STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DR. ALBERTO T. FERNANDEZ, HENNY CRISTOBOL, AND PATRICIA E. RAMIREZ,

Petitioners, Case No. 13-1492

vs.

MIAMI-DADE COUNTY SCHOOL BOARD,

Respondent.
_____/

RECOMMENDED ORDER

Administrative Law Judge Edward T. Bauer held a final hearing in this cause on March 4, 2015, by video teleconference between sites in Tallahassee and Miami, Florida.

APPEARANCES

For Petitioners: Robin Gibson, Esquire
Amy U. Tully, Esquire
Gibson Law Firm
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Lake Wales, Florida 33853

For Respondent: Luis M. Garcia, Esquire
Miami-Dade County School Board
1450 Northeast Second Avenue, Suite 430
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STATEMENT OF THE ISSUE

The amount of reasonable costs and attorney's fees to be awarded Petitioners pursuant to section 1002.33(4)(b)4., Florida Statutes.

PRELIMINARY STATEMENT

In or around May 2012, Petitioners Alberto Fernandez, Henny Cristobol, and Patricia Ramirez, each a longstanding employee of the Miami-Dade School Board, filed complaints with the Florida Department of Education ("DOE") pursuant to section 1002.33(4), Florida Statutes. Distilled to their essence, the complaints alleged that Respondent Miami-Dade County School Board ("MDCPS") retaliated against Petitioners because of their involvement in the attempted conversion of Neva King Cooper Educational Center to a public charter school.

DOE investigated Petitioners' complaints and, on November 16, 2012, issued a "Final Investigative Report," the findings of which were unfavorable to MDCPS. Following an unsuccessful attempt to conciliate the complaints, DOE's then-commissioner notified the parties by written correspondence dated April 12, 2013, that the investigation had been terminated; that, with respect to each Petitioner, DOE had concluded that reasonable grounds existed to believe that an unlawful reprisal had occurred; and that the complaints would be referred to the Division of Administrative Hearings ("DOAH").

Thereafter, on April 23, 2013, DOE forwarded Petitioners' complaints to DOAH for further proceedings. After a protracted discovery period, Petitioners' complaints proceeded to a final hearing, which was held on January 27 through 31, 2014, in

Miami, Florida, and on February 14, 2014, by video teleconference between sites in Tallahassee, Lakeland, and Miami.

In a Recommended Order filed June 30, 2014, the undersigned concluded that MDCPS had violated section 1002.33(4)(a) by transferring Petitioners from Neva King Cooper Educational Center to alternative job sites, where they were required to perform menial tasks wholly incompatible with their positions, education, and training. Inasmuch, however, as Respondent had already restored Petitioners to comparable job assignments during the pendency of the litigation, the recommended relief was narrow: an award of $10,590.00 to Petitioner Fernandez, whose involuntary transfer resulted in the loss of several bonuses. The undersigned recommended the denial of Petitioners' remaining requests for compensation.

By Final Order dated November 6, 2014, DOE rejected the parties' exceptions, adopted the Recommended Order in its entirety, and remanded the matter to the undersigned "solely for the purpose of a fact finding determination, supported by contemporaneous time records and evidence as to the appropriate hourly rate, to be followed by a recommendation as to the amount of reasonable costs, including attorney's fees, to the Petitioners."[1/] In accordance therewith, the undersigned reopened DOAH Case No. 13-1492 by order dated November 18, 2014.

On December 15, 2014, Petitioners' lead counsel, Robin M. Gibson, filed an Affidavit as to Attorney Fees and Costs ("Affidavit"). As amended on December 18, 2014, Mr. Gibson's Affidavit alleges that he personally expended 891.17 hours in his representation of Petitioners; that his associate attorney, Ms. Amy Tully, expended 403.46 hours in connection with the litigation; and that his paralegal expended 36.8 hours. Significantly, the affidavit further alleges that, accounting for the loadstar factors——which include a consideration of the rate customarily charged in the locality——the "following hourly rates for attorneys and paralegal have been established as"[2/]: $325.00 per hour for Mr. Gibson; $165.00 per hour for Ms. Tully in connection with work performed from March 18, 2013, through September 30, 2013, and $200.00 per hour for all work performed thereafter; and $75.00 per hour for paralegal work performed from April 24, 2012, through September 30, 2013, and $85.00 per hour for all subsequent work. Advocating for a contingency risk multiplier of 2.0, Mr. Gibson's Affidavit requests an award of attorney's fees totaling $773,482.16. Finally, the affidavit seeks an award of costs in the amount of $25,376.29.

A final hearing on the issue of attorney's fees and costs was held on March 4, 2015, during which Petitioners testified on their own behalf; presented the testimony of Mr. Gibson and Robert Josefsberg; and introduced the Affidavit as to Attorney

Fees and Costs ("Affidavit"), attached to which are six exhibits, labeled A through F. MDCPS presented the testimony of one witness, James Crosland, and introduced one exhibit.

The transcript of the final hearing was filed with DOAH on May 26, 2015. At the parties' request, the undersigned extended the deadline for the submission of proposed recommended orders to June 15, 2015. Both parties timely submitted proposed recommended orders, which the undersigned has considered in the preparation of this Recommended Order.

Unless otherwise indicated, all references to the Florida Statutes are to the 2014 codification.

