UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

KNOX COUNTY, TENNESSEE, Plaintiff/Counter-Defendant, v. M.Q., et al., Defendants/Counter-Plaintiffs.	)	No. 3:20-CV-173-DCLC-HBG (*Lead Consolidated Case*)
M.Q., et al., Plaintiffs, v. KNOX COUNTY, TENNESSEE Defendant.	)	No. 3:20-CV-125-DCLC-HBG

REPORT AND RECOMMENDATION

This case is before the undersigned pursuant to 28 U.S.C. § 636, the Rules of this Court, and the referral Order [Doc. 39] of the District Judge.

Now before the Court is a Motion for Attorney's Fees [Doc. 31], filed by M.Q. Knox County responded in opposition to the Motion [Doc. 37], and M.Q. replied [Doc. 38]. The parties also filed supplemental filings [Docs. 40, 41, 42] that the Court has considered. Accordingly, for the reasons further explained below, the Court **RECOMMENDS** that the Motion for Attorney's Fees [**Doc. 31**] be **GRANTED IN PART AND DENIED IN PART.**

I. ANALYSIS

In the Motion for Attorney's Fees, M.Q. requests fees for two attorneys. Specifically, Attorney Gilbert spent 165.75 hours in this case and requests $450 per hour, which results in an award of $74,587.50. Attorney Gilbert also paid expenses (*i.e.*, postage, hotel, and meals) in the amount of $1,612.40 and $3,150.00 for an expert, for a total amount of $4,762.40 in expenses.

With respect to Attorney Jessica Salonus, she spent 260.5 hours in this case and requests $300 per hour, which she states results in an award of $72,037.50.[1] In addition, Attorney Salonus states that she is requesting payment of costs and expenses in the total amount of $16,467.03. Out of these costs and expenses, $9,150.50 were for experts.

Subsequently, M.Q. filed a Supplemental Fees Declaration [Doc. 40], requesting additional attorney's fees for litigating fees. Specifically, M.Q. requests an additional $6,637.50 for Attorney Gilbert, and $1,125.00 for Attorney Salonus.

As an initial matter, the parties agree that M.Q. is the prevailing party under the Individuals with Disabilities Education Act ("IDEA"), and therefore, is entitled to attorney's fees. Thus, the Court must determine whether the requested amount of attorney's fees is reasonable. In making this determination, courts often employ the "lodestar method," which is "the proven number of hours reasonably expended on the case by the attorney, multiplied by a reasonable hourly rate." *Isabel v. City of Memphis*, 404 F.3d 404, 415 (6th Cir. 2005). The reasonableness of the hours and the rate is determined by considering twelve factors:

> (1) time and labor required; (2) the novelty and difficulty of the questions presented; (3) the skill needed to perform the legal service

[1] In Attorney Salonus's Declaration, she states that spent 260.5 hours in this case at the rate of $300 per hour, which equals $72,037.50 in attorney's fees. [Doc. 31-2 at ¶ 14]. The Court notes, however, that 260.5 multiplied by $300 is $78,150.00. Give this typographical or mathematical error, the Court has relied on Attorney Salonus's final invoice, which reflects an outstanding balance of $88,504.53. Taking into account $16,467.03 in expenses, the amount of attorney's fees is $72,037.50.

> properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time and 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 the case; (11) the nature and length of the professional relationship with the client; and (12) awards in "similar cases."

Id. at 415-16. The most critical factor in determining the reasonableness of a fee award is the degree of success obtained. *Id.* at 416 (quoting *Farrar v. Hobby*, 506 U.S. 103, 114 (1992)).

With the above analysis in mind, the Court will now turn to Knox County, Tennessee's objections. Specifically, Knox County, Tennessee ("County") asserts five main objections to the request for attorney's fees as follows: (1) the hourly rates are unreasonable, (2) there are errors in the entries, (3) the fees are duplicative, (4) secretarial tasks are billed at litigation rates, and (5) M.Q.'s attorneys used quarter-hour billing. Finally, the parties dispute whether M.Q. is entitled to the expert costs in the amount of $12,300.50. The Court will address these issues separately, unless otherwise noted.

