IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

C.P.X. through his next friend S.P.X.; and K.N.X. through his next friend Rachel Antonuccio, for themselves and those similarly situated, Plaintiffs, v. KELLY KENNEDY GARCIA in her official capacity as Director of the Iowa Department of Human Services; CORY TURNER in his official capacity as Interim Mental Health and Disabilities Services Director of Facilities; and MARK DAY in his official capacity as Superintendent of the Boys State Training School, Defendants.	Case No. 4:17-cv-00417-SMR-HCA ORDER ON PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND EXPENSES

Before the Court is Plaintiffs' Motion for Attorneys' Fees and Expenses pursuant to 42 U.S.C. § 1988(b), 28 U.S.C. § 1920, Federal Rules of Civil Procedure 23(h) and 54(d), and Local Rule 54(a). [ECF No. 330]. Defendants filed a resistance. [ECF No. 341]. No party requested a hearing on the motion, and the Court finds the issues can be resolved without it. *See* LR 7(c). For the reasons stated below, Plaintiffs' Motion for Attorneys' Fees and Expenses is GRANTED IN PART.

I. BACKGROUND

Plaintiffs filed suit on November 27, 2017 against Defendants alleging several constitutional violations relating to the operations and policies of the Boys State Training School ("BSTS") in Eldora, Iowa. After a bench trial, the Court found that Defendants had violated Plaintiffs' substantive due process rights and imposed a permanent injunction to correct the

constitutional violations identified in its Trial Order.[1] Plaintiffs then filed this Motion for Attorneys' Fees and Expenses. [ECF No. 330]. Plaintiffs request an award of $4,550,762.90 in attorneys' fees and $390,363.05 in expenses. *Id.* Defendants filed a Resistance, objecting to the Court awarding the full amount requested by Plaintiffs arguing that the fees associated with Plaintiffs' unsuccessful claims are not recoverable; that the requested fees are generally not reasonable; and that the Court should reduce the amount awarded for expenses. *See* [ECF No. 341].

II. LEGAL STANDARD

Plaintiffs request the Court award attorneys' fees and expenses as a prevailing party under 42 U.S.C. § 1988 and 42 U.S.C. § 1997e(d) ("Prison Litigation Reform Act" or "PLRA"). The Court is authorized to award reasonable attorneys' fees to a prevailing party in an action to enforce 42 U.S.C. § 1983 and the PLRA. 42 U.S.C. § 1988(b) ("[T]he court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs."); 42 U.S.C. § 1997e(d)(1). A party "may be considered [a] 'prevailing part[y]' for attorney's fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the part[y] sought in bringing suit." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (citation omitted). A prevailing plaintiff "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." *Id*. at 429 (citation omitted). Monetary damages are not required to establish a party as prevailing; an injunction or declaratory judgment will ordinarily be enough. *See Rhodes v. Stewart*, 488 U.S. 1, 4 (1988) (per curiam). "The touchstone of the prevailing party inquiry must be the material alteration of the legal relationship of the parties in a manner which Congress sought

[1] For an exhaustive discussion of the procedural history, the Court's findings of fact and conclusions of law, see the Court's Trial Order, [ECF No. 328]. *See also C.P.X ex rel. S.P.X. v. Garcia*, 450 F. Supp.3d 854 (S.D. Iowa 2020).

to promote in the fee statute." *Texas State Tchrs. Ass'n v. Garland Ind. Sch. Dist.*, 489 U.S. 782, 792–93 (1989); *see also Heaton v. Weitz Co.*, 534 F.3d 882, 892 (8th Cir. 2008) ("[B]ecause damages awards do not reflect fully the public benefit advanced by civil rights litigation, Congress did not intend for fees in civil rights cases . . . to depend on obtaining substantial monetary relief." (quotation omitted)). Complete victory on all claims by a plaintiff is not required for an award of attorneys' fees; rather, "the degree of the plaintiff's overall success goes to the reasonableness of the award." *Garland Ind. Sch. Dist.*, 489 U.S. at 793.

