Individuals with Disabilities Education Act (IDEA) against the New York City Department of Education. Plaintiffs initially filed this suit seeking enforcement of Findings of Fact and Decision (FOFD) issued in an administrative proceeding, along with the fees associated with the administrative proceeding and instant action. Defendant has since come into compliance with its obligations and Plaintiffs withdrew the claim for enforcement. Only Plaintiffs’ application for \$148,996.05 in attorneys’ fees and costs remains. *See* Cuddy Decl. Ex. 6, ECF No. 38-6. Defendant does not dispute that Plaintiffs are entitled to an award of attorneys’ fees under 20 U.S.C. §1415(i)(3)(B)(i), but argues that the award Plaintiffs seek is excessive and not “reasonable.” For the reasons stated on the record and set forth below, Plaintiffs’ application for attorneys’ fees is granted, with modifications.

**DISCUSSION**

IDEA was intended to ensure that all children, regardless of intelligence or ability, receive an adequate education “that emphasizes special education and related services designed to meet their unique needs.” 20 U.S.C. § 1400(d)(1)(A); *see Schaffer v. Weast*, 546 U.S. 49, 51 (2005); *A.R. ex rel. R.V. v. N.Y. City Dep’t of Educ.*, 407 F.3d 65, 72 (2d Cir.2005). All are equal

before the law. IDEA applies to the schooling of every child with a disability, and every such child is assured a free appropriate public education (FAPE) through an Individual Education Plan (IEP). *Schaffer*, 546 U.S. at 53. To ensure all disabled children receive an appropriate education, IDEA requires states to offer “an array of procedural safeguards,” including the filing of a due process complaint and hearing before an impartial adjudicator. *Polera v. Bd. of Educ. of Newburgh Enlarged City Sch. Dist.*, 288 F.3d 478, 482 (2d Cir. 2002).

Congress has left it to aggrieved parties and their lawyers to vindicate these rights. They are important rights and necessitate an award of fees where parents prevail. In evaluating the reasonableness of the fee, the court, among all other factors, should be sensitive to an adequate incentivization of counsel to take these cases. *See Kassim v. City of Schenectady*, 415 F.3d 246, 252 (2d Cir.2005); *Milwe v. Cavuoto*, 653 F.2d 80, 84 (2d Cir.1981) (“The award of counsel fees is not intended to punish the defendant in any way. Rather it is to permit and encourage plaintiffs to enforce their civil rights. To declare those rights while simultaneously denying the award of fees would seriously undermine the declared congressional policy.”) (citations omitted). There are not many lawyers who take IDEA cases, perhaps because the fee structure has been so tight. *See, e.g., M.D. v. New York Dep’t of Educ.*, 2021 WL 3030053 (S.D.N.Y. July 16, 2021); *H.C., v. New York City Dep’t of Educ.*, 2021 WL 2471195, at \*4 (S.D.N.Y. June 17, 2021). With these factors as a frame of reference, I evaluate Plaintiff’s application.

#### **A. Hourly Rates**

To calculate a “presumptively reasonable fee,” a district court first determines the appropriate billable hours expended and sets a “reasonable hourly rate.” *Lilly v. City of New York*, 934 F.3d 222, 230 (2d Cir. 2019) (citing *Arbor Hill Concerned Citizens Neighborhood Ass’n v. Cnty. of Albany & Albany Cnty. Bd. of Elections*, 522 F.3d 182, 190 (2d Cir. 2008). Determining whether a plaintiff’s requested rates are reasonable requires “a case-specific inquiry into the prevailing market rates for counsel of similar experience and skill to the fee applicant’s counsel.” *Farbotko v. Clinton Cnty.*, 433 F.3d 204, 209 (2d Cir. 2005). In doing so, courts may not make reference solely to rates awarded in prior cases, and must consider whether prior rates

still reflect the applicable prevailing rate. *Id.*; *A.R. ex rel. R.V. v. N.Y. City Dep't of Educ.*, 407 F.3d 65, 82 (2d Cir.2005).