A. Hourly Rates

As mentioned above, Attorney Gilbert requests $450 per hour, and Attorney Salonus requests $300 per hour. In support of these rates, Attorney Gilbert filed a Declaration, stating as follows:

> 10. As a lawyer of 26 years, focusing on the narrow but complex area of special education, I believe my requested rate of $450, and that of my co-counsel, Jessica Salonus, of $300 per hour, are reasonable and in line with Eastern District rates. For me, that is a $50 increase since my accepted rate of $400 in 2019. In 2019, in *L.H. v. Hamilton Cnty Dep't of Educ*., 356 F. Supp. 3d 713 (E.D. Tenn. 2019) and in *S.P. et v. Knox County, et al*., No. 3:17-cv-100-PLR-DCP, Ms. Salonus and I were approved at the rates of $400 and $275 per hour, respectively. The *L.H.* case is the landmark inclusion case for Tennessee, followed by the ALJ and this Court in M.Q. I have also assisted other lawyers who sought a $400 rate.

> *Gunter v. Bemis Co*., 2019 U.S. Dist. LEXIS 132116, at *16 (E.D. Tenn. July 25, 2019).

[Doc. 31-1 at ¶ 10].

Attorney Salonus also filed a Declaration stating as follows:

> 11. I am requesting the rate of $300 per hour for myself. I have been using that rate the past two years for clients who can pay my attendance at IEP meetings and for smaller matters for special education. It is appropriate for this line of work and my level of knowledge and skill in handling these types of claims, particularly given the degree of difficulty, contingency, risk, and fact that we did not require any payment for attorney fees from Michael Q.'s family.
>
> 12. As mentioned, I do frequently represent a number of children with disabilities through the State whose families are able to retain me on an hourly basis of $300 per hour to attend their child's IEP meetings or to engage in pre-suit negotiations to help them resolve special education disputes with their child's school. This rate of $300 hourly is also the rate which has been used to calculate my fees in a number of other settlements which have been approved on behalf of minors in the past year, including recently in a Petition for Minor Approval held in front of Chancellor Bulter in Madison County in February 2021. It is also the hourly rate I have used in all settlements with school districts since January 2019, including cases settled in Knox County.
>
> 13. Additionally, I submit that this rate is reasonable in 2021 given that Mr. Gilbert and I have been approved many times at the rate of $275.00 and $400.00 per hour, respectively, in contested fee petitions dating back to 2012 in the Middle District of Tennessee. Further, in 2016, I applied for, and was compensated in a fee petition at the rate of $275 per hour in the Western District of Tennessee. And in 2019, Mr. Gilbert was approved at $400 per hour and I was approved for $275 per hour for my work completed from 2013 through 2016 in *L.H. v. Hamilton Cty. Dept. of Educ*., 356 F. Supp. 3d 713 (E.D. Tenn. 2019).

[Doc. 31-2 at ¶ 11-13]. In addition, M.Q. filed Dean Rivkin's Declaration stating:

> **The customary fee**: In view of the skill, experience, and reputation of the lawyers for M.Q., the fees requested fall well within the customary fees charged by lawyers with comparable credentials. Because no ordinary market exists for special education lawyers in

> Tennessee, the key criterion here is to recognize a rate that will attract lawyers to this highly specialized and complex area of public interest practice. Congress recognized the importance of attracting "private attorneys general" to areas of national need. Lawyers are not flocking to IDEA/504/ADA litigation; to the contrary. The fees requested here are necessary to attract lawyers like Mr. Gilbert and Ms. Salonus to take on special education cases. Those who do should be awarded a fair fee, and the rates requested here of $450 and $300, respectively, are more than fair in today's relevant legal market. Given their past statutory fee awards, their 2021 rates, the operative date for determining statutory fee awards, fall well within the range of increases that lawyers make to ensure that their practices are financially able to persist.

[Doc. 31-3 at ¶ 15]. In addition, Dean Rivkin notes that counsel accepted this case on a contingency fee. [*Id.*]. Finally, M.Q. submitted Michael Braun's Declaration, which states, in relevant part, as follows:

> I am familiar with rates charged by attorneys in civil rights matters and employment matters in Tennessee, including Knoxville. Although I am located in Nashville, I litigate cases in Knoxville too, including against Knox County. Based upon the breadth of experience and results repeatedly obtained by Mr. Gilbert and Ms. Salonus, the hourly rates of $450 and $300, respectively, are well within the acceptable market rates for these types of cases.

[Doc. 31-4 at ¶ 11].