The United States Supreme Court has recognized that Congress intended an award of fees to be available *pendente lite*. *See Hanrahan v. Hampton*, 446 U.S. 754, 757 (1980); *Bradley v. Richmond Sch. Bd.*, 416 U.S. 696, 722 n.28 (1974) (noting "the entry of any order that determines substantial rights of the parties may be an appropriate occasion upon which to consider the propriety of an award of counsel fees."). To receive interim fees a plaintiff must "establish[] the liability of the opposing party," but it is not necessary that a final order by the court to have been instituted. *Hanrahan*, 446 U.S. at 757.

When a party is awarded fees under the PLRA, the fees must be "directly and reasonably incurred in proving an actual violation of the plaintiff's rights," and the total fee awarded must be "proportionately related to the court ordered relief for the violation." 42 U.S.C. § 1997e(d)(1). The hourly rate of fees awarded under the PLRA cannot exceed 150 percent of the hourly rate under the Criminal Justice Act ("CJA").[2] *Id.* § 1997e(d)(3). Fee awards must be "reasonable,"

[2] Due to the lengthy litigation in this case, Plaintiffs request the Court award fees consistent with the annual increases in CJA rates. Those rates, and the authorized PLRA rates, are reflected in the table below.

Year	**CJA Rate**	**PLRA Rate**
2/15/2019-12/31/2019	$148	$222
3/23/2018-2/14/2019	$140	$210
5/5/2017-3/22/2018	$132	$198

meaning "a fee that is sufficient to induce a capable attorney to undertake the representation of a meritorious civil rights case." *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010).

III. ANALYSIS

A. Requested Fees

The Court begins with the amounts requested by Plaintiffs. In total, they seek attorneys' fees of $4,550,762.90 and expenses in the amount of $390,363.05. [ECF No. 330]. The number of hours incurred by Plaintiffs' counsel is sub-divided between the three firms representing the Plaintiffs as shown below:

Firm	**Total Hours**
Children's Rights	12,669.72 hours
Disability Rights Iowa	2,768.1 hours
Ropes & Gray	7,576 hours
Total	23,013.82 hours

The fees and expenses requested by counsel, broken down by firm, are as follows:

Firm	Legal Fees	Expenses	**Total**
Children's Rights	$2,431,199.90	$95,700.68	$2,526,900.58
Disability Rights Iowa	$583,083.00	$9,837.21	$592,920.21
Ropes & Gray	$1,536,480.00	$284,825.16	$1,821,305.16
Total	$4,550,762.90	$390,363.05	$4,941,125.95

Given the litigation experience of Plaintiffs' counsel in this case, the Court finds the PLRA rates in the table above to be unquestionably reasonable especially given the prevailing rates from their home markets are significantly higher. *See Miller v. Dugan*, 764 F.3d 826, 831 (8th Cir. 2014) (noting district courts may consider the prevailing rate in the market from which attorneys have traveled where attorneys have "extensive experience.'").

[ECF No. 331 ¶ 2].

In support of their Motion, each firm has submitted affidavits attesting to their requests for fees and expenses. [ECF Nos. 331; 332; 333]. Included with the affidavits are itemized lists of hours billed by each of the attorneys and support staff, including summaries of the work completed during that time. [ECF Nos. 331-3 332-2; 333-3]. Expenses are similarly itemized. [ECF Nos. 331-4; 332-3; 333-4].

B. Recoverability of Fees

Defendants argue that Plaintiffs were unsuccessful on several of their claims, so fees and expenses related to those particular claims cannot be recovered. [ECF No. 341-1 at 2–7]. Plaintiffs brought constitutional claims under the Eighth Amendment and the Fourteenth Amendment, and the Court granted summary judgment to Defendants on the Eighth Amendment claims. [ECF No. 190 at 11–12]. The Fourteenth Amendment claims proceeded to trial.

