

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

CARVER MIDDLE SCHOOL GAY-
STRAIGHT ALLIANCE, et al.,

Plaintiffs,

No. 5:13-cv-623 Oc-32 TJC-PRL

v.

SCHOOL BOARD OF LAKE
COUNTY, FLORIDA,

Defendant.

PLAINTIFFS' REPLY IN SUPPORT OF
MOTION FOR ATTORNEY'S FEES & LITIGATION COSTS

In support of their Motion for Attorney's Fees & Litigation Expenses (ECF 111) and pursuant to Order (ECF 110), the Carver Middle School Gay-Straight Alliance and H.F. (collectively, the "Carver GSA") reply to the School Board's Response (ECF 113) as follows:

Reasonable Hourly Rates

The Carver GSA requests reasonable rates for the four timekeepers. It relies on its argument in its Motion for Attorney's Fees (ECF 111) at 4-6 and the Declaration of William Sheppard (ECF 111-2). Additionally, it adds the following:

The School Board's expert Robert Bonner has limited knowledge of the prevailing rates in the Middle District for plaintiff's civil rights lawyers. The basis of his knowledge comes from a survey of published court opinions and knowledge from unpublished opinions that he litigated.¹ His limited knowledge, discussed further in the preceding footnote, means his opinions on reasonable hourly rates should be discounted in their entirety. Because his opinion on rates cannot be credited, the Court must look elsewhere for guidance.

First, the Court should approve hourly rates that prevail in the specific marketplace available for victims of those deprived of civil rights. *Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1300 (11th Cir. 1988) (focusing on the "reasonable hourly rate for a plaintiff's civil rights lawyer"). Bonner's own rates, Bonner Decl. (ECF 113-1) at 2, ¶ 11, are irrelevant because attorneys who represent defendants and are paid by insurance companies, like him, are routinely paid less. Bonner Dep. (ECF 116) at 24:23–25:3. Instead, the hourly rate that prevails among plaintiff's civil rights lawyers is dictated, in part, by the rates they would be paid in other cases they must decline. *See Johnson v. Georgia*

¹ He also has sometimes learned of the plaintiff's hours in some of the few cases he settles. *See* Bonner Dep. (ECF 116) at 33:9-17. However, it is a rare circumstance that he can deduce hourly rates. He would have to know both the number of hours and how the global settlement was divided between the client and the attorney. *See id.* at 30:4-15, 31:20-25, 32:1-9. And he made clear that he does not know how fee agreements are structured for civil rights attorneys and their clients. *See id.* at 31:14-19. In short, he simply is not sufficiently familiar with rates that civil-rights attorneys receive to opine on that subject as an expert.

Highway Exp., Inc., 488 F.2d 714, 718 (5th Cir. 1974) (“preclusion of other employment” should guide rate determination).² Because many plaintiff’s civil-rights lawyers also handle personal injury cases in both state and federal court, and that work is precluded by work on civil-rights cases, the rates paid in personal injury cases are highly probative. Personal injury lawyers generally work in a competitive market that often involves expensive advertising. Bonner Dep. (ECF 116) at 12:24–13:1, 25:17-24. Given these high operating costs, these attorneys must expect to be compensated at a significantly higher rate than insurance defense attorneys. *See id.* at 28:8-20 (personal injury attorneys in state court are routinely higher than civil rights lawyers in federal court). And like personal injury lawyers, plaintiff’s civil-rights lawyers work for a contingency fee. The typical retainer provides for a fee of the greater of the court-awarded fee or a percentage of the recovery (damages plus court-awarded fee). *See, e.g., Yellow Pages Photos, Inc. v. Ziplocal, LP*, 8:12cv755, 2017 WL 3393569, at *5 (M.D. Fla. Aug. 8, 2017). So, a court’s award of fees does not always reflect the lawyer’s total compensation. That total compensation may only be determined by dividing the typical plaintiff’s civil-rights / personal injury lawyer’s total compensation by the number of hours worked for that compensation. Yet, these figures are not

² Cited with approval in *Ela v. DeStefano*, No. 16-11548, --- F.3d ---, 16-11548, 2017 WL 3725593, at *4 (11th Cir. Aug. 30, 2017) (In determining whether the lodestar is reasonable, “the [district] court is to consider the 12 factors enumerated in *Johnson*”) (quotations omitted)

readily apparent to someone who is not a plaintiff's civil-rights lawyer. Aside from attorney rates approved by the court, Bonner admitted that he does not know the actual compensation of these attorneys. Bonner Dep. (ECF 116) at 32:7-9. In fact Bonner did not know whether plaintiff's civil-rights lawyers generally work on a contingency or charge by the hour. *See id.* at 25:25–26:2, 31:8-19. Instead, only a personal injury and civil-rights attorney like William Sheppard can speak to the usual compensation for civil-rights attorneys representing individual plaintiffs. He has the best knowledge of what the prevailing market rates are in the Middle District.

Second, the Middle District of Florida has approved rates comparative to what the Carver GSA requests and over \$400 per hour. *See Mawk v. Kaplan Univ.*, 6:13cv1469, 2015 WL 4694055, at *7 (M.D. Fla. Aug. 6, 2015) (Conway/Spaulding, JJ.) (approving rates of \$455–475 for Williams (16 years' experience) and \$310 for Rigby (4 years' experience) in a Title VII lawsuit); *Douglas v. Zachry Indus., Inc.*, 6:13cv1943, 2015 WL 6750803, at *5 (M.D. Fla. Nov. 5, 2015) (Byron, J.) (approving rates of \$400 for W. Doug Martin (9 years' experience) in a personal injury lawsuit); *Fornell v. Morgan Keegan & Co., Inc.*, 6:12cv38, 2013 WL 656321, at *7 (M.D. Fla. Jan. 11, 2013) (Smith, J.) (approving rates of \$450 for Erez and Sonn (16 years' experience), *report and recommendation adopted*, 2013 WL 656457 (M.D. Fla. Feb. 22, 2013) (Antoon,

J.); *Whirlpool Corp. v. Olsen*, 2:15-CV-223-FTM-38CM, 2016 WL 241391, at *3 (M.D. Fla. Jan. 5, 2016) (Mirando, J.) (approving rates of \$350 for Von Eitze (10 years' experience) in promissory-note default lawsuit), *report and recommendation adopted sub nom. Whirlpool Corp. v. Wysocki*, 2016 WL 233793 (M.D. Fla. Jan. 20, 2016) (Chappell, J.).

The Carver GSA's counsel exhibited competence and thorough preparation³ in this complex case,⁴ as reflected by the trial judge remarks that the case was "difficult," but "well-trying." Trial Tr. (Mar. 3, 2015) (ECF 70) at 145, 147. Their experience and skill is not diminished because it has not been recognized by a Florida Bar board certification. Such certifications are helpful to attorneys trying to attract clients, *see Bonner Dep.* (ECF 116) at 9:10-14, but less so to an organization's staff attorneys, *see Norman*, 836 F.2d at 1300 ("reputation and experience are usually only proxies for skill").

The Court should approve the rates the Carver GSA and Sheppard proposed.