The County objects, arguing that Dean Rivkin's and Michael Braun's affidavits fail to provide any information as to what the customary attorney rate is in similar cases. The County states that Dean Rivkin does not provide any specifics as to the customary hourly rate and has not been involved in special education litigation since 1997. With respect to Michael Braun, the County states that while he opines that $300 and $450 are acceptable market rates, his own hourly rate is $250. The County states that Michael Braun's hourly rate of $250 is much closer to the prevailing market rate for this District. Further, the County argues that the hourly rates far exceed the upper limits of fees recently awarded by this District in other complex litigation. Finally, the

County states that there were other factors presented in the *L.H.* case that were not presented in the instant matter. The County requests that the Court award Attorney Gilbert $275 per hour and Attorney Salonous $250 per hour given their level of experience.

M.Q. replies that the County's suggested reduction is less than what his counsel was previously awarded and that the County repeats the arguments that were already addressed in *L.H.*

In determining the appropriate hourly rate to apply, the district court must consider the prevailing market rate in the relevant community, which for fee purposes, is the legal community within the court's territorial jurisdiction or venue. *Brooks v. Invista,* No. 1:05-cv-328, 2008 WL 304893, at *3 (E.D. Tenn. Jan. 30, 2008) (citing *Adcock-Ladd v. Sec'y of the Treasury*, 227 F.3d 343, 349 (6th Cir. 2000)). The appropriate or reasonable hourly rate "may not, however, exceed the amount necessary to cause competent legal counsel to perform the work required." *Id.* (citing *Coulter v. Tennessee*, 805 F.2d 146, 148 (6th Cir. 1986), *abrogated on other grounds by, The Ne. Ohio Coal. for the Homeless v. Husted*, 831 F.3d 686 (6th Cir. 2016)).

The Court of Appeals has explained this distinction well:

> The statutes use 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. Under these statutes a renowned lawyer who customarily receives $250 an hour in a field in which competent and experienced lawyers in the region normally receive $85 an hour should be compensated at the lower rate.

Coulter, 805 F.2d at 149; *see also Lamar Adver. Co. v. Charter Township of Van Buren*, 178 F. App'x 498 (6th Cir. 2006) ("Even if it would be reasonable to award [plaintiff] $370 per hour, the record supports the district court's conclusion that $200 per hour is sufficient to encourage competent lawyers in the relevant community to undertake legal representation.").

The Court has considered the County's objections but finds the County's suggested rates too low. As the parties acknowledge, in 2019, Attorney Gilbert was awarded $400 an hour, and Attorney Salonus was awarded $275 an hour. *L.H.*, 356 F. Supp. 3d at 724 ("The Court will calculate the lodestar rate according to Plaintiffs' attorneys' current billing rates—$400 for Justin Gilbert, and $275 for Jessica Salonus."). The Court does not find counsels' hourly rates should be reduced below the rates that were previously awarded. Further, the Court notes that the instant matter is a special education case, which "is usually financially impractical for parents to carry beyond an initial due process hearing, absent the willingness of a lawyer to gamble upon his or her ultimate success and the fee shifting provisions of the civil rights law." *Id.* As mentioned above, M.Q. has established that there are not many attorneys willing to take these cases, and therefore, Attorney Gilbert's and Attorney Salonus's rates should reflect that this area of the law is highly specialized with few attorneys practicing. Accordingly, the Court declines to recommend the County's suggested hourly rates.

The Court, however, finds Attorney Gilbert's request for $450 per hour and Attorney Salonus's request for $300 per hour unreasonable given that they were awarded $400 and $275, respectively, in 2019. The instant matter was filed the following year in 2020 and adjudicated in 2021. The Court finds an increase of $50 *per hour* and $25 *per hour* over the course of two years excessive. The Court recommends that Attorney Gilbert be awarded $425 per hour and that Attorney Salonus be awarded $290 per hour (approximately a 3% increase per year from their billing rates in 2019). The Court finds that such rates reflect the specialized skills of the attorneys, their years of experience, and the passage of time since *L.H.* was litigated.

B. Hours Billed

First, the County objects to certain billing errors by Attorney Gilbert. Second, the County argues that duplicative fees should be reduced. Third, the County objects to counsels' use of quarter-hour billing. Finally, the County objects to counsels' billing for secretarial tasks. The Court will address each objection separately.

