STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MANATEE COUNTY SCHOOL BOARD,

Petitioner,

vs. Case No. 19-5307F

LINCOLN MEMORIAL ACADEMY, INC.,

Respondent.
_____/

FINAL ORDER ON ATTORNEY'S FEES AND COSTS

Upon proper notice, a final hearing in this matter was held on December 19, 2019, in Sarasota and Tallahassee, Florida, via video teleconference, before Robert S. Cohen, a duly-designated Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Erin G. Jackson, Esquire
Ashley A. Tinsley, Esquire
Johnson Jackson PLLC
100 North Tampa Street, Suite 2310
Tampa, Florida 33602

Terry Joseph Harmon, Esquire
Sniffen & Spellman, P.A.
123 North Monroe Street
Tallahassee, Florida 32301

For Respondent: Christopher Norwood, J.D.
Governance Institute for
School Accountability
14844 Breckness Place, Suite 100
Miami Lakes, Florida 33016

Tag Feld, Esquire
Law Office of Tag Feld, P.A.
Suite 101, No. 304
5265 University Parkway
University Park, Florida 34201

STATEMENT OF THE ISSUE

The issue is the amount of attorney's fees and costs to which Petitioner is entitled as the prevailing party in the underlying matter, DOAH Case No. 19-4155.

PRELIMINARY STATEMENT

Upon due notice, the underlying cause came for formal hearing on August 26 through 29, 2019, in Bradenton, Florida, before the undersigned, a duly-designated ALJ of DOAH. The sole question at issue during the August 2019 hearing was whether the Manatee County School Board ("Petitioner" or "School Board") proved violations of law and other good cause to immediately terminate a charter school agreement with Lincoln Memorial Academy, Inc. ("LMA" or "Respondent"), pursuant to section 1002.33(8)(c), Florida Statutes. Section 1002.33(8)(c) states that:

> A charter may be terminated immediately if the sponsor sets forth in writing the particular facts and circumstances indicating that an immediate and serious danger to the health, safety, or welfare of the charter school's students exist. … A requested hearing must be expedited and the final order must be issued within 60 days after the date of request.

§ 1002.33(8)(c), Fla. Stat. When a hearing is requested pursuant to section 1002.33(8)(c), the hearing must be held, and the final order must be issued, within 60 days of the hearing request.

On September 27, 2019, a Final Order was entered, finding in favor of Petitioner, denying Respondent's appeal, and terminating the charter school contract between Petitioner and Respondent. In that Order, the undersigned reserved the right to address whether attorney's fees, costs, and sanctions are awardable to Petitioner. On October 4, 2019, Petitioner filed a timely motion for attorney's fees and costs. Respondent filed a response after hours on Friday, October 11, 2019, which resulted in the response appearing on the docket at 8:00 a.m. on Monday, October 14, 2019. The slightly late submission by Respondent is accepted as timely and was considered in the writing of the Order on entitlement to attorney's fees by Petitioner, as the prevailing party. On October 22, 2019, a telephonic hearing was held on the issue of Petitioner's entitlement to fees and costs. On this same date, the undersigned issued an Order stating that Petitioner is entitled to reasonable attorney's fees and costs for having defended this matter against Respondent, pursuant to the clear and unambiguous language of section 1002.33(8)(b) and (c). Therein, the undersigned also stated that Petitioner may request fees for any actions occurring during the discovery phase of these proceedings, as well as at hearing in its pursuit of fees.

Although the parties could have opted to submit affidavits in lieu of a live evidentiary hearing, Respondent requested a live hearing. On December 19, 2019, an evidentiary hearing on the reasonableness of the amount of costs and fees sought by Petitioner was held before the undersigned. The School Board called three witnesses: Attorney Robert W. Boos of Adams and Reese; Mark S. Smith, Jr., manager of Carr, Riggs & Ingram ("CRI"); and John E. Jorgenson, chief executive officer ("CEO") and president of Sylint. Mr. Boos served as Petitioner's expert witness, testifying to the reasonableness of the rate charged, the hours expended, and total fee amount based on the rate charged multiplied by the hours accrued (i.e., the Lodestar Amount). Mr. Smith and Mr. Jorgenson testified to the scope of the services provided, the

rates charged, and the authenticity of their invoices. Attorney Terry J. Harmon of Sniffen & Spellman, P.A., also testified to the authenticity of his invoices and Curriculum Vitae ("CV"). Respondent presented no witnesses. In addition, Petitioner entered 16 exhibits into evidence, which included affidavits of all Johnson Jackson PLLC attorneys and staff that billed time in this matter; the agreement for contractual services between Johnson Jackson PLLC and Petitioner; the agreement for contractual services between Sniffen & Spellman, P.A., and Petitioner; Johnson Jackson PLLC invoices and time reports, court reporter invoices, subpoena invoices, CRI invoices, Sylint invoices, an engagement letter regarding the services provided by CRI to Petitioner in this matter; and the CVs belonging to Mr. Harmon, Mr. Smith, Lori Kidder of CRI, Mr. Jorgenson, Mr. Boos, and all Johnson Jackson PLLC attorneys who billed time in this matter. Respondent entered one exhibit into evidence—the minutes from the July 23, 2019, School Board meeting. A Transcript of the proceeding was ordered and delivered to DOAH on January 7, 2020. Both Petitioner and Respondent timely filed proposed final orders on attorney's fees and costs. The proposed final orders have been duly considered, along with the testimony and evidence presented at hearing in the following Final Order.

References to the Florida Statutes are to the 2019 codification, unless otherwise indicated.