³ The Middle District of Florida has approved rates of \$250 per hour in an ADA case where the court was "thoroughly unimpressed" after the attorney "was completely unprepared for the hearing and lacked familiarity with her own previous submissions to the Court." *Hoewischer v. Shopping Ctr. Developers of Florida, Inc.*, 3:12-CV-106-J-99TEM, 2013 WL 784644, at *2 (M.D. Fla. Mar. 1, 2013). The Carver GSA's counsel should be compensated at a higher rate.

⁴ The School Board's expert retreated from its belief that the case was "not a complicated case." Bonner's Decl. (ECF 113-1) at 9, ¶ 25. He admitted that the case was complex. Bonner Dep. (ECF 116) at 10:20-25 ("In some respects there were issues that were difficult.")

Reasonable Number of Hours

At the time of filing its motion for attorney's fees (ECF 111), the Carver GSA's counsel spent 702.8 hours in district court. District Time Records (ECF 111-3). They spent 164.9 hours on the appeal.⁵ Appellate Time Records (ECF 106 at 17-27). The sum is 867.7. The Carver GSA exercised billing judgment, eliminated 273.3 hours, and reduced its request to 594.4 hours. Categorized Summary of District Time (ECF 111-5) (463.9 hours); Categorized Summary of Appellate Time (ECF 111-6) (130.5 hours). It then eliminated 20% of the hours spent on the Complaint (ECF 1) and 25% of the hours spent on the Motion for Preliminary Injunction (ECF 4) in light of the unsuccessful First Amendment claim advanced as a corollary to the Equal Access Act claim. Carver GSA's Atty's Fee Mot. (ECF 111) at 12. That amounts to an additional elimination of 10.4 hours (sum of 20% off 17.5 hours for complaint and 25% off 27.5 hours for motion) for a total elimination of 283.7 hours. In the end, the Carver GSA's counsel requested compensation for 584 hours—a 33% reduction from the 867.7 hours spent. *See* District & Appellate Court Summary of Timekeeper Hours, attached and incorporated as Ex. 118-1.

⁵ ECF 111-6 inaccurately reflected the total of the noted hours for the appeal to be 245.1.

The School Board argues for a further deduction of these hours. *See* School Board's Response ("Resp.") (ECF 113). To arrive at the compensatory hours it believes are reasonable, it first identified activities by time record it contends are unreasonable and divided them into six categories on six exhibits.⁶ Bonner Dep. (ECF 116) at 6:19–7:6 (explaining the methodology the School Board used); Resp., Exhibits (ECF 113-3–113-8). It then subtracted the total time in each of the categories from the hours requested by the Carver GSA. Bonner Dep. (ECF 116) at 7:11-14. In this way, the School Board seeks a further deduction of 175.4 hours. Resp., Exhibits (ECF 113-3–113-8) (totaling amounts on the last page). The

⁶ The School Board's specific identification and categorization of the objected activities is helpful to hone the dispute. However, four problems exist with its exhibits.

(1) The School Board objects to some activities for more than one reason and therefore included them on more than one exhibit. For example, the Carver GSA requested compensation for 1.4 hours of Tilley's time on June 17, 2014, for discussing deposition outlines with Cooper. District Time Records (ECF 111-3) at 7. Yet, the School Board included this in both its Communications exhibit (ECF 113-3 at 5) and its Depositions exhibit (ECF 113-6 at 2 (listing 1.5 hours)).

(2) Its proffered sum of time by timekeeper in each category is not always accurate. For example, it seeks to eliminate 19.9 hours of Tilley's time as unreasonable interoffice communication (ECF 113-3), when the actual sum of the listed time entries is 18.1.

(3) The School Board does not always faithfully reproduce the actual time entry. The Court should not rely on the School Board's exhibits to discern the reported activity. For example, the School Board's Initial Brief exhibit (ECF 113-7) at 3 described Tilley's activity on Oct. 26, 2015, as "Draft/revise brief," when Tilley's time entry read "drafting carver appellate brief (edits to statement of the case, statement of facts, summary of argument, injunctive and declaratory relief not moot, EAA)," *see* Mot. for App. Atty's Fees (ECF 106) at 25.

(4) The School Board seeks to deduct some time the Carver GSA had already eliminated. For example, it seeks to deduct Tilley's conferences on Feb. 4, 2015 (ECF 113-3 at 7-8), but the Carver GSA had already eliminated that time (ECF 111-3 at 11).

For these reasons, the Court can neither rely on the School Board's exhibits to review attorney time entries nor deduct the totaled time at the bottom of the exhibits, even assuming the Court otherwise determined that the School Board's objections were sound.

School Board's proposed deduction would translate into an award of only 419 hours—a 52% reduction off the 867.7 total hours spent.

The School Board's response does not address the relevant legal issue. Rather than attempting to address the hours reasonably expended, the School Board instead focused on the number of hours it believes should be eliminated. In other words, the School Board's methodology focused on further deductions with little consideration of whether the remaining hours themselves would be reasonable. *See* Bonner Dep. (ECF 116) at 17:4-11 (remarking that Bonner looked only at what deductions (17.9) to make from the time spent on oral arguments (19.4) without considering whether the difference would be a reasonable number of hours (1.5)), 18:13–19:6 (same for initial brief). No one disputes “excessive, redundant or otherwise unnecessary hours should be excluded.” *Norman*, 836 F.2d at 1301 (quotation omitted). For this reason, the Carver GSA already eliminated 283.7 hours. However, the School Board's assertion that an additional 175.4 hours were also excessive failed to take into account the hours that were already eliminated. The School Board's claim that these additional hours are excessive is undermined by the fact that some hours are not excessive. Transparently, 90 minutes is not a sufficient amount of time to prepare for and present oral argument in a federal appeals court. Yet that is the School Board's position to this Court in

its response. This inattentive accounting of hours calls into question the propriety of all of their proposed deductions of deductions.

Furthermore, the School Board's proposed deductions were made by an expert who simply did not understand the case. He spent 23.4 hours last month rendering his opinion on the appropriate number of compensatory hours. Bonner Dep. (ECF 116) at 5:6-11. Yet, he exhibited a complete lack of understanding of the most fundamental issues in the case. For example, when asked whether the School Board contended in the district court and the court agreed that the School Board did not violate the Equal Access Act, Bonner was uncertain. *See id.* at 9:22–10:19. One cannot read any of the briefing in this case or the trial order or appellate opinion without learning that the School Board contended that the Equal Access Act does not apply to Carver Middle School, yet Bonner did not know this, only coming to that answer using tools of logical deduction on the spot at his deposition. *See id.* His ignorance about the primary dispute in the lawsuit throughout the district-court proceedings and on appeal speaks to an utter lack of knowledge about the claims and defenses. He cannot possibly give an informed opinion about the reasonableness of the attorney's fees request without an informed understanding of the lawsuit.

Only minimal further reductions are warranted. The Carver GSA explains why this is so by examining each category in which the School Board' expert requested a further reduction. The Carver GSA tabulated the School Board's proposed deductions (in red) by category (exhibit), and identified, where appropriate, the number of hours the Carver GSA worked, requested, and agreed to reduce (in blue). *See* Carver GSA's Summary of School Board's Response, attached and incorporated as Ex. 118-2.