1. Errors

The County states that Attorney Gilbert's travel records appear to contain clerical errors because his records note that travel time is supposed to be split between this case and another case, but the time billed does not reflect the split time. For instance, on November 21, 2019, the actual invoice reflects 2 full hours of travel time instead of .5 hours. The County states that on December 14, 2019, and December 18, 2019, Attorney Gilbert's travel to and from is not billed at a half rate. The County states that 2.75 hours should be deducted from Attorney Gilbert's travel time to account for these clerical entries. Further, the County states that Attorney Gilbert billed 1.5 hours on November 19, 2019, and 2.25 hours on November 21, 2019, for work that does not appear to be related in this case.

In his Reply, M.Q. states that the County's objections should be sustained as the above entries are incorrect. Accordingly, the Court recommends that Attorney Gilbert's time be reduced by 6.5 hours.

2. Duplicative Fees

The County acknowledges that when a party is represented by two attorneys, some overlap of billing hours is inevitable. The County argues that here, counsels' duplicative work should be eliminated. For instance, the County states that on November 21, 2019, both attorneys attended the depositions of M.Q.'s parents, but only Attorney Salonus billed for it as she defended the

depositions. The County continues that later, Attorney Salonus billed two hours for preparing for the deposition of the special education teacher, but Attorney Gilbert actually took the deposition. In addition, the County asserts that both attorneys billed their full rate for the entirety of the due process hearing (December 16, 2019-December 18, 2019) when only Attorney Gilbert addressed the tribunal. The County further states that both attorneys billed extensive hours for preparing expert witnesses and exhibits and that these preparation tasks did not require both attorneys to be involved. *See* [Doc. 37 at 9]. The County argues that Attorney Gilbert billed 60.25 hours for preparation, and Attorney Salonus billed 54.5 hours for preparation. The County proposes that the hours where both attorneys were working with the expert witnesses be reduced by 50%, and that Attorney Salonus's hours be reduced by 50% given that she did not address the tribunal. Thus, the County recommends reducing 6.5 hours for Attorney Gilbert, and 16 hours for Attorney Salonus.

Further, the County argues that Attorney Gilbert and Attorney Salonus also collaborated on the pleadings in this action when only one attorney was necessary, *see* [Doc. 37 at 11]. The County proposes to reduce 20.25 hours from Attorney Gilbert's time and 16.25 hours from Attorney Salonus's time based on this objection.

M.Q. replies that with respect to the County's objection relating to the deposition, Attorney Salonus prepared the outline, questions, and exhibits for Attorney Gilbert, which made the deposition less expensive. Further, M.Q. states that Attorney Salonus addressed and participated at the due process hearing. M.Q. argues that each party used a "co-pilot" for many different functions in this case. In addition, with respect to the County's objection regarding the briefs, M.Q. argues that the time was well spent by counsel, as it enabled the ALJ to write a cogent decision, which was fully affirmed by the Court.

The Court has reviewed the County's objections and declines to recommend reductions for alleged duplication. Specifically, the Court has reviewed the County's objection relating to the deposition and finds that there was no duplication. Attorney Salonus billed for preparing the deposition, while Attorney Gilbert billed for taking the deposition. The County also objects to both lawyers attending the due process hearing. The Court will not recommend reductions on this objection. In the Court's experience, two attorneys are often necessary to conduct trials. Generally, lead counsel examines the witnesses, but the other attorney, as M.Q. argues, "is measuring witness[es], assessing and selecting proof (often as the proof develops in hearing), selecting witnesses, working with the experts, making suggestions for examination, responding to the tribunal, debriefing the day, planning the next one, and managing the client." [Doc. 38 at 6]; *see also Clements v. Prudential Protective Servs., LLC*, 100 F. Supp. 3d 604, 617 (E.D. Mich. 2015), *aff'd*, 659 F. App'x 820 (6th Cir. 2016) (disagreeing with defendant's argument that the fees sought were duplicative because two attorneys attended the mediation). For the same reasons, the Court declines to recommend any reductions for preparing exhibits and experts.

Finally, the County argues that the attorneys' collaboration on the Findings of Fact and Conclusions of Law was duplicative. The Court agrees with M.Q. that the County's argument ignores the impact of this aspect of the case and the difficulty it presented. Accordingly, the Court finds the County's arguments regarding the duplicative work not well taken.