FINDINGS OF FACT

1. Through its submission of evidence and presentation of witnesses, Petitioner has demonstrated that the attorney's fees sought are reasonable based upon the reasonable rate charged and the reasonable hours expended in this matter. During the December 19, 2019, hearing, Respondent offered little evidence and no witnesses to adequately dispute Petitioner's position.

2. The hours expended in this matter are reasonable given the time and labor required, the novelty, complexity, and difficulty of the questions involved, the skills required to perform the legal service properly, the fact that working on this matter precluded other employment, and the accelerated time limitations imposed by section 1002.33(8)(c). For example, although the documents reviewed and relied upon by Petitioner were voluminous, and the motion practice was unrelenting throughout the abbreviated discovery period, the allotted time to conduct discovery, prepare for, and litigate this matter was minimal. The governing statute itself, section 1002.33(8)(c), requires that a final order be issued within 60 days of the request for hearing. In order to adequately litigate this matter, Petitioner's legal team had to dedicate almost entirely all of their time to this matter for several weeks at the cost of time that would otherwise have been dedicated to other cases and/or employment opportunities. The impact of this preclusion is especially significant given the fact that Johnson Jackson PLLC Attorney Erin G. Jackson's hourly rate for Petitioner ($165.00) is significantly lower than the hourly rate charged to the firm's private sector clients.

3. This preclusion additionally resulted in Ms. Jackson relying upon the assistance of multiple Johnson Jackson PLLC attorneys, clerks, and paralegals, in addition to Attorney Terry J. Harmon of Sniffen & Spellman, P.A. Like Ms. Jackson, Mr. Harmon charged Petitioner a rate that is significantly lower than the rate he generally charges for private sector clients. The unique circumstances of this case rendered this assistance both reasonable and necessary to Petitioner's success in this matter.

4. Further complicating matters, the question at issue, i.e., whether Petitioner proved violations of law and other good cause to immediately terminate a charter school agreement pursuant to section 1002.33(8)(c), is a novel one. In fact, section 1002.33(8)(c) was recently revised in 2018 in two notable and impactful ways: (1) section 1002.33(8)(d) became 1002.33(8)(c); and (2) the Florida legislature removed the option for the sponsor to hear an

appeal of immediate termination, instead now requiring that all such appeals be held before an ALJ. *Compare* § 1002.33(8)(d), Fla. Stat. (2017), with § 1002.33(8)(c), Fla. Stat. (2018). Consequently, precedent with similar factual circumstances raising related issues pursuant to this statute is nearly nonexistent.

5. The lack of precedent on this issue is further heightened by the fact that the conditions necessary to warrant immediate termination, i.e., an immediate and serious danger to the health, safety, or welfare of charter school students, are more severe and, therefore, much less common than terminations pursuant to other portions of section 1002.33. The novelty, complexity, and difficulty of this issue necessarily required Ms. Jackson to expend significant time and resources on researching and strategizing in preparation for the hearing.

6. Respondent's evasive and dismissive behavior further contributed to the foregoing challenges and required Petitioner's legal team to dedicate additional hours and attorneys to this matter that would not have otherwise been necessary if Respondent simply complied with the rules of discovery and the undersigned's orders regarding the same. Consequently, Petitioner's legal team spent more than 73 hours drafting motions and performing related duties addressing Respondent's persistent refusal to respond to discovery. As a result of Respondent's failure to comply with discovery requirements and direct orders from the undersigned, Petitioner had no choice but to expend this additional time. The legitimacy and necessity of these efforts is further evidenced by the fact that the undersigned granted each of Petitioner's motions to compel.

7. Further, Johnson Jackson PLLC maintained detailed records of all services rendered as evidence of the extensive time and effort dedicated to this matter. These records demonstrate that Johnson Jackson PLLC attorneys and staff dedicated approximately 1,178.8 hours between July 30,

2019 (when Ms. Jackson began drafting written discovery to be issued to Respondent), and January 15, 2020, to this matter.

8. Sniffen & Spellman, P.A., also maintained detailed records of all services rendered. These records show that the attorneys and staff of Sniffen & Spellman, P.A., dedicated approximately 71.9 hours to this matter between August 2019 and January 15, 2020.

9. During the December 19, 2019, hearing, Petitioner's expert, Attorney Robert W. Boos of Adams and Reese, testified to the reasonableness of the hours expended by Johnson Jackson PLLC in this matter. Mr. Boos has been practicing law for approximately 40 years and has served as counsel for the Hillsborough County School Board. Based on Mr. Boos' years of experience as an attorney, in addition to a review of the hours expended by the attorneys and staff of Johnson Jackson PLLC and Sniffen & Spellman, P.A., Mr. Boos testified that the total amount of hours expended was reasonable given the underlying circumstances of this matter. He also found the discounted hourly rate to be "eminently reasonable."

10. In an effort to rebut the reasonableness of the hours expended by Petitioner's legal team, Respondent attempted to dispute the nature of its behavior in the underlying proceedings during the December 19, 2019, hearing. Specifically, although Respondent contended that it was not there "to relitigate what already happened at the previous hearing," Respondent then went on to assert that, "LMA's entire inventory, every single piece of paper, every single record was seized by Manatee County School Board. They had access to everything." However, as already thoroughly addressed by the undersigned in his 95-page Final Order, Petitioner, in fact, did not have access to everything. In fact, Petitioner still does not have access to "everything." As previously explained by the undersigned:

> Another factor that has not gone unnoticed by the undersigned in the course of these expedited proceedings is that LMA's pattern of refusing to respond to requests for information made by the

> School District during discovery has continued into these proceedings. The undersigned can only imagine Petitioner's frustration with the constant refusal of LMA to provide the documents requested during discovery, with the common refrain of "you already have the documents, because you (the School District) seized all of LMA's records … leaving us (the former staff) with nothing to provide you." However, this cry by LMA fails to ring true … . No evidence was presented through testimony, and certainly not through documentation, that LMA provided the complete records of their activities in this first year of the charter's school operations.