In *Arbor Hill*, the Second Circuit clarified how district courts should calculate reasonable fee awards. 522 F.3d at 190. There, the Court explained that “[t]he reasonable hourly rate is the rate a paying client would be willing to pay. In determining what rate a paying client would be willing to pay, the district court should consider, among others, the *Johnson* factors; it should also bear in mind that a reasonable, paying client wishes to spend the minimum necessary to litigate the case effectively.” *Id.* The *Johnson* factors, from *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974) are the following:

- (1) the time and labor required;
- (2) the novelty and difficulty of the questions;
- (3) the level of skill required to perform the legal service properly;
- (4) the preclusion of employment by the attorney due to acceptance of the case;
- (5) the attorney's customary hourly rate;
- (6) whether the fee is fixed or contingent;
- (7) the time limitations imposed by the client or the circumstances;
- (8) the amount involved in the case and the results obtained;
- (9) the experience, reputation, and ability of the attorneys;
- (10) the “undesirability” of the case;
- (11) the nature and length of the professional relationship with the client; and
- (12) awards in similar cases.

Courts need not make specific findings as to each factor, provided each is considered when determining the ultimate fee award. *See E.F. ex rel. N.R. v. N.Y.C. Dep't of Educ.*, 2014 WL 1092847, at \*3 (S.D.N.Y. Mar. 17, 2014) (citing *Lochren v. Cnty. of Suffolk*, 344 F. App'x 706, 709 (2d Cir.2009)).

Having considered all the *Johnson* factors, as well as the need to adequately incentivize attorneys to represent clients in IDEA fee-shifting cases, I find that the Cuddy Law Firm's rates are reasonable. Among other factors, the administrative hearing was heavily contested and required the skill of an experienced IDEA litigator to prevail, as there were multiple days of hearings and five hearings on the merits. Additionally, the fee was entirely contingent, Plaintiff was awarded nearly all the relief sought in the administrative proceeding, and the attorneys of the Cuddy Law Firm have years of experience in IDEA litigation. There is also a need to alleviate the view that such cases are “undesirable,” and appropriately incentivize attorneys to represent disabled student who could otherwise not afford to litigate meritorious

cases themselves. *See* Kassim, 415 F.3d at 252; *Milwe*, 653 F.2d at 84. The rates, although higher than other district courts have allowed, are in my judgment reasonable, and much below commercial rates charged by experienced attorneys with expertise in their areas of litigation. I also cannot say that there has been an overuse of personnel or an across-the-board failure to delegate to lower-billing personnel. I thus find that Plaintiffs' counsel are entitled to the following rates: \$550/hr. for Andrew Cuddy and Jason Sterne, \$450/hr. for Kevin Mendillo, \$425/hr. for Justin Coretti, \$400/hr. for Benjamin Kopp, \$375/hr. for Erin Murray, and \$225/hr. for all paralegals.

### **B. Hours Billed**

To calculate the reasonable hours expended, courts look to "contemporaneously created time records" and exclude "hours that are excessive, redundant, or otherwise unnecessary." *Kirsch v. Fleet Street, Ltd.*, 148 F.3d 149, 173 (2d Cir. 1998). In doing so, "a district court may exercise its discretion and use a percentage deduction as a practical means of trimming fat from a fee application." *M.D. v. New York City Dep't of Educ.*, 2018 WL 4386086, at \*4 (S.D.N.Y. Sept. 14, 2018) (quoting *McDonald ex rel. Prendergast v. Pension Plan of the NYSA-ILA Pension Tr. Fund*, 450 F.3d 91, 96 (2d Cir. 2006)).

On balance, the hours Plaintiff's counsel expended in preparing for the administrative proceeding and federal proceeding were reasonable. Defendant argues Plaintiff's counsel spent an unreasonable amount of time preparing for various aspects of the administrative and federal proceedings. For instance, Defendant argues that Plaintiff's 37 hours to prepare a hearing request was unreasonable. However, doing so required reviewing three years of educational records, in addition to drafting the text of the request itself. That amount of time appears reasonable in light of the billing records Plaintiff provides. Likewise, Defendant argues that 24 hours to prepare for the first administrative hearing, which lasted 2.5 hours, was unreasonable, and similarly argues that 20 hours to prepare for the second hearing was unreasonable. While the preparation time for the first hearing appears slightly higher than in other similar cases, *see C.B. v. New York City. Dep't of Educ.*, 2019 WL 3162177, at \*27 (S.D.N.Y. July 2, 2019), the second hearing lasted longer than 8 hours and was spread over 4

days. A ratio of 20 preparation hours to 8 hours of hearing time is well within a reasonable range. *See, e.g., id.; R.G. v. N.Y.C. Dep't of Educ.*, 2019 WL 4735050, at \*4 (S.D.N.Y. Sept. 26, 2019). As a final note, much of Plaintiff's billing appears attributable to delays Defendant caused.