3. Quarter-Hour Billing and Secretarial Tasks

The County objects to counsels' use of quarter-hour billing and states that it has identified over thirty (30) tasks billed at .25 hours when the tasks should have taken less than fifteen (15) minutes of time. *See* [Doc. 37 at 12 n. 5]. The County states that in *L.H.*, the court reduced the amount awarded to Attorney Gilbert and Attorney Salonus by 7.5% each for this same reason. In

addition, the County states that both attorneys include some billable hours for secretarial tasks, including compiling records, labeling videos, redacting records, correspondence with witnesses regarding scheduling, bate stamping records, preparing exhibits, and preparing pleadings for filings. The County argues that most of these tasks are grouped with other legal activities, so it is difficult to parse out what amount of time was spent purely on those disallowed activities. The County argues that there appears to be some overlap between the issue of quarter-hour billing and the inclusion of non-legal work billed at the full litigation rate. Thus, the County proposes that the Court reduce the overall hours by 15% to account for quarter-hour billing and the inclusion of non-legal work.

M.Q. responds that the County makes a blanket assumption about quarter-hour billing in that attorneys bill up but never down, but this assumption is wrong. M.Q. states that his attorneys use software to keep track of their billing entries and that if an item is trivial, it is not inputted. M.Q. states that other entries are rounded down to reduce time. For instance, M.Q. states that if a matter took 35 minutes, it would be recorded as .5 and not the .75 that the County asks the Court to assume. M.Q. argues that it is not appropriate for Attorney Gilbert and Attorney Salonus to suffer across the board cuts to every single time entry for their consistent use of a quarter-hour system when they do not record nominal time and also round down. Finally, M.Q. states that the County has altered time entries relating to preparing the case in an attempt to characterize the entries as "secretarial."

"Whether quarter-hour billing is reasonable is a matter within the discretion of the district court." *Yellowbook Inc. v. Brandeberry*, 708 F.3d 837, 849 (6th Cir. 2013). "This discretion arose from concern that quarter-hour increments result in over-billing." *Hubbell v. FedEx Smartpost, Inc.*, No. 14-13897, 2018 WL 1392668, at *4 (E.D. Mich. Mar. 20, 2018) (citing *Yellowbrook*, 708

F.3d at 849), *aff'd*, 933 F.3d 558 (6th Cir. 2019)). Recently, as the parties acknowledge, the court in *L.H.* stated, "In this District in particular, the use of quarter-hour billing is disfavored." *L.H.*, 356 F. Supp. 3d at 727.

On the other hand, however, some "[c]ourts have declined to find the practice of billing in quarter hour increments per se unreasonable." *King v. Whitmer*, No. CV 20-13134, 2021 WL 5711102, at *8 (E.D. Mich. Dec. 2, 2021) (other citations omitted). Courts will impose reductions if the quarter-hour billing entries appear "suspect" or "fee enhancing." *Id.* (citations omitted). For instance, if the "billing records were replete with quarter-and half-hour charges for tasks that likely took a fraction of the time (e.g., drafting letters and emails, telephone calls, and intra-office conferences)," courts will impose restrictions. *Id*. "In comparison, district courts have declined to reduce charges due to quarter-hour billing where the attorney's time sheets do not reflect entries equating to menial takes that would require less than fifteen minutes to complete or when the law firm's regular practice is to bill in this manner." *Id.*

The Court has reviewed the above authority, coupled with the evidence in this case, including the billing entries, and will not recommend a reduction based on counsels' use of quarter-hour billing. Here, Attorney Gilbert and Attorney Salonus utilized software to keep track of their time. In addition, Attorney Gilbert and Attorney Salonus have rounded their time down, not up. For example, if a matter took 35 minutes, Attorney Gilbert and Attorney Salonus would record the task as .5 and not .75. Attorney Gilbert and Attorney Salonus have also excluded compensable work from their entries (*i.e.*, reviewing the referral Order). Specifically, Attorney Salonus states as follows, "In fact, there are many phone calls, emails with clients, and briefing time which I incurred and either did not include or cut from this fee petition in order to reduce my time." [Doc. 31-2 at ¶ 14]. Similarly, Attorney Gilbert states as follows:

> Time that takes less than fifteen minutes (a quarter hour) is typically not entered into my billing software. A recent example of this is the referral Order on the motion for attorney's fees to Magistrate Judge Guyton (D.E. 39). I reviewed the Order and made a quick note to Ms. Salonus, my co-counsel, but this took less than fifteen minutes so I did not bill for that time.

[Doc. 40-1 at ¶ 3].