In its Trial Order, the Court found Defendants had violated Plaintiffs' substantive due process rights under the Fourteenth Amendment by failing to provide adequate mental health care and improper use of solitary confinement and mechanical restraints. [ECF No. 328 at 101]. The Court rejected Plaintiffs' claims pertaining to the Defendants' assessment procedures, procedures for managing psychotropic medications, procedures for obtaining informed consent, and the licensure of the school's psychologist. *Id.* at 81–82. Plaintiffs had also advanced claims that Defendants violated the Americans with Disabilities Act ("ADA") and the Rehabilitation Act ("RA"), but these claims were ultimately rejected by the Court as well. *Id*. at 100. Because Plaintiffs failed to succeed on every single claim, Defendants argue their requested fee should be reduced by 50%. [ECF No. 341-1 at 7].

Nevertheless, the scoreboard on Plaintiffs' causes of action is not an accurate portrayal of the Court's Trial Order or the results obtained on behalf of their clients. It is true that Plaintiffs did not prevail on every single claim advanced. But it is clear that the unsuccessful claims were "inextricably intertwined and involve[d] a common core of facts" and were also "based on related legal theories," as those claims upon which Plaintiffs emphatically succeeded. *Dorr v. Weber*, 741 F. Supp. 2d 1022, 1031 (N.D. Iowa 2010) (citing *Hensley*, 461 U.S. at 435; *see also Emery v. Hunt*, 272 F.3d 1042, 1046 (8th Cir. 2001) ("[T]he plaintiff may be compensated for time spent on unsuccessful claims that were related to his successful claims, but not for time spent on unsuccessful claims that were 'distinct in all respects from his successful claims.'" (citation omitted)). "Where a plaintiff has obtained *excellent results*, [their] attorney should recover a fully compensatory fee." *Hensley*, 461 U.S. at 435 (emphasis added). No person could reasonably read the Court's Trial Order and believe that Plaintiffs had achieved anything other than *excellent results*, much less that the case resulted in a split-decision or a mixed result. Furthermore, the Supreme Court has been clear that an action for attorneys' fees "should not result in a second major litigation" that would cause an infinite feedback loop of litigation that seeks fees for the prior round of legal work. *Comm'r, INS v. Jean*, 496 U.S. 154, 163 (1990) (citation omitted). Plaintiffs achieved excellent results under any reasonable interpretation of the Trial Order and their attorneys' fees should not be reduced on that basis.

C. Reasonability of Fees and Expenses

1. Redundancies and inefficiencies

Defendants next argue that the number of attorneys used by Plaintiffs' on the case was inefficient and resulted in redundancies and duplication of efforts for which Defendants should not be liable in a fee award. "Counsel for the prevailing party should make a good faith effort to

exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary. . . ." *Hensley*, 461 U.S. at 434. Defendants claim that duplication of Plaintiffs' counsel efforts is "apparent throughout" the billing records submitted to the Court and "it is particularly glaring in the records detailing attendance by multiple attorneys at each hearing." [ECF No. 341-1 at 7; 11]. Defendants take particular exception to the number of attorneys Plaintiffs had in attendance at trial, depositions, and hearings, asserting that the fees requested to include "nineteen attorneys, six paralegals, one intern, and one 'litigation analyst'" are unreasonable. *Id*. at 7. Plaintiffs respond that Defendants' complaints are based on the incorrect supposition that all attorneys and staff for Plaintiffs worked on the case simultaneously, resulting in a duplication of efforts. [ECF No. 347 at 2]. Instead, Plaintiffs argue, the number attorneys and staff who appear on the billing records was a result of staff rotation and turnover. This is supported by affidavits submitted by Plaintiffs' counsel as a number of attorneys worked on the case for a period of time and then did not appear in the billing records later. *See* [ECF No. 331 ¶ 9].

