



G.C. v. San Diego Unified School District

2021 | Cited 0 times | S.D. California | August 17, 2021

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

G.C., By and Through his Guardian Ad Litem Linda Clark

Plaintiff, v. SAN DIEGO UNIFIED SCHOOL DISTRICT,

Defendant.

Case No.: 21-cv-00019-L-BGS

REPORT & RECOMMENDATION FOR ORDER GRANTING INCOMPETENT COMPROMISE PETITION

Before the Court is a Motion for Approval of an filed by Plaintiff Linda Clark, as guardian ad litem for Plaintiff G.C., an incompetent individual. (ECF No. 14.) Having considered Plaintiff unopposed motion, and for the reasons set forth below, the Court GRANTS the motion. I. BACKGROUND

This case arises under the Individuals

On December 8, 2020, Plaintiff filed a complaint with the Office of Administrative to Case 3:21-cv-00019-L-BGS Document 15 Filed 08/17/21 PageID.228 Page 1 of 7 the duration of distance learning and compensatory education due to failure to provide Plaintiff with FAPE during the 2019 20 and 2020 21 school years. (Id.)

On December 18, 2020, Plaintiff filed a Motion for Stay Put with the OAH seeking to keep -to- , which was denied on December 24, 2020. (Id.) However, after transportation hours had been removed due to distance learning, the number of nursing hours Plaintiff sought was 6 6.5 hours per school day, which would cost approximately \$60,000.00 \$69,615.00 in total. (Id. at 5.) On December 24, 2020, the OAH denied Plaintiff Motion for Stay Put. (Id. at 3.)

On January 6, 2021, Plaintiff filed a Complaint for Reversal of the and a Petition for Guardian Ad Litem with this Court. (ECF Nos. 1, 2.) Before Plaintiff could serve Defendant or file a Motion for Preliminary Injunction seeking Stay Put, the parties entered into a settlement agreement on February 10, 2021. (ECF No. 14 at 3.) Plaintiff then filed a Motion to Dismiss on February 16, 2021. (Id.) On February 18, 2021, the Court denied without prejudice and incapacity. (ECF No. 7.) On March



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15, 2021, the Court denied since the court had not yet granted Petition for Guardian Ad Litem. (ECF No. 8.)

On March 30, 2021, Plaintiff filed an Amended Petition for Guardian Ad Litem, which was granted on April 2, 2021. (ECF Nos. 9, 10.) On April 21, 2021, Plaintiff filed an Amended Motion to Dismiss. (ECF No. 12.) On June 16, 2021, after considering Amended Motion to Dismiss and the attached Settlement Agreement, the Court found that it was unable to approve the settlement without further information. (ECF No. 13.) The Court then ordered the parties to file a joint motion for approval of the reasonable in light of the facts of the case, and in light of recoveries in similar cases. (Id.)

at 2.) On June 29, 2021, Plaintiff filed a Motion for Approval of Compromise, which is currently before the Court. (ECF No. 14.)

II. LEGAL STANDARD

District courts have a special duty to protect the interests of litigants who are minors or incompetent. See *ad litem* or issue another appropriate order to protect a minor or incompetent person

s Civil Local compromised, voluntarily discontinued, dismissed or terminated without court order or Civ. L.R. 17.1(a).

In the context of proposed settlements in cases with minor plaintiffs, the Ninth *Robidoux v. Rosengren*, 638 F.3d

1177, 1181 (9th Cir. 2011) (quoting *Dacanay v. Mendoza*, 573 F.2d 1075, 1080 (9th Cir. 1978)); see also *Salmeron v. United States* must independently investigate and evaluate any compromise or settlement of a minor's

Under *Robidoux*, a district court's settlement review is limited to whether the net amount distributed to the minor is fair and reasonable, considering the facts of the case, the minor's specific claim, and recovery in similar cases. 638 F.3d at 1181-82. *Robidoux* instructs that courts should not evaluate the fairness of the recovery by comparing the minor's proportion of the total settlement to the amounts designated for co-plaintiffs or counsel. *Id.* at 1182. plaintiff is fair and reasonable in light of their claims and average recovery in similar

Id. District courts have extended the *Robidoux* inquiry to cases involving the approval of an incompetent plaintiff's settlement. E.g., *Banuelos v. City of San Bernardino*, Case No. EDCV 13-736-GW-DTB, 2018 WL 6131190 (C.D. Cal. Apr. 2018); *Mugglebee v. Allstate Ins. Co.*, Case No.: 14-CV-2474-JLS-JMA, 2018 WL 1410718 (S.D. Cal. Mar. 2018); *Smith v. City of Stockton*, 185 F. Supp.