FINDINGS OF FACT

I. Background

1. As noted previously, this case finds its genesis in Petitioners' well intentioned——but ultimately ill-fated——attempt to convert Neva King Cooper Educational Center ("Neva King," a school operated by MDCPS) to a public charter school. The possibility of converting Neva King to a public charter school first occurred to Petitioners Fernandez and Cristobol during the waning months of 2011. At that time, and in their capacity as Neva King's administrators, Fernandez and Cristobol contacted Robin Gibson, a longstanding member of the Florida Bar who had participated in the successful conversion of several schools in Polk County, the location of Mr. Gibson's law practice.

2. Impressed with Mr. Gibson's knowledge of the statutory provisions relating to school conversion, Fernandez and Cristobol retained him to assist in the preparation of a conversion application. Their arrangement was straightforward: Mr. Gibson would receive an initial retainer of $1,000.00, against which his services would be billed at the rate of $200 per hour.

3. MDCPS quickly squelched the conversion efforts and, beginning in late April of 2012, reassigned all three Petitioners to undesirable work locations. At or around that time, Petitioners elected to file complaints against MDCPS pursuant to section 1002.33(4)(a), Florida Statutes, which prohibits school districts from retaliating against employees because of their involvement with an application to establish a charter school. Notably, despite the striking parallels between section 1002.33(4)(a) and the Florida Civil Rights Act——which prohibits, among other things, unlawful acts of workplace retaliation——Petitioners proceeded to retain Mr. Gibson without contacting *any* other prospective attorneys, let alone attorneys with backgrounds in employment litigation or administrative practice.

4. As for the terms of the representation, Petitioners and Mr. Gibson agreed that if they succeeded, Mr. Gibson would be entitled to reasonable attorney's fees and costs pursuant to

section 1002.33(4)(b)4. Implicit in this arrangement was the understanding that no fee would be paid if Petitioners did not prevail.

5. Over the course of the next several years, Petitioners' complaints navigated their way through the DOE investigative process, a five and one-half day administrative hearing, and final proceedings before DOE. Mr. Gibson, who was assisted during the litigation by Ms. Tully, a 2007 graduate of the University of Florida College of Law, now seeks a sizeable award of attorney's fees ($773,482.16, after the application of a 2.0 contingency multiplier) and costs. In gauging the propriety of this request, the undersigned begins with a determination of number of hours reasonably expended by Mr. Gibson and his staff, followed by an assessment of the reasonable hourly rate for those services.

II. Hours Expended

6. As noted previously, Mr. Gibson avers in his affidavit that, during the period of April 24, 2012, through December 3, 2014, he personally expended 891.17 hours in connection with the underlying litigation; that Ms. Tully, his associate, expended 403.46 hours; and that his paralegal expended 36.8 hours.

7. During the final hearing in this cause, Mr. Gibson testified that, in his opinion, the foregoing totals are reasonable in light of the factors enumerated in Rule of

Professional Conduct 4-1.5(b). On cross-examination, however, Mr. Gibson acknowledged that the billing records contain a number of entries that are either duplicative or otherwise patently invalid. By way of example, consider the following entries dated January 27 and 28, 2014, wherein identical activities are recorded twice:

> 01/27/14 Travel to the site of the administrative hearing, participate in all-day hearing, travel back to hotel, telephone call to Amy Tully to inform her about the need for a legal memorandum having to do with the standard of causation for the ultimate question to be decided by the Court; prepare for next day's testimony. -- RG fees, 14 @ $325.00 = 4,500.00
>
> 01/28/14 Travel to the site of the administrative hearing, participate in all-day hearing, travel back to hotel, telephone call to Amy Tully to inform her about the need for a legal memorandum having to do with the standard of causation for the ultimate question to be decided by the Court; prepare for next day's testimony. -- RG fees, 14 @ $325.00 = 4,500.00

8. Also illustrative are entries dated July 10, 2012, and January 23, 2014, which record 30 hours and 14 hours, respectively, in connection with work ostensibly performed at home "at night"——errors that, once brought to Mr. Gibson's attention, quickly resulted in conceded reductions[3/] totaling 39 hours:

> 07/10/12 Home at night: review abuse of process legal research, exhibits from previous drafts, and fact reports from

> [Fernandez] and [Cristobol]; dictate complete redraft of complete now entitled Second Amended Complaint.
> -- RG fees, 30 @ $325.00 = 9,750.00
>
> 01/23/14 Home at night, work with the trial documents to arrange them in sequential order so that we can assemble the notebooks for the Court and opposing counsel tomorrow, place documents within approximately 32 different tabs.
> -- RG fees, 14 @ $325.00 = 4,550.00

9. Because of these and other patent irregularities, Mr. Gibson ultimately conceded to deletions or modifications to his billing entries totaling 64.2 hours.[4/] Mr. Gibson further acknowledged that the total hours of Ms. Tully[5/] and the paralegal[6/] should be adjusted downward by 1.2 and 12 hours, respectively. In addition, the undersigned's independent review of the billing records has uncovered duplicative entries dated November 1, 2013, both of which record 8.2 hours of work by Mr. Gibson,[7/] as well as an erroneous entry of Ms. Tully's, for 2.6 hours,[8/] dated August 4, 2014. Applying each of the foregoing reductions to the number of hours originally pleaded yields the following adjusted totals:

> Robin Gibson: 818.77 hours (891.17 – 72.4)
> Amy Tully: 399.56 hours (403.36 – 3.8)
> Paralegal: 24.8 hours (36.8 – 12.0)