I thus decline to reduce the number of hours for while Plaintiff seeks attorneys' fees, with one exception. Justin Coretti billed 39.2 hours in travel at \$212.50/hr., which amounts to half his normal rate, for a total of \$8,330. As stated on the record at oral argument on April 6, 2022, that amount of travel time is unwarranted because a reasonable client would hire an attorney with a much shorter commute. *See H.C.*, 2021 WL 2471195, at \*11. Accordingly, Corretti's \$8,330 billed for travel time is reduced by approximately 70%, to a total of \$2,500. In all, Plaintiffs are entitled to \$92,157.50 for fees in the administrative action and \$41,180 for fees in the federal action.

### **C. Costs & Interest**

Plaintiff's costs for travel and printing will be reduced. Defendant argues Plaintiff's expenses for costs of the administrative and federal litigation should be reduced or eliminated entirely. Specifically, Defendant contends that "expenses totaling \$3,927.52, including fax costs (\$332), lodging (\$876.13), meals (\$235.48), mileage (\$1,140.18), parking (\$162.50), postage (\$17.82), copying (\$636.50 billed at 0.50 per page), toll (\$47.63), transportation (\$77.28), and a filing fee (\$402)" should be reduced. Def. Br. at 21. Defendant also argues Plaintiff is not entitled to an award of interest.

The rate for printing will be reduced to \$0.10 per page and the costs for faxing will be eliminated. In this district, "\$0.10 per page continues to be entirely reasonable compensation for printing costs." *R.G. v. N.Y.C. Dep't of Educ.*, 2019 WL 4735050, at \*6 (S.D.N.Y. Sept. 26, 2019) (*citing Febus v. Guardian First Funding Grp.*, LLC, 870 F. Supp. 2d 337, 341 (S.D.N.Y. 2012)). Plaintiff is entitled to only \$127.30 for printing expenses. The costs for faxing are not reasonable. *See id.*

Plaintiffs' requested reimbursement for lodging, meals, and transportation should also be reduced. With respect to lodging, courts in this district routinely decline to award

lodging expenses to the Cuddy firm because a reasonable client would hire attorneys who did not have to commute the distances that were traveled. *See H.C.*, 2021 WL 2471195, at \*11 (citing *C.D.*, 2018 WL 3769972, at \*13); *R.G.*, 2019 WL 4735050, at \*6. The same is true for meals, which were not necessary to the legal representation and “would not have been billed by local counsel.” *R.G.*, 2019 WL 47350, at \*6. Similarly, the travel expenses CLF incurred, in the form of mileage, tolls, and parking, were largely unnecessary. A 70% reduction of the requested amount is reasonable. *Id.*; *H.C.*, 2021 WL 2471195, at \*11; *M.H.*, 2021 WL 4804031, at \*28. Applying that reduction, Plaintiffs will be awarded \$342.05 for mileage, \$48.76 for parking, \$14.29 for tolls, and \$23.18 for transportation for a total of \$428.28 as allowable, reimbursable expenses.

In all, Plaintiff will be awarded \$127.30 for printing costs, \$428.28 for travel costs, \$17.82 for postage, and \$402 for a federal filing fee, for a total of \$975.40 in reimbursable expenses. Plaintiffs have not explained why they are entitled to either pre- or post-judgment interest, and I decline to award any interest.

### CONCLUSION

Plaintiff’s motion for summary judgment awarding fees is granted as modified. In all, Plaintiffs are awarded \$92,157.50 for fees in the administrative matter, \$41,180.00 for fees in the federal action, and \$975.40 in reimbursable expenses, for a total of \$134,312.90. The parties shall settle an order implementing this decision by April 27, 2022. The Clerk shall terminate ECF No. 14.

SO ORDERED.

Dated: April 7, 2022  
New York, New York

  
ALVIN K. HELLERSTEIN  
United States District Judge