Interoffice Communications (ECF 113-3)

The Carver GSA's counsel discussed strategies with each other over the telephone and by email. Through these exchanges they often settled on strategies or made conclusions based from conflicting research. This time was necessary for representation. *See* Bonner Dep. (ECF 116) at 20:16–21:3. Nevertheless, the Carver GSA only requested attorney's fees for one of the participants in the conversation, eliminating the time for all others (errors noted later). For example, when Stevenson and Tilley discussed whether the GSA was as a proper organizational client on August 13, 2013, Stevenson eliminated his time and left only Tilley's time as requested. District Time Records (ECF 111-3) at 1, 15.

The School Board seeks to eliminate 42.6 requested hours⁷ as unnecessary interoffice communication (22.2 hours for Stevenson, 19.9 hours for Tilley, and 0.5 hours for Cooper). *See* Resp., Exhibit–Attorney Communications Activities (ECF 113-3) at 11. Yet, the 42.6 hours of requested time represents over 100 hours of total time spent by all attorneys participating in the discussion and development of legal strategies. And some of the conferences were with third-parties. For example, the Carver GSA requests time for the Sept. 23, 2013, Stevenson and Tilley consultation with Sara Cohen, an educator, about how teachers understand the meaning of “curricular.” *See* District Time Records (ECF 111-3) at 2, 15. Yet, the School Board seeks to eliminate this time as interoffice communication even though this conference involved a third party. Resp., Exhibit–Attorney Communication Activities (ECF 113-3) at 2.

The School Board did identify some instance in which the Carver GSA failed to eliminate time for all but one attorney party to an internal discussion.

These 5.7 hours should thus be eliminated:

⁷ In this category, the School Board sought a reduction of 2 hours the Carver GSA had already eliminated:

Tilley	12/12/2013	0.2	call with BJS logistics of filing, service
Tilley	11/17/2014	0.1	call with LC about calling chambers
Tilley	11/21/2014	0.1	email to bjs and lc re discovery hearing
Tilley	2/4/2015	0.6	post-conference call with bjs re next steps
Tilley	2/4/2015	0.5	call with bjs to prepare for pre-pretrial conf
Stevenson	2/15/2017	0.5	Telephone conference with Tilley re: Mot. for Partial ...

Stevenson	5-Dec-13	0.3	Telephone conference with Tilley re: methods to ...
Stevenson	5-Sep-14	0.2	Telephone conference with Tilley re: depositions, resp. ...
Stevenson	8-Oct-14	0.2	Telephone conference with Tilley re: Sch. Bd.'s request ...
Cooper	30-Oct-14	0.6	TC with DT re reply
Stevenson	29-Jan-15	0.2	Telephone conference with Tilley re: trial
Stevenson	23-Feb-15	1.2	Telephone conference with Tilley re: trial preparations ...
Tilley	12-Jan-17	1.3	call with BJS re club application, settlement
Tilley	12-Jan-17	1.3	call with BJS re club application, settlement
Tilley	7-Feb-17	0.4	call with BJS re getting nominal damages under Equal ...

These figures have been included as an “Agreed Reduction” on the Carver GSA’s Summary of School Board’s Response (ECF 118-2).

No further elimination is warranted.

Unsuccessful First Amendment Claim (ECF 113-4)

The School Board seeks a 32.6 hour deduction of the Carver GSA’s requested time because it contends the time relates to the unsuccessful First Amendment claim (4.7 hours for Stevenson, 25.4 hours for Tilley, and 2.5 hours for Cooper). Resp., Exhibit–Unsuccessful Legal Theories (ECF 113-4) at 6. It attacks the Carver GSA’s work on four filings. Each is discussed below. Only a 1.8 hour deduction of Tilley’s time is warranted.

Complaint (ECF 1)

The School Board seeks to eliminate Tilley's time (0.1) on Dec. 5, 2013, related to "review e-mail discussion of 1st Amendment claims." Exhibit—Unsuccessful Legal Theories (ECF 113-4) at 2. However, the Carver GSA already eliminated it. District Time Records (ECF 111-3) at 2. No further elimination is warranted.

Motion for Preliminary Injunction (ECF 4)

The Carver GSA spent 42.5 hours on its Motion for Preliminary Injunction (ECF 4). Categorized Summary of District Time (ECF 111-5). After it exercised billing judgment, including removing discrete First Amendment tasks, 27.5 hours remained. *Id.* Additionally, because it moved on both its Equal Access and First Amendment claims, the Carver GSA eliminated an additional 25% of the requested time spent on that motion—to 20.6 hours (75% of 27.5 hours). *Id.*; Summary of School Board's Response (ECF 118-2). Yet, the School Board seeks a further reduction of 28.1 hours—more than the requested 20.6 hours. Exhibit—Unsuccessful Legal Theories (ECF 113-4). In other words, the School Board essentially contends that the Carver GSA should not receive any award at all for any work on the motion for preliminary injunction. The Court should reject the

School Board's attempt to eliminate any more time than the Carver GSA itself already eliminated.

A district court “must deduct time spent on discrete and unsuccessful claims.” *Norman*, 836 F.2d at 1302. The Carver GSA did that. *See, e.g.*, District Time Records (ECF 111-3) at 5 (eliminating 5.4 hours (3.1 hours plus 2.3 hours) of Tilley's time spent on Jan. 30, 2014, related to the “First Amendment” claim). The School Board's contention that Stevenson “discr[ete]ly devoted” 4.7 hours and Tilley “discr[ete]ly devoted” 25.4 hours to the First Amendment claim mischaracterizes the time entries. Resp., Bonner's Decl. (ECF 113-1) at 8, 10 (¶¶ 20, 27). Indeed, only two entries (Dec. 5, 2013 & Nov. 24, 2014) on the School Board's exhibit mention “First Amendment” or “1st Amendment.” Resp., Exhibit–Unsuccessful Legal Theories (ECF 113-4) at 1, 5.⁸ And some of the objected time even specifically relates to the successful Equal Access Act claim. *See* Resp., Exhibit–Unsuccessful Legal Theories (ECF 113-4) at 3 (eliminating Tilley's Dec. 12, 2013, entry for drafting the “EAA” part of the motion).

A further lodestar adjustment for an unsuccessful claim only applies when a plaintiff has limited success. *Norman*, 836 F.2d at 1302. Such an apportioned

⁸ The Carver GSA had already eliminated the Dec. 4, 2013, time entry. District Time Records (ECF 111-3) at 2. The Carver GSA agrees to eliminate the Nov. 24, 2014, time spent on the Response to the School Board's Motion for Summary Judgment. *See infra*.

reduction is appropriate only where the relief “is limited in comparison to the scope of the litigation as a whole.” *Id.* Yet, here the Carver GSA got what it sought in this lawsuit. The Carver GSA now operates as a non-curricular student group at Carver Middle. Order on Remand (ECF 107) at 5. Therefore, the Carver GSA’s 25% reduction for the interwoven time spent on its motion for preliminary injunction was more generous than required by law.