Plaintiffs also tell the Court they have exercised "billing judgment" by eliminating numerous hours which they say were expended on this case but for which they do not request payment.[3] The Court's direct experience with the incredible volume of documents produced by Defendants in this case—Plaintiffs put the figure at more than 860,000 pages—and the nature in which much of it was produced—disorganized and often lacking identification or other data that would assist the collating of such a large amount of documents—supports Plaintiffs' contention that the hours expended was not excessive. *See Gilbert v. Little Rock*, 867 F.2d 1063, 1066 (8th Cir. 1989) (noting judges should weigh hours against their "own knowledge, experience, and

[3] The filings indicate that Children's Rights wrote off 988.95 hours, [ECF No. 331 ¶ 12], Disability Rights Iowa wrote off 785.7 hours, [ECF No. 332 ¶ 8], and Ropes & Gray wrote off 1247.25 hours, [ECF No. 333 ¶ 14].

expertise of the time required"). Plaintiffs also assert Defendants' motions practice "drove up the cost of litigation." [ECF No. 331 ¶ 39]. Although many of Defendants' motions were ultimately unsuccessful, and the Court recognizes that Defendants have a right—indeed a duty—to zealously represent their clients, it is an inescapable fact that Plaintiffs were required to devote time to responding to such motions, which inevitably added to the work hours contributing to their ultimate success in the case.

The trial itself lasted nine days and included extensive post-trial briefing by both parties, which also resulted in additional hours expended. After careful review of the time sheets submitted by the Plaintiffs, the Court is convinced the hours requested are reasonable and were not excessively inefficient.

2. Paralegal rates

Because reasonable attorneys' fees are to be calculated to "yield the same level of compensation that would be available from the market," the Supreme Court has recognized that "the increasingly widespread custom of separately billing for the services of paralegals and law students who serve as clerks, must be taken into account." *Missouri v. Jenkins ex rel. Agyei*, 491 U.S. 274, 286 (1989) (internal citations omitted). Plaintiffs request reimbursement for the six paralegals who worked on the case. [ECF No. 330-1 at 18]. Children's Rights and Ropes & Gray both request reimbursement for the work by their paralegals at $150 per hour.[4]

[4] Several times in their resistance, Defendants point out that it appears that Plaintiffs bill some of their paralegals up to $250. *See* [ECF No. 333-3]. However, it appears this is simply the manner in which the timeslip was entered. Ropes & Gray's request for reimbursement for the same paralegals is $150 per hour instead of the $250 per hour which appears on the timeslip. *Compare* [ECF No. 333-1 at 8] (Declaration of Timothy Farrell requesting reimbursement for paralegal Samantha Sleevi at $150 per hour), *with* [ECF No. 333-3] (Ropes Gray timeslips showing time entries for Samantha Sleevi calculated at $250 per hour). The Court would encourage Plaintiffs to make this clear in the future to avoid any confusion over the billed rate.

[ECF Nos. 331 ¶ 17; 333 ¶ 18]. DRI represents it will write off all their paralegal time. [ECF No. 332 ¶ 8].

The PLRA does not directly address rates that can be charged for the work of paralegals and other support staff, so "'courts have used their own discretion' in determining appropriate rates for such staff." *Brown v. Precythe*, Case No. 17-cv-4082-NKL, 2020 WL 1527160 at *3 (W.D. Mo. March 30, 2020) (quotation omitted). One federal court in the Northern District of Iowa found in 2018 that the rate of $160 was "eminently reasonable." *Wologo v. Transamerica Life Ins. Co.*, No. C 17-136-MWB, 2018 WL 1632243 at *2 (N.D. Iowa April 4, 2018). The Court agrees that a rate of $150 is reasonable and will award paralegal time billed as such.

3. Block billing

Defendants accuse Plaintiffs of "block billing" in their fee request. An attorney block bills when he or she bills with "entries that specify only the daily activities, but that do not specifically indicate how much time was spent on each individual task." *Dorr*, 741 F. Supp. 2d at 1036 (quotation omitted). Defendants point the Court to time entries by Attorney Nathan Kirstein as being indicative of Plaintiffs' block billing. [ECF No. 341-1 at 15]. Defendants do not identify any particular entries as specific examples of block billing and, after reviewing time entries, the Court is satisfied that the entries contain details sufficient to allow the Court meaningful review. *See H.J. Inc. v. Flygt Corp.*, 925 F.2d 257, 260 (8th Cir. 1991).