As acknowledged by Respondent, the parties have already litigated this issue. The undersigned previously issued his Final Order as to the issue of these documents. The undersigned also stated his intent to avoid relitigating the issue during the December 19, 2019, hearing. Respondent's argument is without merit, blatantly disregards previous rulings in the underlying case, and, therefore, should have no bearing on the present issues.

11. Notably, Respondent did not dispute the novelty and complexity of the issues involved or expedited nature of this matter. To the contrary, Respondent's qualified representative, Mr. Norwood, described this matter as "very quick, very expedited," explaining further that, "[t]here was a lot of things that happened not, you know, typical of any case … . This is a fairly new area of law, period." Such factors are relevant to determining whether the number of hours expended were reasonable.

12. Although Respondent did not dispute the expedited nature of this matter, it nonetheless attempted to argue that the School Board had a "choice," with respect to terminating LMA's charter immediately pursuant to section 1002.33(8)(c), which requires expedited proceedings, versus section 1002.33(8)(b), which allows for a 90-day timeline. Based on this contention, Respondent suggested that it was Petitioner's own fault that these proceedings were expedited, and, therefore, Petitioner should pay for it.

But this argument fails to account for the fact that the undersigned has already determined that the rationale underlying Petitioner's decision to terminate Respondent's charter was warranted due to the dangers that Respondent posed to its students' health, safety, and welfare. With student health, safety, and welfare at risk, Petitioner did not have a "choice." Rather, the act of immediately terminating LMA's charter was "the only remaining" measure available to Petitioner at that point in time:

> The testimony presented by both parties to this proceeding leads the undersigned to the conclusion that no tools were left for the School District in dealing with a charter school that failed to address their repeated efforts at gathering information.

As evidenced by the foregoing, Petitioner has already litigated and provided sufficient evidence of the numerous notices and warnings Petitioner issued to Respondent and Respondent's lack of cooperation preceding the termination of its charter. Contrary to Respondent's allegations, Respondent's own choices caused this expediency. Accordingly, Respondent should bear the cost, not Petitioner.

13. Given the novelty, complexity, and difficulty of resolving this issue coupled with the extraordinary circumstances of this matter, including but not limited to, the time spent by Petitioner's legal team attempting to overcome Respondent's prejudicial hurdles, the hours expended were clearly reasonable.

14. The rates charged by Petitioner were equally reasonable. In consideration of the market value and the factors set forth in Rule Regulating Florida Bar 4-1.5, Johnson Jackson PLLC charged Petitioner $165.00 per hour for attorneys; $100.00 per hour for first-year attorneys; and $90.00 per hour for paralegals and law clerks. Johnson Jackson PLLC's hourly rate is extremely reasonable given the experience and expertise of its attorneys and staff, as evidenced by their CVs and affidavits.

15. Sniffen & Spellman, P.A., similarly charged Petitioner $165.00 per hour for attorneys; $75.00 per hour for paralegals; and $50.00 per hour for law clerks. As evidenced by the fact that both Johnson Jackson PPLC attorneys and Sniffen & Spellman, P.A., attorneys billed the same rate, Sniffen & Spellman, P.A.'s, hourly rate is consistent with the market rate and reasonable given the experience and expertise of its attorneys and staff, once again as evidenced by Mr. Harmon's CV and affidavits.

16. The foregoing rates are also consistent with, if not noticeably lower than, the rates charged by other attorneys, paralegals, and/or law clerks, to school boards in other nearby counties in Florida. For example, attorneys for Indian River County charge $250.00 to $180.00 per hour and attorneys for Hernando County charge $285.00 to $215.00 per hour.

17. Importantly, despite the expedited nature of this matter, these rates do not exceed the fee agreements between Petitioner's legal team and Petitioner, which both preceded the circumstances that gave rise to this matter. Both Johnson Jackson PLLC and Sniffen & Spellman, P.A., remained committed to the hourly rates agreed-to pursuant to these agreements regardless of the complexity, novelty, and difficulty of the issues.

18. The reasonableness of these rates is further evidenced by the nature and length of Johnson Jackson PLLC and Sniffen & Spellman, P.A.'s, professional relationship with Petitioner. For example, Ms. Jackson has had a professional relationship with Petitioner since 2009. The length of Ms. Jackson and Mr. Harmon's relationship with Petitioner also serves as evidence of Ms. Jackson and Mr. Harmon's extensive experience, skills, expertise, and abilities in this area of law. Ms. Jackson has been admitted to The Florida Bar since 2000, and Mr. Harmon has been admitted to The Florida Bar since 2006. Ms. Jackson is board certified by The Florida Bar in labor and employment law, and Mr. Harmon is board certified by The Florida Bar in education law.

19. During the December 19, 2019, hearing, Petitioner's expert, Mr. Boos, testified to the reasonableness of the fees charged by Ms. Jackson in this matter. As mentioned previously, Mr. Boos has been practicing law for approximately 40 years and has served as counsel for the Hillsborough County School Board. Mr. Boos testified that he generally charges the School Board of Hillsborough County $310.00 per hour. By comparison, Petitioner's legal team charged Petitioner no more than $165.00 per hour. Based on Mr. Boos' years of experience as an attorney, in addition to his review of the lawyer invoices, Mr. Boos testified that Petitioner's legal team's hourly rate was "eminently reasonable."