Presumably, the School Board seeks to deduct all of time spent on the motion because the motion was unsuccessful. But *Hensley’s* admonition applies to *claims*, not motions. In fact, to deny compensation for work performed on unsuccessful motions would improperly “atomize” this case. *See Comm’r, INS v. Jean*, 496 U.S. 154, 161–62 (1990) (holding that “the EAJA—like other fee-shifting statutes—favors treating a case as an inclusive whole, rather than as atomized line-items.”). In its preliminary-injunction order, the district court did not agree with the Carver GSA that the Equal Access Act applies to Carver Middle School, but the Carver GSA’s view was vindicated on appeal. It is irrelevant to the fees request that the motion was denied.

No further reduction is warranted.

Response to Motion to Dismiss (ECF 12)

The School Board seeks to eliminate 2.6 hours of Stevenson's time on Feb. 10, 2014, related the hearing on the School Board's Motion to Dismiss (ECF 12) and preliminary injunction (0.9 + 1.0 + 0.7 hours). Exhibit–Unsuccessful Legal Theories (ECF 113-4) at 5. Because the district court heard both motions, Order (ECF 17) at 2, and the Carver GSA moved for a preliminary injunction on both its Equal Access Act and First Amendment claims, this time cannot be segregated for elimination. *Norman*, 836 F.2d at 1302 (“[I]n determining reasonable hours the district court must deduct time spent on discrete and unsuccessful claims.”). The time should therefore not be eliminated, and no further reduction is warranted.

Response to School Board's Motion for Summary Judgment (ECF 43).

The Carver GSA agrees to eliminate 1.8 hours of Tilley's time on Nov. 24, 2014, spent discretely on responding to the First Amendment section of the School Board's Motion for Summary Judgment. *See* Exhibit–Unsuccessful Legal Theories (ECF 113-4) at 5-6. This amount has been included as an “Agreed Reduction.” Summary of School Board's Response (ECF 118-2).

Clerical Activities (ECF 113-5)

What the School Board characterizes as “clerical activities” warranting a deduction misstates the nature of the activity. Resp., Exhibit– Clerical Activities by Attorneys (ECF 113-5) at 2 (identifying 8.6 hours of “clerical time”). Admittedly, drafting a notice of a typical deposition is clerical. 0.4 hours of Stevenson time in Sept. 2014 (0.2 hours + 0.2 hours) should be eliminated and has been included as an “Agreed Reduction.” Summary of School Board’s Response (ECF 118-2). The remainder of the requested 8.2 hours is compensatory.

Stevenson spent 2.6 hours in June 2014 drafting a Rule 30(b)(6) notice of deposition. *See* Notice of Deposition, attached and incorporated as Ex. 118-3. The Rule requires a party seeking to depose an organization like the School Board to “describe with reasonable particularity the matters for examination.” This permits the organization to designate a person or persons who will testify on its behalf for those subject matters. The notice must be carefully drafted because the failure to include a subject matter in the notice or adequately describe it relieves the organization of any duty to provide a person on that subject. Stevenson carefully identified and described 17 subject matters for examination. No further reduction is warranted.

In Feb. 2017, as part of settlement negotiations, Stevenson requested 5.6 hours reviewing the Carver GSA's attorney time to share with opposing counsel. At this point in the litigation, the School Board had just approved the Carver GSA's application to form and operate as a non-curricular student group at Carver Middle. (ECF 96). However, the district court had not resolved the question of prospective relief. *See* Pls.' Mot. for Limited Discovery (ECF 104) at 1 (filed Mar. 29, 2017) (requesting discovery before "the Court rules on the viability of the prospective claims"). The district court had not ruled on nominal damages or entitlement to fees. *See* Order on Remand (ECF 107) (filed Apr. 12, 2017). Accordingly, counsel had to take care to remove privileged material. *See, e.g.,* District Time Records (ECF 111-3) at 12 (eliminating redacted time records from Mar. 9, 2015). This was too sensitive and important to leave to clerical staff. No further reduction is warranted.

Depositions (ECF 113-6)

The School Board seeks a 31.0 hour reduction of the Carver GSA's requested time on the June and September 2014 depositions. *Resp., Exhibit—Depositions* (ECF 113-6) at 2-3. However, the Carver GSA's requested time is reasonable.

June 2014 Depositions

The Carver GSA's counsel spent 72.4 hours for the June 2014 depositions. Categorized Summary of District Time (ECF 111-5). Over two full days, they deposed six witnesses: the Superintendent and Rule 30(b)(6) designee (Moxley), district staff charged with reviewing student club applications (Cole), the Carver Middle School principal (Cunningham), and three other personnel expected to have knowledge about noncurricular student clubs.⁹ Although two attorneys attended each of these depositions, the Carver GSA exercised billing judgment to eliminate attendance time by the non-participating attorney in each deposition and all travel time. After a 39% reduction, they requested 44.4 hours. *Id.* The School Board seeks a further deduction of 25.6 hours—to 18.8 hours. Resp., Exhibit– Deposition Preparation (ECF 113-6) at 3; Summary of School Board's Response (ECF 118-2). In other words, far from merely objecting to the presence of an additional attorney at depositions, the School Board does not believe that even half the time of the *participating* attorney can reasonably be compensated. However, the Carver GSA's request is reasonable given the number of depositions, the time to take them, and the fact that the depositions were critical for its motion for summary judgment (ECF 28) and trial. This evidence obtained before trial and then put into

⁹ The Carver GSA made this same representation in its Attorney Fee's motion (ECF 111) at 13. The School Board did not contest its accuracy in its response.

evidence at trial was the basis for judgment being entered for the Carver GSA following remand from the Eleventh Circuit. If the School Board had conceded all along that the elements of an Equal Access Act claim were met but that the Act simply did not apply, the depositions would not have been necessary. But because the School Board did not so concede—indeed, it continued to maintain even after remand from the Eleventh Circuit that the Equal Access Act had not been violated—the Carver GSA needed to take those depositions. No further reduction is warranted.

September 2014 Depositions

The Carver GSA's counsel spent 45.7 hours for the September/October 2014 depositions. Categorized Summary of Summary of District Time (ECF 111-5). Over full two days, they deposed or defended the deposition of seven witnesses: each of the School Board's five members, its financial officer, and its expert Moxley.¹⁰ Although two attorneys attended each of these depositions, the Carver GSA exercised billing judgment to eliminate attendance time by the non-participating attorney in each deposition and all travel time. After a 70% reduction, they requested only 13.7 hours. *Id.* The School Board seeks a further

¹⁰ The Carver GSA made this same representation in its Attorney Fee's motion (ECF 111) at 14-15. The School Board did not contest its accuracy in its response.

reduction of 5.4 hours¹¹—reducing the hours to 8.3. Resp., Exhibit– Deposition Preparation (ECF 113-6) at 3; Summary of School Board’s Response (ECF 118-2).

The Carver GSA’s request is reasonable given the fact the depositions were critical for its motion for summary judgment (ECF 28) and trial, and, ultimately—as discussed above—for the entry of judgment in its favor. No further reduction is warranted.