4. Clerical and administrative tasks

Defendants object to the inclusion of paralegal fees for purely administrative or clerical tasks, specifically identifying billing entries they insist reflect administrative or clerical tasks, "such as scanning, printing, assembling binders and folders, data entry, paying invoices, setting up and tearing down the 'war room', and arranging for catering." [ECF No. 341-1 at 14]. "[P]urely

clerical or secretarial tasks should not be billed at a paralegal rate, regardless of who performs them." *Jenkins*, 491 U.S. at 288 n.10. Defendants have included a spreadsheet of the tasks billed at the paralegal (and sometimes attorney) rate which they claim are administrative tasks. [ECF No. 342] (sealed). The Court's review of Defendants' spreadsheet indicates that some of the tasks identified do not appear to be sufficiently complex to require the professional expertise of a paralegal and its accompanying pay rate. *See e.g., id.* at 6 (Daniel Adamek billing .55 hours at $150 for "Prepare labels for trial examination folders"); 7 (Maya Tappan Brown with six separate entries for "Index Named Plaintiff documents" at $150 per hour for a total of $2,145). As such, the Court finds it appropriate to reduce some of Plaintiffs' fee award.

Because some administrative and clerical tasks were billed at the paralegal rate, Defendants urge the Court to reduce Plaintiffs' fee award by at least $324,080.60. [ECF No. 341-1 at 14]. While many of the entries highlighted by Defendants, [ECF No. 342] (sealed), do appear to be administrative and not requiring a paralegal's professional expertise, Defendants greatly overstate the number of entries that are not obviously within the realm of a paralegal's duties. In fact, some of the entries noted by Defendants clearly appear to be within a paralegal's bailiwick.[5] *See, e.g., id.* at 2 ("Research stakeholders, update stakeholder chart, and work on stakeholder contact memos"); 4 ("File pro hac vice motions for MN and SP"); 7 ("Gather relevant documents for HF in preparation for 30(b)(6) depositions"). Many of the tasks highlighted by Defendants fall within the core responsibilities of a paralegal and it would have been inappropriate for counsel to assign to staff without legal training.

[5] *See What does a Paralegal do?* CAREER EXPLORER, https://www.careerexplorer.com/careers/paralegal/ (last accessed Dec. 28, 2020) (noting duties typically assigned to paralegals are: "Conduct research"; "Organize and present information"; "Draft correspondence and documents").

However, the Court does find it appropriate to reduce the requested fees by some amount due to the activities that could have been appropriately delegated to a non-paralegal. Based on its review of the submitted entries, the Court will reduce the requested fee reimbursement for clerical and administrative tasks by $10,000, amounting to approximately 67 hours at the rate of $150 per hour.

4. Plaintiffs' expenses

a. Whether fees should be reduced for excessive staffing

Plaintiffs' Motion also includes a request for expenses incurred during this case, totaling $390,363.05. [ECF No. 331 ¶ 2]. Federal Rule of Civil Procedure 54 authorizes cost awards to prevailing parties. *See* Fed. R. Civ. P. 54(d)(1) ("Unless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney's fees—should be allowed to the prevailing party."). The Eighth Circuit has said "[a] prevailing party is presumptively entitled to recover all of its costs." *168th and Dodge, LP v. Rave Reviews Cinemas, L.L.C.*, 501 F.3d 945, 958 (8th Cir. 2007) (citation omitted); *Poe v. John Deere Co.*, 695 F.2d 1103, 1108 (8th Cir. 1982) ("Costs, unlike attorney's fees, are awarded to a prevailing party as a matter of course, unless the district court directs otherwise; unusual circumstances need not be present."). Defendants request the Court to exercise its discretion to reduce the expense award by twenty percent. *See Greaser v. State, Dept. of Corrections*, 145 F.3d 979, 985 (8th Cir. 1998) ("[T]he district court has substantial discretion in determining and awarding costs to a prevailing party."). Defendants do not provide a basis to calculate the twenty percent reduction for which they advocate but base their argument on the same concerns the Court addressed earlier in this Order—that Plaintiffs overstaffed their depositions, hearings, and trial work.