20. Respondent did not dispute or otherwise offer any evidence disputing the reasonableness of the hourly rates charged during the December 19, 2019, hearing.

21. Based upon the foregoing findings, Petitioner's legal team's hourly rates are clearly reasonable in light of the market value, the agreements between the parties, and the experience and skill offered by the attorneys and staff at Johnson Jackson PLLC and Sniffen & Spellman, P.A. Accordingly, the undersigned accepts these rates in calculating the total amount of attorney's fees owed by Respondent in this matter.

22. Based upon the reasonableness of the fees charged and hours expended, the Lodestar figure (i.e., the fees charged multiplied by the hours expended) is $175,658.00 for work performed prior to November 30, 2019, and is $17,992.50 for work performed through January 15, 2020; together, totaling $193,650.50. These totals are broken down in detail below:

For work performed prior to November 30, 2019:

- Erin Jackson (Shareholder) - $165.00 x 346.5 hours = $57,172.50
- Kevin Johnson (Shareholder) - $165.00 x 9.1 hours = $1,501.50
- Christopher Bentley (Partner) - $165.00 x 4.9 hours = $808.50

- Ashley Gallagher (n/k/a Tinsley) (Associate Attorney) - $165.00 x 434.1 hours = $71,626.50
- Beatriz Miranda (Associate Attorney) - $165.00 x 118.2 hours = $19,503.00
- Colby Ellis (Associate Attorney) - $100.00 x 2.5 hours = $250.00
- Colby Ellis (Law Clerk) - $90.00 x 8.3 hours = $747.00
- Julia Shinn (Paralegal) - $90.00 x 109.6 hours = $9,864.00
- Tiffany Albertson (Paralegal) - $90.00 x 35.5 hours = $3,195.00
- Terry J. Harmon (Shareholder)- $165.00 x 66 hours = $10,890.00
- Sara Finnegan (Law Clerk) - $50.00 x 2 hours = $100.00

TOTAL PRE-NOVEMBER 30, 2019: $175,658.00

For work performed since the November 30, 2019, invoice:

- Erin Jackson (Shareholder) - $165.00 x 31.8 hours = $5,247.00
- Ashley Gallagher (Associate Attorney) - $165.00 x 61.6 hours = $10,164.00
- Bridget McNamee (Of Counsel) - $165.00 x 2.8 hours = $462.00
- Julia Shinn (Paralegal) - $90.00 x 15.8 hours = $1,422.00
- Tiffany Albertson (Paralegal) - $90.00 x 0.6 hours = $54.00
- Terry J. Harmon (Shareholder) - $165.00 x 3.9 hours = $643.50

TOTAL POST-NOVEMBER 30, 2019: $17,992.50

TOTAL FOR PRE- AND POST-NOVEMBER 30, 2019: $193,650.50

23. Because the total fee amount of $193,650.50 is based upon reasonable hours expended and a reasonable hourly rate, this amount, at a minimum, should be awarded.

24. The costs sought by Petitioner in this matter are also reasonable. As previously mentioned, Ms. Jackson and Petitioner have a professional relationship that began approximately ten years ago. This relationship is governed by a fee agreement. Petitioner's fee agreement with Johnson Jackson PLLC provides that its invoices itemize all costs, and such costs may include travel expenses, courier services, service of process fees, photocopy charges by third parties, filing fees, recording fees, lien and judgment searches, expert witnesses, court reporter services, corporate record books, registration fees charged by governmental authorities, and any other costs incurred in the course of representation. In accordance with this agreement, Johnson Jackson PLLC maintains documents itemizing all costs incurred. Accordingly, Petitioner has proper notice of the costs that may be included in any invoices issued, and each cost can be identified and allocated for purposes of demonstrating the reasonable need for these expenses.

25. During the December 19, 2019, hearing, Mr. Boos testified that he reviewed the expenses and costs charged and found those expenses to be reasonable and customary for this type of matter.

26. For purposes of the December 19, 2019, hearing, Petitioner paid Mr. Boos $7,500.00 for his services and $598.45 for court reporter services, totaling $8,098.45 in additional taxable costs accrued since the December 19, 2019, hearing. These costs were necessary expenditures for purposes of pursuing attorney's fees and costs in this matter.

27. In consideration of Mr. Boos' testimony in addition to the applicable factors and guidelines, the following expenditures by Johnson Jackson PLLC should be taxed:

- Court Reporters/Transcripts: $25,607.9017
- Service of Subpoenas & related services: $4,141.74
- Cost of expert testimony by Bob Boos, Esq.: $7,500

The foregoing expenditures total $37,249.64 in taxable costs. Given the reasonableness and necessity of these expenditures, Petitioner should be awarded these costs in full.

28. In addition to the costs outlined above, Respondent must also pay for the services rendered by CRI and Sylint.

29. Petitioner hired CRI to conduct a forensic investigation of LMA, which included, but was not limited to, conducting an analysis of the funding received by LMA and the categorical use of those funds by LMA; confirming LMA's payroll process and determining the status of employee payroll to determine employee payroll liabilities; determining LMA employee withholdings for payroll taxes meant to be paid to the Internal Revenue Service, and LMA employee withholdings for the pension meant to be paid to the Florida Retirement System; and determine LMA's liabilities based upon the unpaid invoices and breakdown of all liabilities between the 2018/2019 and 2019/2020 school year. Based on a thorough analysis of this data, CRI prepared a report, accompanied by hundreds of pages of exhibits, upon which Petitioner's legal team heavily relied on during the formal hearing. Among other things, this report identified the voluminous debts accrued by Respondent; the source of some of those debts; and the funds that still remained unaccounted for. Pursuant to this investigation, CRI was able to confirm Respondent's debt totaled more than one million dollars.