Initial Appellate Brief (ECF 113-7)

The Carver GSA’s counsel spent 62.9 hours drafting its initial appellate brief. Categorized Summary of Appellate Time (ECF 111-6). Exercising billing judgment, it eliminated 18% of this time and only requested 51.6 hours. *Id.* The School Board seeks a further reduction of 44.2 hours (13.9 hours for Stevenson, 25.2 hours for Tilley, 0.4 hours for Abudu, and 4.7 hours for Cooper). Resp., Exhibit–Initial Brief (ECF 113-7) at 3. In its view, the Carver GSA’s counsel should have only spent 7.4 hours (51.6 requested hours minus 44.2 hours sought to

¹¹ The School Board’s sought reduction for the Sept, 2014 depositions overlaps with its requested reduction for clerical activities. Both include a 0.4 hour reduction for Stevenson’s drafting of a notice of deposition. It is improper for the School Board to request a double reduction for a single time entry.

be deducted) on its initial brief.¹² The well-crafted brief on a novel question of law takes more time.

Over its 42 pages, the Carver GSA's initial brief (ECF 111-7) addressed the three complex issues on appeal: The district court dismissed the case with prejudice after concluding it was both not ripe and moot.¹³ *Carver Middle Sch. Gay-Straight All. v. Sch. Bd. of Lake County, Florida*, 842 F.3d 1324, 1328 (11th Cir. 2016). "As an alternative ground for denying relief, the district court ruled that the Equal Access Act does not apply to Carver Middle School." *Id.* Notably, the substantive dispute in the appeal turned on whether a middle school was a "secondary school" subject to the Equal Access Act. Because "no reported decisions of the Florida courts answer this question," the Carver GSA had to marshal innovative, creative arguments to prevail. *See Carver*, 842 F.3d at 1331.

Therefore, the Carver GSA's request for 51.6 hours is reasonable.

¹² Bonner retreated from this position during the deposition when he claimed that 25-30 hours would be reasonable to spend on the initial and reply briefs. Bonner Dep. (ECF 116) at 14:13-16.

¹³ The issue of mootness was not raised by the district court until the trial itself, *see* Plaintiff's Appellate Brief (ECF 111-7) at 21 n.8, and the issue of ripeness was first raised in the trial order, *see id.* at 17 n.6.

Oral Arguments (ECF 113-8)

The Carver GSA's counsel spent 24.7 preparing for and attending oral arguments. Categorized Summary of Appellate Time (ECF 111-6). Exercising billing judgment, it eliminated 21% of this time and only requested 19.4 hours for Tilley's time. *Id.*; Mot. for App. Atty's Fees (ECF 106) at 31 (all requested time attributable to Tilley). The School Board seeks a further reduction of 17.9 hours. Resp., Exhibit–Oral Argument Preparation (ECF 113-8) at 3. In the School Board's view, the Carver GSA's counsel should have only spent 1.5 hours (19.4 requested hours minus 17.9 hours sought reduction to be deducted minus 0.5 hours at oral argument) to prepare and argue before the Eleventh Circuit. It misstates the importance and complexity of the appeal. *See* Trial Tr. (Mar. 3, 2015) (ECF 70) at 145, 147 (observing the case was “obviously ... important and difficult,” but “well-tried”).

In light of the complexity of the appeal, *see* Section on Plaintiff's Initial Appellate Brief, *supra*, Tilley's request for 19.4 hours is reasonable. No further reduction is warranted.

Litigation Expenses

The School Board urges the Court to discount “some” of the litigation expenses, but fails to detail them all. Resp. (ECF 113) at 4 (“some of Plaintiffs’

listed litigation expenses are more akin to overhead expenses”). The Court should not review unspecified objections.

The School Board does complain about some travel expenses, stating it was unnecessary for two attorneys to attend the hearing on the Feb. 2014 motion to dismiss and the June 2014 depositions. *Id.* at 4-5. Through billing judgment, the Carver GSA eliminated all travel time as well as all deposition-attendance time by the extra plaintiffs’ attorney. For this reason, the School Board believes the litigation costs were also unnecessary. It claims as unreasonable and duplicative the \$482.85 on the hearing and \$703.33 for the 2014 depositions (totaling \$1,186.18).

The Carver GSA received benefit from both attorneys at the hearing and deposition and accordingly, their travel expenses should be reimbursed by the School Board. Nevertheless, if the Court is inclined to cut these expenses, the Carver GSA proposes it cut them by half—or \$593.09—as at least one attorney was undoubtedly necessary.

Since filing its Motion for Attorney’s Fees (ECF 111), the Carver GSA has incurred an additional litigation expense. The School Board’s expert Robert Bonner required payment of \$275 to take his deposition. *See* Bonner Invoice,

attached and incorporated as Ex. 118-4. The Carver GSA requests that the Court award it this additional amount as a nontaxable litigation expense.

Other Issues

Correction of Scrivener's Error

In its attorney's fees motion, the Carver GSA miscalculated the total requested amount by twice adding the \$49,160 in attorney's fees in the appellate court. Motion for Attorney's Fees (ECF 111) at 18. The sum of the requested fees and litigation expenses in the motion is \$227,759.73 with interest, not \$276,919.73 with interest. The Carver GSA's counsel quickly clarified this issue with opposing counsel, who graciously did not raise this issue in its response.

Additional Time Spent Since Filing the Motion and Revised Request

Since filing its attorney's fees motion, the Carver GSA's counsel has spent further time on this case as detailed in the attached task-based, itemized statements of the time expended by each of the lawyers for which Plaintiffs seek compensation for work done. *See Additional Time Records & Attorney Declarations*, attached and incorporated as Ex. 118-5. As reflected in these time records, the Carver GSA's counsel spent an additional 33.5 hours, eliminated 15.4

hours through billing judgment (46% reduction), for a net request of 18.1 hours.

See District & Appellate Court Summary of Timekeeper Hours (ECF 118-1).

Previous Litigation

The Carver GSA's previous litigation only minimally reduced the necessary time spent on the current litigation. *See* Sch. Bd.'s Resp. (ECF 113) at 2. *B.N.S. v. Sch. Bd. of Lake Cty., Fla.*, No: 5:13cv205 (M.D. Fla.), was settled with a consent decree within a day. Compl. (ECF 1), ¶ 11. The Carver GSA's counsel saved some time in drafting the complaint, and this savings is reflected in its request. However, no time savings could be realized for the discovery, briefing, trial, and appeal. Moreover, the primary legal issue in this litigation—the applicability of the Equal Access Act to Carver Middle School—was not at issue at all in *B.N.S.*, because the change in state law that the School Board used to justify its legal position on the applicability of the Equal Access Act in the present litigation had not yet occurred at the time *B.N.S.* was filed and concluded. *See, e.g.*, Memorandum Opinion (ECF 75) at 23 (noting date of change in state law). Indeed, the clarity of the law at the time *B.N.S.* was filed was the very reason the case settled within a day.