10. This does not end the matter, for MDCPS contends that further reductions are warranted because the billing records include activities that were unnecessary, unrecoverable,[9/] or

inefficiently performed. MDCPS further asserts that Mr. Gibson and Ms. Tully's use of block billing——the disfavored practice of including multiple tasks within a single billing entry[10/]——makes it difficult, if not impossible, to assess the reasonableness of the adjusted totals on an hour-by-hour basis. Indeed, as to the latter point, the billing records contain *hundreds* of block entries substantially similar to the following:

> 9/3/13 Conference with MM and RG re: moving forward after the depositions, who further to depose, interrogatories and motions to produce that need to be served. Conference call with Nicholas Sirmon re: status of the ethics case with DOE. Began drafting Petitioners second request to produce / email to client for Gordillo's contact information / westlaw research on statute vs. policy / began drafting interrogatories. Phone call with HC re: potential witnesses. Reviewed email from HC. Conference call with AF, HC, and RG re: strategy of further depos / and witnesses. -- AT Fees, 5.2 @ $165.00 = 858.00
>
> 12/11/13 Telephone call from Henny Cristobol concerning yesterday's testimony, my request for all copies of memoranda from Judith Marte, chief financial officer for Miami-Dade District, concerning her itemizations which turn out to be in conflict with Stacy McCrady's budget, Henny promised to review his documents with Albert and send me the documents I requested, conference with Amy Tully with a request for her to draft a proposed affidavit for Albert Fernandez's signature concerning the circumstances surrounding the invitation for the visitor on the Neva King Cooper school grounds, receive Amy's draft of the motion for summary judgment, review and edit, dictate changes to Mary; receive Amy's

> proposed draft of the Fernandez affidavit, spend most of the rest of the afternoon revising and editing the motion for summary judgment along with the Fernandez affidavit, and editing and placing into form the exhibits that will be attached to the motion for summary judgment, place the documents in final form so Mary can give them to Amy tomorrow for review.
> -- RG fees, 5.7 @ $325.00 = 1,852.50

11. Even viewing the billing records through the most charitable lens, block entries account for at least 521.5 of Mr. Gibson's adjusted total hours of 818.77 (63.7 percent), and at least 246 of Ms. Tully's adjusted total hours of 399.56 (61.5 percent).[11/] Due to the pervasiveness of the block entries, some of which include activities that are plainly unrecoverable, the undersigned is foreclosed from performing a reasonableness assessment on an hour-by-hour basis. As an alternative approach, the undersigned shall apply an across-the-board percentage cut of 25 percent to the adjusted total hours of Mr. Gibson, Ms. Tully, and the paralegal. Such a reduction yields the following totals, which reflect the amount of labor reasonably expended on the litigation:

Robin Gibson:	614.08 hours
Amy Tully:	299.67 hours
Paralegal:	18.60 hours

III. Reasonable Hourly Rates

12. As noted previously, Mr. Gibson alleges in his Affidavit that, after accounting for the factors enumerated in

rule 4-1.5(b), his hourly rate "ha[s] been established" as $325 per hour. Mr. Gibson further avers that Ms. Tully's appropriate hourly rate is $165.00 for work performed through September 30, 2013, and $200.00 per hour thereafter. As for the paralegal, Mr. Gibson alleges an hourly rate of $75 for services performed on or before September 30, 2013, and $85 for work completed subsequent to that date.

13. During the final hearing, Petitioners presented the testimony of Robert Josefsberg, a personal friend of Mr. Gibson who has practiced law in Miami-Dade County for the past 53 years. Although his practice has been devoted primarily to commercial litigation, Mr. Josefsberg spent a portion of his early career as an assistant Miami-Dade School Board attorney. Since that time, the School Board has retained Mr. Josefsberg in connection with one litigation matter and three investigations.

14. As to the question of the reasonable hourly rates, Mr. Josefsberg opined that Mr. Gibson's services should be valued at the rate of $700 to $1000 per hour, a range that vastly exceeds the hourly rate pleaded in Mr. Gibson's affidavit and articulated in the parties' Joint Prehearing Stipulation. Mr. Josefsberg further testified, again in sharp contrast to the figures pleaded in the Affidavit and included in the Joint Stipulation, that Ms. Tully's labor should be compensated at a rate between $350 and $450 per hour. Finally, Mr. Josefsberg

opined that the paralegal's services should be valued at the rate of $100 to $175 per hour.

15. For its part, MDCPS presented the testimony of James Crosland, a shareholder with the Miami office of Bryant Miller Olive, who exclusively represents public sector clients in connection with labor and employment disputes. A member of the Florida Bar since 1974, Mr. Crosland is certified as an expert in the field of labor and employment law.

16. Characterizing Mr. Josefsberg's prodigious fee ranges as "unrealistic," Mr. Crosland credibly and persuasively opined that Mr. Gibson's and Ms. Tully's services should be valued at $200 to $250 per hour. Mr. Crosland further testified, again credibly, that regardless of whether an attorney has "been practicing 50 years or five," the going rate in Miami-Dade County in the field of employer relations and labor law conforms to the $200 to $250 range.[12/]

17. In its Proposed Recommended Order, MDCPS suggests, quite reasonably, that the services of Mr. Gibson, Ms. Tully, and the paralegal be compensated at the rate of $250 per hour.[13/] Finding this suggestion well taken, the hourly rate of $250 yields a lodestar amount of $233,087.50:

Robin Gibson:	614.08 hours
Amy Tully:	299.67 hours
Paralegal:	18.60 hours
Lodestar:	932.35 hours * $250 = $233,087.50

18. MDCPS further contends, though, that the lodestar amount must be adjusted downward in recognition of the fact that two of the Petitioners, Cristobol and Ramirez, obtained no financial recovery through the litigation. Petitioners assert, on the other hand, that the contingent nature of the litigation justifies the application of a risk multiplier ranging from 1.75 to 2.0. However, for the reasons discussed shortly, the undersigned concludes that neither adjustment is warranted and that the loadstar amount of $233,087.50 should remain undisturbed.