30. CRI Manager Mark S. Smith, Jr., drafted the report and testified about his findings and the basis for his conclusions during the hearing. During the December 19, 2019, hearing, Mr. Smith confirmed that he testified during the August 2019 hearing and verified the authenticity of his CV, CRI's invoices, and the scope of CRI's services pursuant to CRI's engagement letter with Petitioner. CRI's forensic investigation and report served as undisputable evidence of Respondent's egregious financial mismanagement and how this financial mismanagement posed an immediate

danger to student health, safety, and welfare of LMA's students. The pivotal role that CRI's services played in the underlying case is undisputed.

31. Services rendered by CRI total $42,091.00 and are broken down as follows:

- August 15, 2019 Invoice: $18,258.00
- August 27, 2019 Invoice: $18,871.00
- September 10, 2019 Invoice: $4,962.00

32. For similar reasons, Respondent should also pay for Sylint's services. Petitioner hired Sylint to conduct a forensic audit and investigation of Respondent's laptops, cloud accounts (including but not limited to LMA's "G-suite"), emails, and other electronic software and devices, and provide forensic and evidentiary guidance relative to this litigation. In the performance of these services, Sylint analyzed and authenticated evidence demonstrating the danger that Respondent's ongoing operations posed to student health, safety, and welfare, including but not limited to, surveillance videos showing CEO Eddie Hundley having direct contact with students while on campus, even though this conduct expressly violated statutory law and directives from the Commissioner of Education. The CEO and President of Sylint, John E. Jorgensen, testified and authenticated the date and time of these surveillance videos during the formal hearing on August 27, 2019.

33. Sylint also discovered that agents of Respondent, including, but not limited to, Chief Financial Officer Cornelle Maxfield, deleted hundreds of files during the pendency of this action after Petitioner had served Respondent with written discovery requests. Sylint's employee, Weston Watson, testified regarding the deletion of these files during the formal hearing on August 26, 2019. To demonstrate the prejudicial effect of Respondent's conduct, Sylint also created several demonstratives presented at the hearing, including, but not limited to, a timeline showing when agents of LMA deleted documentation seemingly responsive to Petitioner's discovery requests.

34. In addition to deleting files that should have been preserved, Respondent failed to comply with numerous requests by Sylint, Petitioner, and the undersigned to hand over tablets, phones, and/or emails in a timely fashion. For example, Mr. Hundley never gave Petitioner or Sylint his phone despite numerous requests that he do so and did not provide a USB containing his emails until approximately 3:00 p.m. on the second day of the four-day hearing.

35. Services rendered by Sylint from August 2, 2019, to August 30, 2019, which included, but were not limited to: evidence collection and intake; data analysis; device imaging; hearing preparation; and testimony at hearing, cost approximately $24,996.68.

36. During the December 19, 2019, hearing, and pursuant to a Motion in Limine, Respondent objected to the introduction of evidence regarding CRI and Sylint's services because the respective investigations "would have happened regardless of whether or not LMA had appealed the decision to terminate the school." In support of this contention, Respondent cited the July 23, 2019, School Board meeting minutes. However, contrary to Respondent's contentions, the July 23 School Board meeting minutes demonstrate exactly why CRI and Sylint's invoices are relevant and should be reimbursed—because the services performed by CRI and Sylint would not have been necessary but for LMA's mismanagement and poor decision-making—not any action taken by the School Board. As pointedly explained by the undersigned:

> I don't think they bring in a firm to perform an audit between school years … if they didn't think there was a problem going on … But this was in no way, shape, or form a routine audit being performed by CRI. It was a forensic audit looking for money that was believed to have gone missing, and ultimately based on my findings proven to have gone missing.

37. The undersigned has already determined that the conditions resulting in the termination of LMA's charter posed an immediate danger to student health, safety, and welfare; and Respondent's conduct caused such conditions to arise. The evidence discovered and/or analyzed by Sylint and CRI was vital to Petitioner's case. In fact, the undersigned expressly relied on evidence discovered and/or analyzed by CRI and Sylint in finding that both Respondent's financial mismanagement and Mr. Hundley's conduct posed an immediate danger to the health, safety, and welfare of students. As explained by the undersigned in his Final Order:

> When forensic accountants and long-time public officials cannot find all of the necessary records to continue the operation of the school, just two days after being taken over by the School District, to answer the questions about payroll taxes, FRS contributions, Best and Brightest awards, food service menus and purchases, and utility payments, someone is hiding the ball. … Even with limited records available, however, the School District has made a strong case for immediately terminating the charter.

38. Although Respondent disputes whether Petitioner would have employed CRI and Sylint's services regardless of Respondent's appeal, Respondent does not dispute the vital role that CRI and Sylint's services played in this matter. Respondent failed to produce documentation requested during discovery despite assurances that it would do so and, months later, still has not produced requested documentation. Respondent has never, during the pendency of these proceedings, in good faith responded to reasonable discovery requests. CRI and Sylint, to the extent possible, were able to at least partially to fill this gap of missing information and even demonstrate how Respondent was actively engaging in conduct to ensure Petitioner did not have access to this information. In light of Respondent's complete failure to cooperate with Petitioner, Petitioner had no choice but to rely upon CRI and Sylint's assistance. Absent this assistance, Respondent's

prejudicial conduct would have significantly, if not completely, debilitated Petitioner's ability to demonstrate the true extent of the immediate dangers that Respondent posed to student health, safety, and welfare.