Conclusion

For the reasons set forth above, Plaintiffs respectfully request an award a total of \$232,304.73 for attorney’s fees (\$225,704) and litigation expenses in the district court and the appellate court (\$6,600.73) pursuant to 42 U.S.C. §1988 as follows:

Attorney’s Fees

Hourly Rates

<u>Attorney</u>	–	<u>Year (State)</u>	<u>Rate</u>
Nancy Abudu	–	1999 (NY)	\$450
Leslie Cooper	–	1996 (NY)	\$450
Benjamin Stevenson	–	2002 (FL)	\$400
Daniel Tilley	–	2010 (NY)	\$350

Compensatory Hours (ECF 118-1)

<u>Attorney</u>	–	<u>Hours</u>
Nancy Abudu	–	1.8
Leslie Cooper	–	24.9
Benjamin Stevenson	–	301.2
Daniel Tilley	–	266.4
Total		594.2

Litigation Expenses

\$5,710.24	-	nontaxable litigation expenses in the district court (ECF 111-12)
\$615.49	-	nontaxable litigation expenses in the appellate court (ECF 106 at 59)
\$275	-	School Board’s expert witness fee for Aug. 2017 deposition (ECF 118-4)
\$6,600.73	-	Total

Dated: Aug. 31, 2017

Certificate of Service: Today, I filed this document with the Clerk of the Court using the CM/ECF system, which will send notification of the filing to all persons registered for this case, including any opposing counsel that have appeared.

Respectfully Submitted,

s/ Benjamin James Stevenson

Benjamin James Stevenson

Fla. Bar. No. 598909

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Daniel B. Tilley

Trial Counsel

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Counsel for Plaintiffs

**District & Appellate Court
Summary of Timekeeper Hours**

Carver GSA v. Lake Cty. Sch. Bd., No. 5:13cv623 (M.D. Fla.)
Carver GSA v. Lake Cty. Sch. Bd., No. 15-14183 (11th Cir.)

Time Keeper

	<u>Abudu</u>	<u>Cooper</u>	<u>Stevenson</u>	<u>Tilley</u>	<u>Total</u>	<u>Total Discount</u>
<u>Hours Worked (through ECF 111)</u>						
District ¹	7.2	42.8	337.9	314.9	702.8	
11th Cir. ²	4.4	12.4	68.8	79.3	164.9	
Subtotal	11.6	55.2	406.7	394.2	867.7	
<u>Eliminated Hours</u>						
District ¹	-7.2	-25.4	-98.9	-107.4	-238.9	
11th Cir. ²	-2.6	-3.7	-20.1	-8.0	-34.4	
Subtotal	-9.8	-29.1	-119.0	-115.4	-273.3	
<u>1st Amend. Reduction</u>						
District		-0.6	-1.7	-8.0	-10.4	
<u>Requested Hours (ECF 106 & 111)</u>						
District	0.0	16.8	237.3	199.5	453.5	35%
11th Cir.	1.8	8.7	48.7	71.3	130.5	21%
Subtotal	1.8	25.5	286.0	270.8	584.0	33%
<u>Additional Hours (ECF 116-1)</u>						
Total Hours	0.0	0.0	28.4	5.1	33.5	
Eliminated	0.0	0.0	10.7	4.7	15.4	
Net	0.0	0.0	17.7	0.4	18.1	46%
<u>Carver GSA's Agreed Reduction (ECF 116)</u>						
	0.0	0.6	2.5	4.8	7.9	
<u>Current Requested Hours</u>						
Total	1.8	24.9	301.2	266.4	594.2	

¹ See District Court Attorney Time Records (ECF 111-3)

² See Appellate Court Attorney Time Records (ECF 106 at 17-27)

District & Appellate Court
Summary of School Board's Response (ECF 113)

Carver GSA v. Lake Cty. Sch. Bd., No. 5:13cv623 (M.D. Fla.)
Carver GSA v. Lake Cty. Sch. Bd., No. 15-14183 (11th Cir.)

Time Keeper

	<u>Abudu</u>	<u>Cooper</u>	<u>Stevenson</u>	<u>Tilley</u>	<u>Total</u>
<u>Communications (ECF 111-3)</u>					
Sch. Bd.'s Proposal Reduction		0.5	22.2	19.9	42.6
<i>Carver GSA's Agreed Reduction</i>	0.0	0.6	2.1	3.0	5.7
<u>Unsuccessful First Amendment (ECF 113-4)</u>					
Complaint (ECF 1)					
Sch. Bd.'s Proposal Reduction				0.1	0.1
<i>Carver GSA's Agreed Reduction</i>					0.0
Mot. for Prelim. Injunc. (ECF 4)					
Hours Worked (ECF 111-5)	0.6	2.5	2.3	37.1	42.5
Requested Hours (incl. 1st Am.)	0.0	1.9	1.6	17.2	20.6
Sch. Bd.'s Proposal Reduction		2.5	2.1	23.5	28.1
Net Hours	0.0	-0.6	-0.5	-6.3	-7.5
<i>Carver GSA's Agreed Reduction</i>					0.0
Response to Motion to Dismiss (ECF 12)					
Sch. Bd.'s Proposal Reduction			2.6		2.6
<i>Carver GSA's Agreed Reduction</i>					0.0
Respond to School Board's Motion for Summary Judgment (ECF 43)					
Sch. Bd.'s Proposal Reduction				1.8	1.8
<i>Carver GSA's Agreed Reduction</i>				1.8	1.8
Subtotal					
Sch. Bd.'s Proposal Reduction (ECF 113-4)		2.5	4.7	25.4	32.6
<i>Carver GSA's Agreed Reduction</i>				1.8	1.8

	<u>Abudu</u>	<u>Cooper</u>	<u>Stevenson</u>	<u>Tilley</u>	<u>Total</u>
<u>Clerical Activities (ECF 113-5)</u>					
Sch. Bd.'s Proposal Reduction			8.6		8.6
<i>Carver GSA's Agreed Reduction</i>			0.4		0.4

	<u>Abudu</u>	<u>Cooper</u>	<u>Stevenson</u>	<u>Tilley</u>	<u>Total</u>
<u>Deposition Preparation (ECF 113-6)</u>					
Discovery - Depositions (June 2014)					
Hours Worked (ECF 111-5)	0.0	4.9	55.2	12.3	72.4
Requested Hours (ECF 111-5)	0.0	2.4	33.6	8.4	44.4
Sch. Bd.'s Proposal Reduction			17.3	8.3	25.6
Net Hours		2.4	16.3	0.1	18.8
<i>Carver GSA's Agreed Reduction</i>					0.0

Discovery - Depositions (Sept./ Oct. 2014)					
Hours Worked (ECF 111-5)	0.0	0.0	35.5	10.2	45.7
Requested Hours (ECF 111-5)	0.0	0.0	10.6	3.1	13.7
Sch. Bd.'s Proposal Reduction			5.4		5.4
Net Hours			5.2	3.1	8.3
<i>Carver GSA's Agreed Reduction</i>					0.0

Subtotal					
Sch. Bd.'s Proposal Reduction (ECF 113-6)			22.7	8.3	31.0
<i>Carver GSA's Agreed Reduction</i>				0.0	0.0