Accordingly, the Court finds that Attorney Gilbert's and Attorney Salonus's practice of rounding time down and excluding other tasks compensate for overbilling, if any, that occurs due to billing in quarter-hours.

In addition, the Court has reviewed the billing entries to determine whether they are "replete with quarter-and half-hour charges for tasks that likely took a fraction of the time," *King*, 2021 WL 5711102, at *8, and the Court does not find that counsels' billing entries are replete with such fee-enhancing entries. Accordingly, the Court will not recommend reductions based on quarter-hour billing.

The Court has also reviewed the County's objections regarding secretarial work and has specifically reviewed the cited examples of such work. *See* [Doc. 37 at 13 n. 7]. The Court finds that the work performed is compensable. For instance, some of the more time-consuming tasks include as follows: "12/13/2019 Identify, prepare, and organize all potential exhibits, memos, transcripts, etc. needed for hearing [3.5]," and "10/08/2020 Continued revision of response to motion for judgment on the pleadings and insertion of citations to technical record [8.75]." The Court finds these tasks are legal functions. Most of the remaining entries are clearly legal tasks or involved such little time that the Court would be turning into a green shade accountant if reductions were recommended. *Ne. Ohio Coal. for the Homeless v. Busted*, 831 F.3d 686, 703 (6th Cir. 2016) ("[I]n assessing fees, district courts are not required to act as 'green-shade accountants' and

'achieve auditing perfection' but instead must simply do 'rough justice.'" (quoting *Fox v. Vice*, 563 U.S. 826, 838, (2011)).

4. Expert Witness Fees

M.Q. requests his experts' costs and expenses in the amount of $7,650.50 for Dr. Katherine MacLeod and $4,650.00 for Dr. Charles Ihrig, for a total amount of $12,300.50. M.Q. acknowledges that the IDEA does not allow recovery for expert fees, but he argues that Section 504 of the Rehabilitation Act ("Section 504") and Title II of the Americans with Disabilities Act ("ADA") allow such expenses to the prevailing party. M.Q. states that judgment for a least restriction environment "LRE" violation under Section 504 and/or unnecessary exclusion under ADA should also be entered in this case so that he can be reimbursed for the costs of his experts.

The County objects, stating that expert witness fees are not available under Section 504 or the ADA. In addition, the County asserts that even if these statutes allowed such fees, the County is not liable thereunder because the Court did not find that it violated either law.

M.Q. replies that courts have expressly held that expert costs may be recovered under Section 504. M.Q. maintains that the facts of this case establish violations of Section 504 and the integration mandate of the ADA.

In the present matter, the parties acknowledge that the IDEA does not allow prevailing parties to recover the costs for experts or consultants. Other courts have held, however, that expert fees are recoverable under Section 504 and the ADA. *E.H. v. Wissahickon Sch. Dist.*, No. CV 19-5445, 2020 WL 6286709, at *12 (E.D. Pa. Oct. 27, 2020 ("[M]any courts in this circuit have concluded that expert fees are recoverable for prevailing parties under Section 504, and the Court agrees," and that "expert fees are litigation expenses recoverable under the ADA"); *but see M.P. ex rel. K.P. v Ind. Sch. Dist.*, No. 721, No. 01-771, 2007 WL 844688, at *4 (D. Minn. Mar. 16,

2007) (holding expert fees not recoverable under the Rehabilitation Act). Even if the Court assumes that such fees are recoverable under Section 504 or the ADA, the Court will not recommend that expert fees be awarded in this case. *See D.S. by & through R.S. v. Knox Cty., Tennessee*, No. 3:20-CV-240, 2021 WL 6496726, at *15 (E.D. Tenn. June 21, 2021) ("The Court assumes without deciding that expert witness fees are recoverable if Knox County also violated Section 504 of the Rehabilitation Act or Section II of the Americans with Disabilities Act.").