39. It is also important to note that Petitioner has already reduced the requested costs for CRI and Sylint's services in an effort to be reasonable. As noted by the undersigned, Petitioner reduced the CRI invoices from $54,000.00 to $42,091.00, only submitting invoices beginning in August 2019. Sylint's invoices also begin in August 2019. Thus, prior to submission of Respondent's Motion in Limine, Petitioner already excluded, although it did not have to, any costs pertaining to services that could have arguably been perceived as "outside the scope of the Order on Termination."

40. In consideration of the foregoing, Respondent should pay for CRI and Sylint's services as taxable costs and/or as sanctions for Respondent's willful lack of cooperation throughout these proceedings. Respondent's conduct remains undisputed. The prejudicial effect of Respondent's conduct remains undisputed. Accordingly, Respondent should be liable for these costs, totaling $67,087.68.

CONCLUSIONS OF LAW

41. DOAH has jurisdiction over the parties to this proceeding and the subject matter of this proceeding pursuant to sections 120.569, 120.57, and 1002.33(8), Florida Statutes.

42. The ALJ has final authority to resolve this dispute pursuant to section 1002.33(8)(b) and (c), which provides, in pertinent part, that "[t]he administrative law judge shall award the prevailing party reasonable attorney fees and costs incurred during the administrative proceeding and any appeals." § 1002.33(8)(b), Fla. Stat.

43. In accordance with the foregoing statutory authority, the undersigned issued an Order dated October 22, 2019, stating that Petitioner, as the prevailing party, was entitled to reasonable attorney's fees and costs for

having defended this matter against Respondent. That order further stated that:

> Petitioner may request fees for any actions occurring during the discovery phase of these proceedings as well as at hearing in its pursuant of prevailing party fees pursuant to the above-cited statute.

This conclusion is consistent with applicable authority and guidance. *See, e.g.*, *Travieso v. Travieso*, 474 So. 2d 1184, 1184-85 (Fla. 1985) (holding that expert witness fees may be taxed as costs for a lawyer who testifies as an expert as to reasonable attorney fees); *Pirretti v. Dean Witter Reynolds, Inc.*, 578 So. 2d 474, 476 (Fla. 4th DCA 1991)(stating "it is not uncommon for attorney's fees to be awarded for the additional legal effort required in obtaining a contested judgment for attorney's fees" and citing numerous cases from the Florida Supreme Court and Florida District Courts of Appeal holding the same); *In re Amends. to Unif. Guidelines for Taxation of Costs*, 915 So. 2d 612 (Fla. 2005) (identifying expenses associated with expert witnesses and court reporter services as costs that should be taxable).

44. The Florida Supreme Court has accepted the Lodestar approach as a suitable foundation for an objective structure in setting reasonable attorney's fees. *Fla. Patient's Comp. Fund v. Rowe*, 472 So. 2d 1145, 1150 (Fla. 1985). The Lodestar approach requires the court to: (1) determine the number of hours reasonably expended on the litigation; (2) determine a reasonable hourly rate for the services of the prevailing party's attorney; and (3) once determined, multiply the reasonably hourly rate by the reasonable number of hours expended. *Id.* at 1150-51.

45. In assessing reasonable fees pursuant to the Lodestar approach, courts should apply those factors enunciated in The Florida Bar Code of Professional Responsibility. *Id.* at 1150; *Standard Guar. Ins. Co. v. Quanstrom*, 555 So. 2d 828, 830 (Fla. 1990). These eight factors are set forth in rule 4-1.5 of the Rules Regulating the Florida Bar and include:

> a. The time and labor required, the novelty, complexity, and difficulty of the questions involved, and the skills requisite to perform the legal service properly;
>
> b. The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> c. The fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature;
>
> d. The significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained;
>
> e. The time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client;
>
> f. The nature and length of the professional relationship with the client;
>
> g. The experience, reputation, diligence, and ability of the lawyer or lawyers performing the service and the skills, expertise, or efficiency of effort reflected in the actual providing of such services; and
>
> h. Whether the fee is fixed or contingent, and, if fixed, as to amount or rate, then whether the client's ability to pay rested to any significant degree on the outcome of the representation.

R. Regulating Fla. Bar 4-1.5(b)(1). Notably, however, utilization of these principles in computing fees must be flexible to enable courts to consider rare and extraordinary cases with truly special circumstances. *Standard Guar. Ins. Co.*, 555 So. 2d at 835.

46. The first step in calculating the Lodestar figure is to determine the number of hours reasonably expended on the litigation. *Rowe*, 472 So. 2d

at 1150. In making this assessment, courts generally consider records detailing the amount of work performed and the novelty and difficulty of the questions involved. *Id.*

47. As discussed in detail above, Petitioner expended a reasonable number of hours litigating this matter. It is undisputed that this matter involved a complex and novel issue and that the underlying proceedings were expedited pursuant to statute. In consideration of these circumstances, and based upon a review of the hours expended by attorneys and staff, Petitioner's expert, Mr. Boos, agreed that the hours expended in this matter were reasonable.

48. The expedited nature of this matter, coupled with Respondent's prejudicial conduct throughout these proceedings, rendered it necessary to utilize the assistance of almost every attorney and staff member at Johnson Jackson PLLC. Indeed, this matter consumed the practice for weeks. The preclusive effect of this matter additionally resulted in Johnson Jackson PLLC relying upon assistance from Mr. Harmon of Sniffen & Spellman, P.A. These circumstances rendered this assistance both reasonable and necessary to Petitioner's success in this matter. *See Johnson v. Univ. Coll. of Univ. of Ala.*, 706 F.2d 1205, 1208 (11th Cir. 1983) ("An award for time spent by two or more attorneys is proper as long as it reflects the distinct contribution of each lawyer to the case and the customer practice of multiple-lawyer litigation."). Mr. Harmon's unique experience in labor and employment law enhanced the representation of Petitioner in this complicated and expedited matter.