According to Defendants, because Plaintiffs used too many attorneys and other staff, many of the expenses included are duplicative and should not be recoverable. Defendants included a chart of deposition attendance to illustrate their argument, which lists the attorneys "present" at each deposition in a single column without distinguishing between Plaintiffs' counsel and Defendants' counsel except for their organization's acronym. [ECF No. 341-2 at 3–5]. Plaintiffs respond that there is no meaningful difference between the attendance of counsel for either party at depositions and provided the Court with their own chart clarifying what they assert is the misleading nature of Defendants' chart, which lists the two parties in separate columns allowing for easier side-by-side comparison. *See* [ECF No. 348-1]. The Court finds that Plaintiffs are correct that there is not a large disparity between the attendance of Plaintiffs' counsel and Defendants' counsel at the depositions. It is true that at several depositions Plaintiffs' counsel outnumbered Defendants' counsel, but not always so.[6]

But the inquiry for the Court is not whether there was perfect balance between the two parties in attendance by counsel. Instead, the proper question is whether the requested award for expenses is reasonable. Furthermore, the burden is on the losing party to "mak[e] the showing that an award is inequitable under the circumstances." *Concord Boat Corp. v. Brunswick Corp.*, 309 F.3d 494, 498 (8th Cir. 2002) (quoting *In re Paoli R.R. Yard PCB Litig.*, 221 F.3d 449, 462–63 (3d Cir. 2000)). Defendants do not offer any explanation why the Court should consider their

[6] Of the twenty-one depositions, attorneys from the Iowa Attorney General's office outnumbered Plaintiffs' counsel at six of them. If the Court includes the depositions when a representative from BSTS was present, there were six additional depositions where Plaintiffs and Defendants had equal attendance. [ECF No. 348-1].

staffing levels as a benchmark by which to judge Plaintiffs' supposed excess staffing, and the Court declines to do so.[7]

b. Whether Plaintiffs' computerized research fees are recoverable

Defendants next argue that fees for computerized legal research should not be recoverable because Plaintiffs' supporting affidavits did not demonstrate that the research was "reasonably related to the issue at hand or that they were reasonably necessary" and they failed to establish that billing clients for computerized legal research charges was prevailing practice in the relevant legal community. [ECF No. 341-1]. Plaintiffs have submitted an affidavit from a local attorney with its reply brief which confirms to the Court what it already knows—that it is a prevailing practice within the Iowa legal market to bill clients for charges accumulated via legal research platforms such as Westlaw and Lexis.

Defendants also contend that Plaintiffs' itemized billing statements are insufficient to demonstrate that "such fees are reasonable." *See Hernandez v. Bridgestone Americas Tire Operations, LLC*, 831 F.3d 940, 950 (8th Cir. 2016). The Court is satisfied that Plaintiffs' supporting affidavits are sufficient to demonstrate the fees are reasonable, in light of the extensive briefing this case entailed and the Court's own experience with the ubiquity of computerized legal research in the legal community. The Court will not require Plaintiffs to include their "terms and connectors" with each entry to demonstrate the reasonableness of their research fees.

[7] Defendants point to Plaintiffs' language asserting that the Defendants "fiercely defended" the lawsuit and referenced their "scorched earth" litigation strategy as evidence that they had sufficient staffing. The Court does not think that aggressive tactics and efficiency are necessarily synonymous. [ECF No. 341-1 at 8].

IV. CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for Attorneys' Fees and Expenses is GRANTED IN PART. [ECF No. 330]. Plaintiffs are awarded a total of $4,540,762.90 in attorneys' fees. The requested fees are reduced by $10,000 for the billing of clerical and administrative tasks at the paralegal rate. The fees are to be apportioned among their attorneys according to their respective submissions in this matter. Plaintiffs are awarded expenses in the amount of $390,363.05.

IT IS SO ORDERED.

Dated this 7th day of January, 2021.

STEPHANIE M. ROSE, JUDGE
UNITED STATES DISTRICT COURT