IV. Reasonable Costs

19. With respect to the issue of costs, Mr. Gibson requests an award totaling $25,376.29. MDCPS correctly points out, however, that this request includes a number of costs that are considered overhead and, thus, are not properly taxable: expenses relating to legal research, travel, long distance calls, photocopies, and postage and expedited courier services. The remaining costs, which the undersigned finds are properly taxed against MDCPS, are as follows:

11/19/13	$1,310.70	Phipps Reporting
12/20/13	$844.90	Fornell and Goldman
12/31/13	$1,195.75	Fernandez and Cristobol
01/08/14	$1,380.00	U.S. Legal Support
01/08/14	$9.23	Kitchen Check Reimbursement
01/31/14	$159.73	Action Signs
01/31/14	$2,392.30	McCrady Depositions
01/31/14	$592.50	Marte/Ramirez Depositions
02/01/14	$592.50	Marte/Ramirez Depositions

02/28/14	$325.00	Service
03/07/14	$309.00	U.S. Legal Support
03/07/14	$1,725.00	Expert Witness Fee
04/03/14	$5,169.40	Transcript
06/26/14	$195.00	Rodriguez, Ramirez, Massa
12/10/14	$1,725.00	Balance of Expert Fee
Total:	$17,926.01	

CONCLUSIONS OF LAW

I. Jurisdiction

20. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569, 120.57(1), and 1002.33(4)(b)4., Fla. Stat.

II. Burden and Standard of Proof

21. As the parties asserting the affirmative of the issue, Petitioners have the burden of proof in this proceeding. Dep't of Transp. v. J.W.C., Inc., 396 So. 2d 778, 788 (Fla. 1st DCA 1981). The reasonableness of the fees and costs sought must be established by a preponderance of the evidence. § 120.57(1)(j), Fla. Stat.

III. Reasonable Attorney's Fees

22. As noted previously, Petitioners are entitled to an award of reasonable attorney's fees and costs pursuant to section 1002.33(4)(b), which provides, in relevant part:

> (b) In any action brought under this section for which it is determined reasonable grounds exist to believe that an unlawful reprisal has occurred . . . the relief shall include the following:

* * *

> 4. Payment of reasonable costs, including attorney's fees, to a substantially prevailing employee, or to the prevailing employer if the employee filed a frivolous action in bad faith.

23. In assessing the reasonableness of a fee request, Florida courts apply the "lodestar" method to obtain an objective estimate of the value of the services rendered. Bell v. U.S.B. Acquisition Co., 734 So. 2d 403, 406-07 (Fla. 1999). Pursuant to that framework, the undersigned must "determine the number of hours reasonably expended by the attorney and a reasonable hourly rate of those services, then multiply the two to arrive at the 'lodestar' amount." Id. at 406. In making this calculation, it is necessary to utilize the criteria enumerated in rule 4-1.5(b), which include, inter alia, the novelty, complexity, and difficulty of the questions involved, as well as the experience, reputation, diligence, and ability of the lawyers performing the service. Id. at 406-07. Finally, Bell instructs that once the lodestar is calculated, it may be appropriate to "add or subtract from the fee based upon a 'contingency risk' factor and the 'results obtained.'" Id. at 407 (quoting Florida Patient's Compensation Fund v. Rowe, 472 So. 2d 1145, 1151 (Fla. 1985)).

A. Hours Reasonably Expended

24. Against this backdrop, the undersigned begins with the most contentious issue between the parties, namely, the number of hours reasonably expended on the litigation. In most cases, such a dispute is resolved by utilizing the relevant criteria set forth in rule 4-1.5(b) to evaluate the reasonableness of the amount of time devoted to each discrete task. However, as discussed previously, Mr. Gibson and Ms. Tully's pervasive use of block billing renders such an approach impossible. See Moore v. Kelso-Moore, 152 So. 3d 681, 682 (Fla. 4th DCA 2014)(noting that the use of block billing made it impossible to determine the reasonableness of the hours expended as to certain matters).

25. Although Florida courts have yet to address the question, Federal decisional authority generally holds that where the use of block billing precludes an hour-by-hour analysis, it is appropriate instead to apply an across the board percentage cut to the total number of hours claimed. Dial HD, Inc. v. Clearone Commc'ns, Inc., 536 Fed. Appx. 927, 931 (11th Cir. 2013)(holding lower court "reasonably applied a 25% across-the-board reduction to the fees charged . . . based on its conclusion that the firm used block billing, making it difficult to ascertain how much time was spent on each task"); Role Models Am., Inc. v. Brownlee, 353 F.3d 962, 971-73 (D.C. Cir. 2004)

(applying a fifty percent reduction where the time records suffered from multiple deficiencies, including block billing).

26. Before proceeding further, the undersigned notes that while the billing records in question contain some non-block entries, such fact does not invite both a percentage cut to the hours included within block entries *and* an hour-by-hour analysis of the non-block entries. As the Eleventh Circuit has persuasively explained:

> [I]n arriving at the lodestar, the court conducted both an hour-by-hour analysis *and* applied an across-the-board reduction of the requested compensable hours. Our circuit's precedent states that the district court is to apply either method, not both. The reason for this is easy to understand: by requiring the district court to conduct either analysis instead of both, we ensure that the district court does not doubly-discount the requested hours, as was the case here.