	<u>Abudu</u>	<u>Cooper</u>	<u>Stevenson</u>	<u>Tilley</u>	<u>Total</u>
<u>Initial Brief (ECF 113-7)</u>					
Hours Worked (ECF 111-6)	0.4	5.7	24.4	32.4	62.9
Requested Hours (ECF 111-6)	0.4	4.7	14.8	31.7	51.6
Sch. Bd.'s Proposal Reduction (ECF 113-7)	0.4	4.7	13.9	25.2	44.2
Net Hours	0.0	0.0	0.9	6.5	7.4
<i>Carver GSA's Agreed Reduction</i>					0.0

	<u>Abudu</u>	<u>Cooper</u>	<u>Stevenson</u>	<u>Tilley</u>	<u>Total</u>
<u>Oral Arguments (ECF 113-8)</u>					
Hours Worked (ECF 111-6)	2.5	1.0	1.8	19.4	24.7
Requested Hours (ECF 106 at 31)	0.0	0.0	0.0	19.4	19.4
Sch. Bd.'s Proposal Reduction (ECF 113-8)				17.9	17.9
Net Hours				1.5	1.5
<i>Carver GSA's Agreed Reduction</i>					0.0

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

CARVER MIDDLE SCHOOL GAY-
STRAIGHT ALLIANCE et al.,

Plaintiffs,

No. 5:13-cv-00623-WTH-PRL

v.

SCHOOL BOARD OF LAKE COUNTY,
FLORIDA,

Defendant.

PLAINTIFFS' NOTICE OF RULE 30(B)(6) DEPOSITION

PLEASE TAKE NOTICE that Plaintiffs, pursuant to Rule 30(b)(6), Fed. R. Civ. P., will take the following deposition(s) to be recorded by stenographic means before a person authorized by law pursuant to Rule 28 at the following location(s) and time(s) with each subsequent deposition of the day commencing as reasonably possible after the preceding deposition(s) have concluded:

<u>Deponent</u>	<u>Date</u>	<u>Time</u>	<u>Location</u>
School Board of Lake County, Florida, R. 30(b)(6) (see below)	Wed., June 25, 2014	10:00 AM	McLin Burnsed 1000 West Main Street Leesburg, Florida 34749 352-787-1241

Pursuant to Fed.R.Civ.P. 30(b)(6), School Board of Lake County, Florida, shall designate one or more officers, directors, managing agents, or other persons to testify on on the following matters:

1. The reason(s) for which the Plaintiff Carver GSA was not and continues not to be permitted to operate as a student club or organization.
2. The School Board's knowledge and beliefs about the Carver GSA and gay-straight alliances generally.

3. The reasons for allowing or disallowing specific student clubs or organizations during the 2013-2014 school year.

4. The procedures, requirements, and standards for approving a student club and organization. This topic includes any guidance given to school officials on these issues and whether specific clubs or organizations complied.

5. The standards and requirements for the proper operation of school clubs or organizations.

6. The intended purpose(s) of the School Board permitting student clubs and organizations.

7. The August 2013 decision to change which student clubs and organizations were permitted.

8. The impetus for School Board Policy 4.502 (DE 4-1).

9. The School Board's interpretation of its policies.

10. The procedures, requirements, benefits, and standards for use of School Board facilities, *see* Sch. Bd. Policy No. 9.30.

11. The organization, powers, oversight, and duties of the School Board, the Superintendent, and school officials.

12. Secondary education and how it is defined and understood within the School District of Lake County, Florida.

13. Curriculum in the School District's schools and how it is determined.

14. The receipt, accounting, apportionment, and allocation of federal financial assistance.

15. Acceptable pedagogical reasons for censoring student speech within the School District.

16. The factual assertions or denials made in the Answer and affirmative defenses, the Motion to Dismiss (DE 10), and Resp. to Mot. for Preliminary Injunction (DE 11).

17. The issues inquired through Plaintiffs' written request for discovery and the School Board's answers and responses to that written discovery.

The oral examination will commence at the above time and place until completion. These depositions are being taken for the purpose of discovery, for use a trial, or for such other purposes as authorized or permitted under applicable law and Federal Rules of Civil Procedure.

PLEASE GOVERN YOURSELVES ACCORDINGLY

Americans with Disabilities Act

In accordance with the American with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall within a reasonable time before any proceeding contact the counsel below.

Dated: June 12, 2014

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served today via U.S. mail and e-mail on opposing counsel:

Stephen W. Johnson
Stephanie McCulloch
McLin Burnsed
1000 West Main Street, P.O. Box 491357
Leesburg, FL 34749

Respectfully Submitted,

/s/ Daniel B. Tilley

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Counsel for Plaintiff

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 260 WEKIVA SPRINGS ROAD, SUITE 2000
 LONGWOOD, FL 32779
 (407) 872-7774

August 22, 2017

BENJAMIN JAMES STEVENSON, ESQ.
 ACLU FOUNDATION OF FLORIDA, INC.
 3 W. GARDEN STREET, SUITE 712
 PENSACOLA, FL 32591-2723

INVOICE

Matter ID: 171047

Matter Producer: REB

Client ID: 2528

Client Producer: REB

CARVER MIDDLE SCHOOL GAY-STRAIGHT ALLIANCE V. SBLC, FL

Invoice # 36172

Federal ID # 59-3457102

CARVER MIDDLE SCHOOL GAY-STRAIGHT ALLIANCE V. SCHOOL BOARD
 OF LAKE COUNTY, FLORIDA

For Professional Services Rendered:

08/14/2017	REB	ATTEND DEPOSITION OF ROBERT E BONNER	1.10 hr	\$275.00
				Total Professional Services: \$275.00

INVOICE SUMMARY

<u>Producer</u>	<u>Role</u>	<u>Rate</u>	<u>Hours</u>	<u>Amount</u>
REB	PARTNER	\$250.00	1.10	\$275.00

For Professional Services:	1.10 Hours	\$275.00
Total Due:		\$275.00

Balance in Trust: \$0.00
 Balance in Retainer: \$0.00

*Please make check payable to Meier, Bonner, Muszynski, O'Dell & Harvey, P.A.
 Thank you.*

Attorney Time Record

Timekeeper: **Benjamin Stevenson**
 Staff Attorney
 ACLU Foundation of Fla.
 3 W. Garden St., Ste 712
 Pensacola, FL 32502

Style: *Carver GSA v. School Board of Lake County, Fla.*
 No. 5:13-cv-623 WTH-PRL (M.D. Fla)