49. The second step in calculating the Lodestar figure is to determine a reasonable hourly rate for the services of the prevailing party's attorneys. *Rowe*, 472 So. 2d at 1150. In reaching this determination, courts generally consider the "market rate," i.e., the rate charged in the community by lawyers of reasonably comparable skill, experience, and reputation for similar services. *Id.* at 1151. Courts also generally consider all of the rule 4-1.5 factors except "the time and labor required"; the "novelty and difficulty of the

question involved"; "the results obtained"; and "whether the fee is fixed or contingent." *See id.* at 1150-51.

50. As discussed in detail above, Ms. Jackson and Mr. Harmon charged the same rate to Petitioner consistent with each of their engagement agreements. The rate charged by Johnson Jackson PPLC and Sniffen & Spellman, P.A., is lower than what is generally charged by them to their private sector clients. Even so, this rate is notably lower than the rate charged to other school boards in the area by other attorneys. Further, both Ms. Jackson and Mr. Harmon have considerable legal experience, long-standing professional relationships with Petitioner, and are board certified by The Florida Bar. In consideration of these factors and a review of Petitioner's invoices, Mr. Boos agreed that the hourly rates charged were reasonable.

51. The third and final step in the Lodestar approach is to multiply the reasonable hourly rates by the reasonable hours expended. *See Rowe*, 472 So. 2d at 1150-51. Based on this calculation, and as broken down in detail above, the total Lodestar figure is $193,650.50.

52. Once the tribunal arrives at the Lodestar figure, the tribunal may adjust this amount to account for other considerations that have not yet figured in the computation—the most important being the relation of the results obtained to the work done. *Smith v. Sch. Bd. of Palm Beach Cty.*, 981 So. 2d 6, 9 (Fla. 4th DCA 2007) (quoting *Dillard v. City of Greensboro*, 213 F.3d 1347, 1353 (11th Cir, 2000). *See also Rowe*, 472 So. 2d at 1151. If the results obtained were exceptional, then some enhancement of the Lodestar might be called for. *Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1302 (11th Cir. 1988). Exceptional results are results that are out of the ordinary, unusual, or rare. *Id.*

53. Following expedited discovery and a four-day hearing complicated by numerous efforts by Respondent to thwart its discovery obligations and subsequent discovery orders, the undersigned held that Petitioner proved violations of law and other good cause to immediately terminate a charter

school agreement with LMA pursuant to section 1002.33(8)(c). Petitioner was successful despite numerous hurdles, including, but not limited to: (1) the expedited nature of this matter; (2) the lack of precedent addressing the question at issue; and (3) Respondent's willful lack of cooperation through the pendency of this matter. Given the unique circumstances of this case, the results are exceptional and should be considered accordingly in computing the final Lodestar figure.

54. To determine the reasonableness of costs, rule 4-1.5 sets forth six factors that may be considered:

> a. The nature and extent of the disclosure made to the client about the costs;
>
> b. Whether a specific agreement exists between the lawyer and client as to the costs a client is expected to pay and how a cost is calculated that is charged to a client;
>
> c. The actual amount charged by third party services to the attorney;
>
> d. Whether specific costs can be identified and allocated to an individual client or a reasonable basis exists to estimate the costs charged;
>
> e. The reasonable charges for providing in-house service to a client if the cost is an in-house charge for services; and
>
> f. The relationship and past course of conduct between the lawyer and the client.

R. Regulating Fla. Bar 4-1.5(b)(2).

55. In determining which costs are taxable, the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions ("Uniform Guidelines") should also be considered. *See In re Amends. to Unif. Guidelines for Taxation of Costs*, 915 So. 2d 612. The Uniform Guidelines specifically identify those costs that should be taxed, may be taxed, and should not be taxed. *Id.*

at 616-17. Notably however, these guidelines are advisory only, and the taxation of costs remains within the tribunal's broad discretion. *Id.* at 614.

56. As set forth in the Uniform Guidelines, litigation costs that should be taxed include, but are not limited to:

> • Depositions – to include (1) the original and one copy of the deposition and court reporter's per diem for all depositions; (2) the original and/or one copy of the electronic deposition and the cost of the services of a technician for electronic depositions used as trial; (3) telephone toll and electronic conferencing charges for the conduct of telephone and electronic depositions.
>
> • Witnesses – to include costs of subpoena, witness fee, and service of witnesses for deposition and/or trial.
>
> • Court reporting costs other than for depositions – to include reasonable court reporter's per diem for the reporting of evidentiary hearings, trial, and post-trial hearings.
>
> • Expert Witnesses – to include a reasonable fee for trial testimony.

57. As set forth in the Uniform Guidelines, litigation costs that may be taxed include, but are not limited to, reasonable travel—to include the reasonable travel expenses of witnesses.

58. As set forth in the Uniform Guidelines, litigation costs that should not be taxed include, but are not limited to:

> • Any expenses relating to consulting non-testifying experts.
>
> • Costs incurred which was not reasonable calculated to lead to the discovery of admissible evidence.
>
> • Travel time of attorneys.

- Travel expense of attorneys.

59. As discussed in detail above, the rule 4-1.5 factors are readily met under the present circumstances. The professional relationship between Johnson Jackson PLLC and Petitioner is a long-standing one governed by a fee agreement that requires Johnson Jackson PLLC to maintain documents itemizing all costs incurred. Johnson Jackson PLLC maintains such documentation and has produced this documentation as evidence of all taxable costs accrued. Further, all costs that should not be taxed pursuant to the Uniform Guidelines and applicable case law have been removed from these calculations. *See, e.g., Landmark Winter Park, LLC v. Colman*, 24 So. 3d 787, 789 (Fla. 5th DCA 2009) (relying on guidelines in holding that 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) (relying on guidelines in holding that photocopies, postage, long distance calls, travel expenses, and courier services should not have been taxed as costs).