Bivins v. Wrap It Up, Inc., 548 F.3d 1348, 1351-52 (11th Cir. 2008)(emphasis in original).

27. Pursuant to the authority cited above, an across-the-board percentage reduction to the adjusted total hours is warranted due to the pervasive use of block billing, as well as the presence of unrecoverable tasks (e.g., hours relating to travel and speaking with the media) within some of the block entries. Although MDCPS requests a cut of at least 30 percent, it is concluded that a reduction of 25 percent to the adjusted

hours yields totals——614.08 (Mr. Gibson), 299.67 (Ms. Tully), and 18.60 (paralegal)——that are reasonable in light of the protracted nature of the litigation, the volume of discovery, the length of the final hearing, and the obvious fact that the services advanced the interests of three Petitioners. The undersigned turns next to the question of the reasonable hourly rates.

B. Reasonable Hourly Rates

28. As discussed previously, Mr. Gibson alleged in his fee Affidavit that, accounting for the relevant lodestar factors, his hourly rate should be established at $325.00; that the rate of Ms. Tully should be set at $165.00 for work performed through September 30, 2013, and $200.00 for all work performed thereafter; and that the rate of the paralegal should be established at $75.00 for tasks performed through September 30, 2013, and $85.00 per hour for all subsequent work.

29. At the conclusion of the final hearing, however, Mr. Gibson announced that he was no longer seeking the foregoing rates but, rather, was requesting hourly fees within the ranges articulated by his expert, i.e., $700 to $1000 for himself, $350 to $450 for Ms. Tully, and $100 to $175 for the paralegal. Needless to say, this change in course came as a surprise to both the undersigned and counsel for MDCPS, particularly since the parties' Joint Stipulation, which was filed just days before

the final hearing and signed by both counsel of record, described the "issues of fact" as follows:

> G. Issues of Fact Which Remain to Be Litigated:
>
> Whether, based on the facts to be adduced at the hearing, Petitioner's counsel's requested hourly rate of $325.00 for himself, $200 per hour for Ms. Amy Tully and $85 per hour for their paralegal are reasonable hourly rates.
>
> Whether, based on the facts to be adduced at the hearing, Petitioner's counsel's request for recovery of over 1,000 hours in attorney's fees is reasonable in light of the facts of this case.

(emphasis added).

30. Owing perhaps to the undersigned's open skepticism of Mr. Gibson's eleventh hour announcement, Petitioners' Proposed Recommended Order suggests "compromise" hourly rates of $577.50 for Mr. Gibson and $288.75 for Ms. Tully. This invitation is declined for several reasons, the first being that the compromise rates exceed the values included in the Joint Stipulation. See Schrimsher v. Sch. Bd. of Palm Beach Cnty., 694 So. 2d 856, 863 (Fla. 4th DCA 1997)("The hearing officer is bound by the parties' stipulations"). Further, and in any event, the compromise rates are derived in part from the hourly ranges articulated by Petitioners' expert, which the undersigned rejects in favor of the $200 to $250 range testified to by MDCPS' expert, Mr. Crosland.

31. With the aim of putting this issue to rest, MDCPS commendably proposes the use of a "blanket rate" of $250 per hour for the services rendered by Mr. Gibson, Ms. Tully, and the paralegal. The application of a $250 blanket rate, which the undersigned concludes is both reasonable and appropriate under the circumstances, results in a lodestar of $233,087.50.

C. Potential Adjustments

32. Finally, it is necessary to examine the parties' respective arguments concerning potential adjustments to the lodestar. Specifically, MDCPS asserts that a downward adjustment is necessary because only one of the Petitioners obtained any financial recovery through the litigation. Petitioners contend, meanwhile, that the contingent nature of Mr. Gibson's fee arrangement warrants the application of a multiplier ranging from 1.75 to 2.0. The undersigned concludes, however, that no adjustments are warranted.

33. Beginning with MDCPS' request, it is true that a reduction to the lodestar is required in cases where the prevailing party achieves only limited success. Eckhardt v. 424 Hintze Mgmt., LLC, 969 So. 2d 1219, 1222 (Fla. 1st DCA 2007). MDCPS fails to acknowledge, however, that the underlying litigation advanced an important public interest: exposing the unlawful acts of reprisal stemming from Petitioners' efforts to convert Neva King to a public charter school, a form of

educational institution that, pursuant to legislative mandate, "shall be part of the state's program of public education." § 1002.33(1), Fla. Stat. This is significant, for it is well settled that where important public interests are vindicated, recovery "cannot be valued solely in monetary terms." Riverside v. Rivera, 477 U.S. 561, 574 (1986). Rather, the relative importance of a money damage award:

> [M]ust be determined on a case-by-case basis. For example, monetary damages will be wholly immaterial when a plaintiff seeks purely equitable relief. On the other hand, where compensatory damages constitute the primary relief sought and become the only relief obtained, a court is not beyond its discretion in considering the damages awarded as a relevant factor. In any event, a court remains obligated to account for all distinct measures of success when determining whether success was limited.

Villano v. City of Boynton Beach, 254 F.3d 1302, 1307-08 (11th Cir. 2001)(internal citations omitted).