Time Period: *Post Atty's Fee Mot. (ECF 111) - After June 15, 2017*

28.4 Total Hours Worked

10.7 Less Eliminated Hours

17.7 Net Hours Requested

<u>Date</u>	<u>Hours</u>	<u>Task</u>	<u>Category</u>	<u>Billing Judgment</u>
12-Jul-17	0.4	Telephone conference with Tilley re: settlement and deposition of Sch. Bd.'s possible expert	Post Atty Fee Motion (ECF 111)	Eliminated
19-Jul-17	0.2	Communicated with opposing counsel re: Deposition of Robert Bonner	Post Atty Fee Motion (ECF 111)	
20-Jul-17	0.2	Communicated with opposing counsel re: Deposition of Robert Bonner	Post Atty Fee Motion (ECF 111)	
21-Jul-17	0.2	Communicated with opposing counsel re: Deposition of Robert Bonner	Post Atty Fee Motion (ECF 111)	
31-Jul-17	3.1	Reviewed and analyzed Sch. Bd.'s Resp. to Attorney-Fee petition to identify issues warranting response	Post Atty Fee Motion (ECF 111)	
1-Aug-17	0.2	Drafted email to Sch. Bd. with list of current district court taxable costs and requested the Sch.Bd.'s position regarding the proposed costs pursuant to the court order (ECF 114)	Post Atty Fee Motion (ECF 111)	
7-Aug-17	1.8	Began drafting reply with emphasis on deductions made by the school board	Post Atty Fee Motion (ECF 111)	
7-Aug-17	1.5	Continued drafting reply with emphasis on school board's deductions exceeding requested time by	Post Atty Fee Motion (ECF 111)	Eliminated
8-Aug-17	0.2	Drafted Notice of Deposition for Robert Bonner	Post Atty Fee Motion (ECF 111)	Eliminated
8-Aug-17	0.2	Corresponded with opposing counsel re: deposition of Robert Bonner	Post Atty Fee Motion (ECF 111)	
8-Aug-17	1.6	Continued drafting reply with emphasis on legal standard for deducting time spent on an	Post Atty Fee Motion (ECF 111)	
10-Aug-17	1.2	Continued drafting reply with emphasis time spent on depositions, clerical activities, and interoffice	Post Atty Fee Motion (ECF 111)	
11-Aug-17	3.4	Continued drafting reply	Post Atty Fee Motion (ECF 111)	Eliminated
11-Aug-17	0.8	Continued drafting reply with emphasis on	Post Atty Fee Motion (ECF 111)	
14-Aug-17	1.5	Prepared examination of Robert Bonner	Post Atty Fee Motion (ECF 111)	
14-Aug-17	0.2	Drafted correspondence to opposing counsel & Bonner re: documents to be available during deposition	Post Atty Fee Motion (ECF 111)	
14-Aug-17	1.3	Deposed Robert Bonner	Post Atty Fee Motion (ECF 111)	

<u>Date</u>	<u>Hours</u>	<u>Task</u>	<u>Category</u>	<u>Billing Judgment</u>
14-Aug-17	0.3	Telephone conference with Tilley re: whether to order deposition	Post Atty Fee Motion (ECF 111)	Eliminated
14-Aug-17	0.3	Telephone conference with Tilley re: Bonner's affidavit and examination of Bonner	Post Atty Fee Motion (ECF 111)	Eliminated
15-Aug-17	1.2	Conducted research on prevailing rates for attorneys in the Middle District of Fla. in reply to School Board's proffered survey	Post Atty Fee Motion (ECF 111)	
15-Aug-17	0.7	Drafting portions of the Reply in support of Carver GSA's Mot. for Atty Fees related to prevailing market rates for attorneys	Post Atty Fee Motion (ECF 111)	
17-Aug-17	3.0	Continued drafting reply	Post Atty Fee Motion (ECF 111)	Eliminated
17-Aug-17	0.9	read Bonner's deposition and incorporated it into Reply	Post Atty Fee Motion (ECF 111)	
23-Aug-17	1.3	Drafted reply with emphasis on prevailing rates and expert's limited knowledge	Post Atty Fee Motion (ECF 111)	
23-Aug-17	0.3	Corresponded with Sch. Bd. re: Sch.Bd.'s position regarding the proposed costs pursuant to the court order (ECF 114)	Post Atty Fee Motion (ECF 111)	
23-Aug-17	0.2	Corresponded with Sch. Bd. re: Sch.Bd.'s position regarding the proposed costs pursuant to the court order (ECF 114)	Post Atty Fee Motion (ECF 111)	
28-Aug-17	1.6	Continued drafting reply	Post Atty Fee Motion (ECF 111)	Eliminated
31-Aug-17	0.6	Finalized Reply (ECF 188)	Post Atty Fee Motion (ECF 111)	

STEVENSON'S DECLARATION
IN SUPPORT OF FEE APPLICATION

I, BENJAMIN STEVENSON, am over the age of 18 and make this declaration based on my personal knowledge, unless otherwise noted:

1. I represented and continue to represent the Plaintiffs in this case both in the appeal and at the trial level.
2. I performed the legal work attributed to me in the foregoing time records.
3. Although several attorneys worked on this case for the Plaintiffs, each of us made a distinct contribution and did not duplicate our efforts. All of the legal work I performed was necessary for the representation of Plaintiffs.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on Aug. 31, 2017

s/Benjamin Stevenson
Benjamin Stevenson

Attorney Time Record

Timekeeper: **Daniel Tilley**
 Staff Attorney
 ACLU Foundation of Fla.
 4343 W. Flagler St., Ste. 400
 Miami, FL 33134

Style: *Carver GSA v. School Board of Lake County, Fla.*
 No. 5:13-cv-623 WTH-PRL (M.D. Fla)

Time Period: *Post Atty's Fee Mot. (ECF 111) - After June 15, 2017*

5.1 Total Hours Worked

4.7 Less Eliminated Hours

0.4 Net Hours Requested

<u>Date</u>	<u>Hours</u>	<u>Task</u>	<u>Category</u>	<u>Billing Judgment</u>
7-Jul-16	0.1	call with Benjamin Stevenson re transfer of case to Judge Corrigan, update on status of fee petition (Steve Johnson has not sought to set our depositions)	Post Atty Fee Motion (ECF 111)	Eliminated
7-Jul-16	0.4	research Judge Corrigan's fee awards, send email to Benjamin Stevenson re same	Post Atty Fee Motion (ECF 111)	
12-Jul-17	0.4	call with Benjamin Stevenson re settlement, anticipated deposition of Steve Johnson's fee expert (the insurance adjuster)	Post Atty Fee Motion (ECF 111)	Eliminated
24-Aug-17	2.2	make initial edits to Benjamin's draft of the reply in support of plaintiffs' attorney's fee motion	Post Atty Fee Motion (ECF 111)	Eliminated
27-Aug-17	1.4	making additional edits to Benjamin's draft of the reply in support of plaintiffs' attorney's fee motion	Post Atty Fee Motion (ECF 111)	Eliminated
30-Aug-17	0.6	made final edits to latest draft of the reply in support of plaintiffs' attorney's fee motion	Post Atty Fee Motion (ECF 111)	Eliminated

**TILLEY'S DECLARATION
IN SUPPORT OF FEE APPLICATION**

I, DANIEL_TILLEY, am over the age of 18 and make this declaration based on my personal knowledge, unless otherwise noted:

1. I represented and continue to represent the Plaintiffs in this case both in the appeal and at the trial level.
2. I performed the legal work attributed to me in the foregoing time records.
3. Although several attorneys worked on this case for the Plaintiffs, each of us made a distinct contribution and did not duplicate our efforts. All of the legal work I performed was necessary for the representation of Plaintiffs.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on Aug. 31, 2017

s/Daniel Tilley
Daniel Tilley