Here, the ALJ did not rule on M.Q.'s claims under Section 504 or the ADA but instead held that they were "pretermitted." [Doc. 29 at 9]. The Court's Memorandum and Order only analyzed the disputed issues under the IDEA. In a recent opinion, United States District Judge Atchley considered the differences in establishing an IDEA claim, a Section 504 claim, and an ADA claim and found that a violation of IDEA does not necessarily mean that a defendant has also violated Section 504 or the ADA. *D.S,* 2021 WL 6496726, at *18. Specifically, in *D.S.*, the ALJ concluded that Section 504 is violated whenever the IDEA is violated and described the Section 504 claim as "pretermitted" and "redundant." *Id.* at *15. The court found that the ALJ erred in finding that a Section 504 claim and an IDEA claim are identical. *Id.* After a thoughtful review of relevant case law, the court reasoned, "The ADA and Rehabilitation Act similarly provide that the denial of a FAPE may be discriminatory, but the denial of a FAPE alone is not sufficient." *Id.* The court found that to establish a Section 504 claim, plaintiff had to present evidence that defendant acted in bad faith or exercised gross misjudgment. *Id.* The court found no such evidence and held that "Knox County did not violate Title VII of the ADA or Section 504 of the Rehabilitation Act, and as a result, D.S., is not entitled to expert witness fees." *Id*. at *17.

M.Q. argues that *D.S.* is not correct because it treats costs as the equivalent of damages. The court in *D.S.* found that the defendant violated the IDEA and then further analyzed whether

defendant violated Section 504 or the ADA. The *D.S.* court noted that the difference between the claims is relevant in the context of whether to award expert fees, but this is essentially what M.Q. is requesting in his filings before the Court. The Court agrees with the analysis in *D.S.*, and upon review of the underlying Memorandum and Order, there is no mention of bad faith or gross misjudgment. Accordingly, the Court will not recommend M.Q. be awarded his expert fees.

5. Supplemental Fee Requests

M.Q. requests his fees for litigating fees, explaining that since the last submission, his attorneys have briefed the attorney's fee issue in the Sixth Circuit, briefed whether the motion for attorney's fees should be stayed, and then drafted the current brief. Thus, M.Q. requests an additional $6,637.50 for Attorney Gilbert and $1,125.00 for Attorney Salonus.

The County did not respond to the Supplemental Fee Request. In any event, however, the Court finds the time spent on the subsequent filings reasonable. As noted above, however, the Court recommends a reduction in the hourly rates that Attorney Gilbert and Attorney Salonus have billed. Accordingly, the Court recommends that Attorney Gilbert be awarded $6,268.75 (14.75 hours x $425) and that Attorney Salonus be awarded $1,087.50 (3.75 hours x $290) for litigating fees.

V. CONCLUSION

Accordingly, for the reasons explained above, the Court **RECOMMENDS**[2] that M.Q.'s Motion for Attorney's Fees [**Doc. 31**] be **GRANTED IN PART AND DENIED IN PART**. Specifically, the Court **RECOMMENDS** as follows:

[2] Any objections to this Report and Recommendation must be served and filed within fourteen (14) days after service of a copy of this recommended disposition on the objecting party. Fed. R. Civ. P. 72(b)(2). Such objections must conform to the requirements of Federal Rule of Civil Procedure 72(b). Failure to file objections within the time specified waives the right to appeal the District Court's order. *Thomas v. Arn*, 474 U.S. 140, 153-54 (1985). "[T]he district court need not provide *de novo* review where objections [to the Report and Recommendation] are '[f]rivolous,

1. Attorney Gilbert be awarded $425 per hour and that 6.5 hours be deducted from his billing entries for an attorney's fee award of $67,681.25 (165.75 hours – 6.5 hours x $425), plus costs;

2. Attorney Salonus be awarded $290 per hour and that no time be deduced from her billing entries for an attorney's fee award of $69,600 (240 hours x $290) plus costs; [3]

3. M.Q. not be awarded his expert fees in the amount of $12,300.50;

4. Attorney Gilbert be awarded an additional $6,268.75 (14.75 hours x $425) for the time spent litigating fees; and

5. Attorney Salonus be awarded an additional $1,087.50 (3.75 hours x $290) for time spent litigating fees.

Respectfully submitted,

Bruce Guyton

United States Magistrate Judge

conclusive or general.'" *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986) (quoting *Nettles v. Wainwright*, 677 F.2d 404, 410 n.8 (5th Cir.1982)). Only specific objections are reserved for appellate review. *Smith v. Detroit Federation of Teachers*, 829 F.2d 1370, 1373 (6th Cir. 1987).

[3] As noted above, *supra* note 1, it appears Attorney Salonus's stated number of hours, 260.5, is incorrect. Thus, the Court arrived at 240 hours by dividing her requested amount of $72,037.50 by her requested hourly rate of $300.