34. Applying these standards to the facts at hand, the undersigned concludes that the failure of Petitioners Ramirez and Cristobol to obtain monetary damages is not dispositive. First, the record makes pellucid that the overriding objective of the earlier proceeding was not to recover economic damages but, rather, to obtain a final order that vindicated Petitioners' contention that they were the victims of unlawful reprisal; Petitioners' success in that endeavor will no doubt

deter MDCPS from repeating such behavior in the future. In addition, the absence of a monetary recovery is plainly of less import where, as here, the agency with final order authority lacked jurisdiction to award a full array of damages. See Broward Cnty. v. La Rosa, 505 So. 2d 422, 423-24 (Fla. 1987) (explaining general principle that administrative agencies have no authority to award common law money damages for noneconomic injuries). Finally, adopting MDCPS' approach would require a downward adjustment in any case where a school board commits an act of reprisal that, regardless of its severity, does not directly result in quantifiable financial consequences to the educator. For these reasons, MDCPS' request for a reduction to the lodestar is rejected.

35. As for Petitioners' request for an upward adjustment, the Florida Supreme Court has held that the factors to be applied in determining if a multiplier is appropriate turn upon the category of case at issue: public policy enforcement cases (category I); tort and contract claims (category II); or family law, eminent domain, and estate and trust matters (category III). Standard Guaranty Ins. Co. v. Quanstrom, 555 So. 2d 828, 832-35 (Fla. 1990). Specifically, the court in Quanstrom held that application of a multiplier in category I cases is "severely restricted," and that "no enhancement for risk is appropriate unless the applicant can establish that without an

adjustment for risk the prevailing party would have faced substantial difficulties in finding counsel in the local or other relevant market." Id. at 832 (internal citations omitted); Lane v. Head, 566 So. 2d 508, 513 (Fla. 1990)(Overton, J., concurring). Although the standards in category II cases are not as restrictive, the party seeking a multiplier must nevertheless demonstrate, inter alia, that securing counsel in the relevant market would have been difficult in the absence of risk enhancement. Sun Bank of Ocala v. Ford, 564 So. 2d 1078, 1079 (Fla. 1990)(upholding denial of multiplier in category II contract case where evidence failed to establish that appellant would have had difficulty finding representation); USAA Cas. Ins. Co. v. Prime Care Chiropractic Ctrs., P.A., 93 So. 3d 345, 347 (Fla. 2d DCA 2012)("If there is no evidence that the relevant market required a contingency fee multiplier to obtain competent counsel, then a multiplier should not be awarded.").

36. It is of no moment whether the instant matter falls within category I or II, for the record is devoid of evidence that, without risk enhancement, Petitioners would have faced *any* difficulties, much less substantial difficulties, finding counsel in Miami-Dade County.[14/] Although Petitioners offered testimony that they could not afford Mr. Gibson's hourly rate, such evidence does not prove that they would have faced difficulties in attracting counsel to their case *absent the*

prospect of an enhanced fee. This is particularly true in light of the compelling nature of Petitioners' cases——i.e., longstanding employees with impeccable disciplinary and performance records who, upon participating in the attempted conversion of Neva King, were promptly transferred to demeaning work assignments——which would have been readily apparent to any competent practitioner. As such, Petitioners' request for a multiplier is rejected.

37. Allocating the lodestar of $233,087.50 among the three Petitioners in accordance with parties' stipulated proportions, the final attorney's fees are as follows:

Fernandez: $233,087.50 * 42% = $97,896.75
Cristobol: $233,087.50 * 38% = $88,573.25
Ramirez: $233,087.50 * 20% = $46,617.50

IV. Reasonable Costs

38. Turning finally to the question of costs, MDCPS correctly argues that Mr. Gibson's request of $25,376.29 includes a number of charges that are not properly taxable. See Landmark Winter Park, LLC v. Colman, 24 So. 3d 787, 789 (Fla. 5th DCA 2009)(holding trial court improperly taxed various overhead costs, which included "postage, online research, facsimile charges, courier services, photocopies, scanning documents and trial supplies"); Mitchell v. Osceola Farms Co., 574 So. 2d 1162, 1163 (Fla. 4th DCA 1991)("As listed, the photocopy, postage, long distance calls, travel expenses and

courier service appear to be office expenses and should not have been taxed as costs."). With such nontaxable expenses removed, Mr. Gibson is entitled to reimbursement for costs totaling $17,926.01.[15/]

CONCLUSION

For the reasons elucidated above, it is RECOMMENDED that the Florida Department of Education enter a final order awarding: attorney's fees totaling $97,896.75, $88.573.25, and $46,617.50 to Petitioners Alberto Fernandez, Henny Cristobol, and Patricia Ramirez, respectively; and costs in the amount of $17,926.01 to Petitioners' counsel.

DONE AND ENTERED this 28th day of July, 2015, in Tallahassee, Leon County, Florida.

EDWARD T. BAUER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of July, 2015.

ENDNOTES

[1/] Neither party took an appeal of the final order.

[2/] Gibson Affidavit, pp. 4-5.

[3/] Hr'g Tr., pp. 129-32; 146-48.

[4/] Hr'g Tr., pp. 131-32; 140-41; 143-50.

[5/] Hr'g Tr., pp. 132-34.

[6/] Hr'g Tr., pp. 124; 140-41.

[7/] Gibson Affidavit, p. D-60.

[8/] Ms. Tully's August 4, 2014, entry of 2.6 hours, which reads "Began drafting exceptions to the recommended order," is plainly erroneous. Specifically, the record reflects that the undersigned's recommended order was filed on June 30, 2014, and that the parties' exceptions to that Order were filed on or before July 15, 2014, some 19 days prior to the August 4 entry.