60. Lastly, and in consideration of the Court's broad discretion in awarding costs, based upon the holding in *In re Amendments to Uniform Guidelines for Taxation of Costs*, 915 So. 2d 612, the undersigned must award Petitioner the costs expended for the services provided by CRI and Sylint in the form of taxable costs or sanctions. Respondent objected to the introduction of any evidence regarding the audits and/or investigations conducted by CRI and Sylint, based upon its argument that these costs would have been incurred in a routine audit of LMA's finances and property when Petitioner assumed the operations and management of the charter school. Both the evidence of record in the underlying case here, as well as testimony and evidence presented by Petitioner at the fees hearing, demonstrate the reason for the audits and property recovery by CRI and Sylint, respectively,

were anything but routine. Both companies found significant, harmful, and crippling financial irregularities (in the case of CRI) and statutory violations by Mr. Hundley, as well as compromised laptops and missing computer records (in the case of Sylint). The excellent work performed by these two companies contributed significantly to the finding that the health, safety, and welfare of the students of LMA were compromised by the actions of LMA executives and founders. Their work was critical to Petitioner's success in pursuing its case against Respondent and should be recovered in this proceeding.

61. The prejudicial effect of Respondent's conduct also remains undisputed and is supported by the fact that the undersigned granted each of Petitioner's motions to compel discovery in DOAH Case No. 19-4155. (*See, e.g.*, Order Granting Motion to Compel Witness to Appear at Deposition dated Aug. 23, 2019; Order Granting Motion to Compel Discovery dated Aug. 23, 2019; Order Granting Petitioner's Emergency Motion to Compel dated Aug. 21, 2019). Such conduct is the exact type of behavior that the imposition of sanctions serves to remedy. *See, e.g.*, Fla. R. Civ. P. 1.380(a)(4) ("If the motion is granted and after opportunity for hearing, the court shall require the party or deponent whose conduct necessitated the motion or the party or counsel advising the conduct to pay the moving party the reasonable expenses incurred in obtaining the order that may include attorney's fees … .").

62. It is important to note that, much like in the underlying case, Respondent has offered little hard evidence to support any of its legal arguments. Respondent called no witnesses at the hearing on attorney's fees, whether expert or lay, with direct or indirect knowledge of the case and the extent to which the parties were under great pressure to prepare the matter for hearing, due to the 60-day statutory requirement from commencement of the underlying case to Final Order issued by the undersigned. The expedited nature of the matter required both parties to cooperate in order to meet the tight deadlines. Throughout the proceedings, Petitioner fully cooperated with

Respondent by making witnesses available for deposition and by providing all documents in its possession for Respondent to better prepare its case for hearing. However, Petitioner's acting in good faith was a one-way street. Respondent missed discovery deadlines, failed or refused to comply with orders to compel, and invoked its Fifth Amendment right not to testify about many of the significant issues confronting the charter school in the underlying case. At every turn in the road, Petitioner's legal team was compelled to work harder, expend more hours, and often repeat reasonable discovery requests due to Respondent's stubborn refusal to comply. When some documents appeared for the first time at hearing in response to discovery requests of a month prior, the already-established pattern of obfuscation was brought home for the final time. The fees awarded in this matter, at an extremely reasonable hourly rate, are clearly justified and, while a significant amount for Respondent to pay, could have been much greater had Petitioner's legal team not contracted to pay a reduced hourly rate for its public entity client.

63. The undersigned reserves jurisdiction to consider a further award of attorney's fees and costs resulting if Petitioner is successful in defending its appeal of the Final Order upholding the immediate termination of LMA's charter. *See* § 1002.33(8)(b), Fla. Stat.

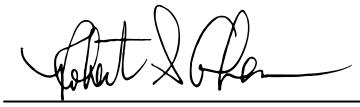
ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Respondent, Lincoln Memorial Academy, Inc., pay Petitioner, Manatee County School Board, a total of $297,987.82, broken down as follows:

- $193,650.50 in attorney's fees;
- $37,249.64 in taxable costs; and

- $67,087.68 for services provided by CRI and Sylint.

DONE AND ORDERED this 24th day of February, 2020, in Tallahassee, Leon County, Florida.



ROBERT S. COHEN
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of February, 2020.

COPIES FURNISHED:

Terry Joseph Harmon, Esquire
Sniffen & Spellman, P.A.
123 North Monroe Street
Tallahassee, Florida 32301
(eServed)

Erin G. Jackson, Esquire
Ashley A. Tinsley, Esquire
Johnson Jackson PLLC
100 North Tampa Street, Suite 2310
Tampa, Florida 33602
(eServed)

Christopher Norwood, J.D.
Governance Institute for
School Accountability
14844 Breckness Place, Suite 100
Miami Lakes, Florida 33016
(eServed)

Tag Feld, Esquire
Law Office of Tag Feld, P.A.
Suite 101, No. 304
5265 University Parkway
University Park, Florida 34201
(eServed)

Cynthia Saunders, Superintendent
Manatee County School Board
215 Manatee Avenue West
Bradenton, Florida 34205-9069

Matthew Mears, General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400
(eServed)

Richard Corcoran, Commissioner of Education
Department of Education
Turlington Building, Suite 1514
325 West Gaines Street
Tallahassee, Florida 32399-0400
(eServed)

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the district court of appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.