[9/] Such unrecoverable activities include travel and speaking with members of the media. Dish Network Serv. L.L.C. v. Myers, 87 So. 3d 72, 78 (Fla. 2d DCA 2012)("In Florida, the longstanding rule is that an award of attorneys' fees should not include travel time without proof that a competent local attorney could not be obtained.")(internal quotation marks omitted); Yule v. Jones, 766 F. Supp. 2d 1333, 1348 (N.D. Ga. 2010)(denying compensation for hours relating to media interviews and responses to information requests, where such activities were not for "legal services required to prosecute the claims asserted in the action"); Gray v. Romeo, 709 F. Supp. 325, 327 (D.R.I. 1989)(holding hours relating to media interviews were not properly chargeable to opposing party; "Defendants should not be expected to compensate the Plaintiff for the cost of generating publicity").

[10/] See Kearney v. Auto-Owners Ins. Co., 713 F. Supp. 2d 1369, 1377-78 (M.D. Fla. 2010)(defining block billing as the practice of including "multiple tasks in a single time entry"); Wise v. Kelly, 620 F. Supp. 2d 435, 450 (S.D.N.Y. 2008)("Block billing is the practice of aggregating multiple tasks into one billing entry.")(internal quotation marks omitted); Bobrow Palumbo Sales, Inc. v. Broan-Nutone, LLC, 549 F. Supp. 2d 274, 283 (E.D.N.Y. 2008)("A reduction is also warranted where counsel

engages in 'block billing,' such that multiple tasks are aggregated into one billing entry."); Jones v. Eagle-North Hills Shopping Ctr., L.P., 478 F. Supp. 2d 1321, 1328 (E.D. Okla. 2007)("Many of the time entries . . . contain multiple tasks under each time entry, which is often referred to as 'block billing.'").

[11/] Petitioners' counsel utilized a "block billing" format with respect to the following entries (each entry is designated by the attorney's initials, followed by the number of hours billed and the page number in Exhibit D in which the entry appears): RG 3.8 (D-1); RG 3.2 (D-1); RG 1.2 (D-1); RG 1.6 (D-1); RG 2.8 (D-2); RG 3.2 (D-3); RG 2.3 (D-3); RG 1.5 (D-3); RG 2.8 (D-3); RG 2.7 (D-3); RG 1.4 (D-4); RG .8 (D-4; entry that begins, "Telephone call to Henny and Albert"); RG 3.0 (D-4); RG 1.6 (D-5); RG 1.8 (D-5); RG 1.7 (D-5); RG 2.8 (D-6); RG 1.3 (D-6); RG 2.8 (D-7); RG 1.3 (D-8); RG 4.3 (D-9); RG 4.7 (D-9); RG 5.0 (D-9); RG 1.4 (D-10); RG 1.7 (D-10); RG 3.0 (D-10; entry was adjusted from 30.0 to 3.0 by stipulation of the parties); RG 2.0 (D-11); RG 5.2 (D-11); RG 1.4 (D-12); RG 1.3 (D-12); RG 1.9 (D-12); RG 1.0 (D-13); RG 1.8 (D-13); RG .7 (D-13; entry that begins, "Email to Ms. Graziadei"); RG 3.3 (D-14); RG 1.4 (D-14); RG .5 (D-14); RG 2.4 (D-15); RG 1.0 (D-15); RG 2.2 (D-16); RG 1.4 (D-19); RG 2.0 (D-19); RG .6 (D-19); RG 1.2 (D-20); RG 1.8 (D-21); RG 1.4 (D-21); RG 1.9 (D-22); RG 1.2 (D-22); RG .9 (D-24); RG 1.6 (D-24); RG 5.3 (D-25); RG 4.8 (D-25); RG 1.0 (D-26); RG 1.7 (D-26); RG .4 (D-27); RG 1.3 (D-27); RG 3.5 (D-29); RG .7 & .7 (D-29); RG 1.2 (D-29); RG 2.3 (D-31); RG 1.0 (D-32); RG 1.2 (D-34; entry that begins, "Richard Shine returned my telephone call"); RG 1.0 (D-34); RG 1.1 (D-35); RG 5.8 (D-35); AT 2.0 (D-35); RG 2.6 (D-36); AT 1.5 & 1.5 (D-37); AT 2.5 (D-37); AT 5.7 (D-37); AT 3.3 (D-37); AT 4.5 (D-38); RG 3.2 (D-38); AT 1.5 (D-39); AT 4.4 (D-39); AT 4.5 (D-39); AT 2.5 (D-39; entry that begins, "Reviewed draft petition with edits"); AT 2.7 (D-40); AT 1.2 (D-40); AT 3.0 (D-40); RG .4 (D-41); AT .7 (D-41); AT 1.9 (D-41); AT 1.0 (D-41); AT 1.3 (D-42); RG 1.7 (D-42); RG 1.4 (D-43); AT 1.5 (D-43); AT 3.1 (D-43); RG .6 (D-43); AT 1.2 (D-44); AT 4.5 & 4.5 (D-44); AT 4.7 (D-45); AT 2.8 (D-45); AT 4.0 & 4.0 (D-45); AT 3.0 (D-45; entry that includes phrase, "TC with client"); RG .9 (D-45); RG 1.2 (D-46); AT 1.0 (D-46); AT 1.0 (D-47); RG 1.2 (D-47); AT 2.0 (D-48; entry that begins, "Call to clients"); AT 1.5 (D-48; entry that begins, "Finished drafting request to produce"); AT 1.6 (D-48); AT 4.0 (D-49); RG 3.3 (D-49); AT 3.5 (D-49); RG 2.0 (D-49); RG 6.7 (D-50); AT 3.8 (D-51); RG 1.2 (D-51); RG 1.4 (D-51); RG .8 (D-51); AT 5.0 (D-51); RG 5.0 (D-52); RG 5.0 (D-52); RG 4.4 (D-52); RG 4.9 (D-52); AT 5.2

(D-53); RG 1.5 (D-53); AT 3.4 (D-53); AT 1.3 (D-54); AT 2.5 (D-54); RG 1.0 (D-54); AT 1.2 (D-54); AT 4.2 (D-54); AT 1.5 (D-54); RG 1.2 (D-55); RG .9 (D-57); RG 2.8 (D-57); RG 2.8 (D-58); RG 2.2 (D-58); RG 5.0 (D-59); RG 3.4 (D-59); RG 5.5 (D-60); RG 1.2 (D-60); RG 1.1 (D-60); RG 3.5 (D-61); RG 2.3 (D-61); RG 1.1 (D-62); RG .5 (D-62); RG 7.1 (D-63); RG 6.5 (D-63); RG 13.0 (D-63); AT 2.5 (D-64); AT 3.3 (D-65); RG 1.0 (D-65); AT 2.5 (D-65); AT 2.0 (D-65); RG 5.5 (D-66); RG 5.2 (D-66); AT 4.0 (D-66); RG 3.5 (D-67); RG 8.2 (D-67); AT 1.7 (D-68); RG 5.7 (D-68); AT 3.0 (D-68); RG 3.4 (D-68); RG 1.2 (D-69); RG 5.2 (D-69); AT 4.3 (D-69); RG 5.6 (D-70); AT 3.5 (D-70); RG 6.0 (D-70); RG 3.2 (D-71); AT 2.3 (D-71); RG 8.1 (D-71); AT 2.0 (D-72); RG .8 (D-72); AT 2.0 (D-73); RG 1.0 (D-73); AT 1.5 (D-74); RG 2.2 (D-74); AT 4.5 (D-74); RG 2.7 & 2.7 (D-75); AT 2.7 (D-75); AT 1.6 (D-76); RG 1.2 (D-76); AT 1.9 (D-76); RG 6.0 (D-76); RG 1.5 (D-77); RG 6.4 (D-77); RG 1.1 (D-77); AT 4.0 (D-78); RG 3.6 (D-78); AT 5.0 (D-78); AT 3.5 (D-79); RG 6.0 (D-79); RG 6.7 (D-79); RG 14.0 (D-79); RG 12.0 (D-79); AT 2.7 (D-79); RG 14.0 (D-80); RG 12.5 (D-80); RG 12.0 (D-80); AT 3.7 (D-82); AT 2.9 (D-82); RG 2.8 (D-82); AT 2.3 (D-83); RG 7.8 (D-83); RG 4.7 (D-83); RG 3.7 (D-84); RG 2.5 (D-84); RG 6.5 (D-84); AT 2.5 (D-84); AT 3.8 (D-86); AT 2.0 (D-86); RG 1.0 (D-86); RG 1.7 (D-87); RG 1.8 (D-87); AT 3.0 (D-87); RG 2.0 (D-88); AT 1.0 (D-88); RG 6.7 (D-89); AT 3.3 (D-89); AT 2.5 & 2.5 (D-89); RG 4.7 (D-91); AT 4.5 (D-92); AT 3.0 (D-92; entry that reads, "Read transcripts and edited proposed recommended order"); AT 2.9 (D-92); RG 3.0 (D-93); RG 3.0 (D-94); RG 1.8 (D-94); RG 1.5 (D-94); AT 3.1 (D-95); RG 2.0 (D-95); RG 1.2 (D-96); RG 2.8 (D-96); RG 3.7 (D-97); RG 1.4 (D-97); AT 2.3 (D-97); AT 2.7 (D-98); RG 1.3 (D-98); RG 1.1 (D-98); RG 5.3 (D-99); AT 3.0 (D-99); RG 4.5 (D-100); RG 4.8 (D-100); RG 4.5 (D-101; entry that begins, "Several drafts of exceptions"); RG 1.8 (D-101); AT 4.0 (D-102); RG 2.7 (D-102); AT 2.0 (D-102); RG 2.3 (D-102); AT 3.0 (D-102; entry that begins, "Discussion with RG re: potential civil action"); AT 4.5 (D-103); AT 2.0 (D-103); RG 1.7 (D-103); RG 1.2 (D-104); RG 1.7 (D-105); RG 1.5 (D-107); RG 1.9 (D-107); AT 1.0 (D-107); RG 1.2 (D-108); RG 1.3 (D-108); RG .9 (D-108).

[12/] Hr'g Tr., p. 184.

[13/] See Resp't PRO, p. 13.

[14/] This conclusion makes it unnecessary to address MDCPS' contention that a multiplier is never available in proceedings initiated under section 1002.33(4).

[15/] Petitioners' Motion for Witness Fee for Expert Witness, filed March 10, 2015, is hereby denied. See Orlando Reg'l Med. Ctr., Inc. v. Chmielewski, 573 So. 2d 876, 883 (Fla. 5th DCA 1990)("Expert witness fees may be awarded in the trial court's discretion, in complex cases when the preparation for testifying is lengthy and burdensome. However, here the attorney witness said he spent only three hours looking at the file and he made it a 'cursory review.'").

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.