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3d 1242 (E.D. Cal. 2016). ///

III. DISCUSSION

A. Proposed Settlement Based on a review of the petitions and applicable law, the Court finds that the terms of the settlement are fair and reasonable as to the incompetent Plaintiff. Plaintiff is seeking due to the Defend 20 and 2020 21 school years, which denied G.C. of FAPE. (ECF No. 14 at 5.) Under the terms of the settlement, the Defendant would provide Plaintiff with a total of \$108,500.00 to encompass any future FAPE obligations through June 30, 2021, which is when G.C. would age out of eligibility for special education and related services. (Id. at 6.) After attorney fees and costs, Plaintiff will receive \$89,000.00 in exchange for dismissing her claims against Defendant with prejudice. (See ECF Nos. 12-2, 14 at 6.) This \$89,000.00 will reimburse Plaintiff for compensatory education services, in areas such as academics, speech-language, at 6.) The settlement indicated that Plaintiff may use up to \$63,000.00 of the amount

received for compensatory education, which accounts for six hours per day of nursing services, which is the amount of time sought for nursing services by Plaintiff for the 2019 20 and 2020 21 school years. (Id.) This is well within the total estimated cost for 6 6.5

nursing hours per day for G.C. for the time period at issue. (ECF No. 14 at 5.) In addition, Id.)

Defendant has not filed any objections to this Petition. In fact, despite not being served with the complaint/summons or not making an appearance in this matter, Defendant San Diego Unified School District informed Plaintiff that it does not object to dismissal compromise, if in fact legally required for dismissal in this circumstance. Id. at 4.)

After considering the facts of this case and the incompetent Plaintiff specific claims, the Court finds that the settlement is fair, reasonable and in the best interests of the incompetent Plaintiff. The Motion to Confirm Incompetent s Compromise is GRANTED.

B. by the Court. See Cal. Prob. Code § 3601; Cal. Fam. Code § ctors, the

amount of money involved and the results obtained, and whether the fee is fixed, hourly,

Favreau v. City of Escondido, No. 10-CV-2348-GPC-WVG, 2013 WL 1701878, at *2 (S.D. Cal. Apr. 2013); see also Cal. Rule of Ct. 7.955(b).

n any action or proceeding brought under this subsection, the court, in its discretion, may award reasonable attorneys fees as part of the costs to the parents or guardian of a child or youth with a disability who is a prevailing party. Parents of Student W. v. Puyallup Sch. Dist., No. 3, 31 F.3d 1489, 1498 (9th Cir. 1994); see also 20 U.S.C. § 1415(i)(3)(B); Park, ex rel. Park v. Anaheim Union High Sch.



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Dist., 464 F.3d 1025, 1034 (9th Cir. 2006). A prevailing party for the purpose of awarding attorney's fees the benefit the parties sought in bringing the suit *Hensley v. Eckerhart*, 461 U.S. 424, 433

(1983). *Texas State Teachers*

Ass'n v. Garland Independent School District, 489 U.S. 782, 792-93 plaintiff the plaintiff cannot claim fees as a prevailing party. *Id.* at 792.

l, the Law Office of Meagan M. Nunez, seeks \$19,500.00 in 14 at 6-7.) This represents approximately 18 percent of \$108,500.00, which is the total amount of the settlement in this case. (See ECF No. 14 at 6-7.) Plaintiff's indicated that she has a written retainer agreement with Plaintiff which includes the (Id. at 7.) although she has provided substantially more legal services than the settlement agreement

provides payment for, the attorney for the Plaintiff and the Plaintiff agree to waive any

settlement agreement. 1

(Id.) these fees are consistent with Ninth Circuit standards for reimbursement of fees and costs to a prevailing parent. (Id.)

Counsel has provided a declaration from Attorney Meagan Nunez in support of their request. (ECF No. 14-1 his settlement provides Parent academic, speech-language, occupational therapy Id. at 4.) Further, guardian ad

litem, Linda Clark, had reviewed the entire settlement agreement and accepted all of the provisions which included the amount of \$19,500.00 in (ECF No. 12-2.)

has been involved with substantive filings in this matter, with filing multiple motions before the OAH and the multiple filings in this case along with settlement discussions. (See Docket; ECF No. 14 at 3-4; see also ECF Nos. 1, 2, 6, 9, 12, 14.) This resulted in Plaintiff achieving the benefit that was sought when first bringing the failure to provide Plaintiff with FAPE during the 2019-20 and 2020-21 school years. The Ninth Circuit recovery of each minor plaintiff under the proposed settlement is fair and reasonable, [. . .]

regardless of the amount the parties agree to designate for See *Robidoux*, 638 F.3d at 1182 more than adequate. Therefore, after considering the duration of this case and the amount

1 Although attorney fees in this case approximately totals she agreed to only accept \$19,500.00 and waive all other outstanding fees and costs. (ECF No. 14-1 at 3-4.)

is fair and reasonable under the circumstances, and do not suggest that the settlement was unfair. IV.



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CONCLUSION

After reviewing the Petition for Approval of Incompetent (ECF No. 14), the Court finds that the proposed settlement of incompetent claims in the amount of \$108,500.00 to be fair and reasonable. The Court approves the

following distribution of settlement funds:

1. The amount of \$89,000.00 (the balance of the settlement proceed) shall be paid to Plaintiff Linda Clark, as guardian ad litem for Plaintiff G.C., an incompetent individual; 2. The amount of \$19,500.00 shall be paid to Meagan M.

Nunez, Accordingly, for the reasons discussed above, IT IS HEREBY RECOMMENDED that the District Court issue an Order: (1) adopting this Report and Recommendation; and (2) GRANTING the Petition (ECF No. 14).

IT IS ORDERED that no later than August 31, 2021, any party to this action may file written objections with the Court and serve a copy on all parties. The document should failure to file objections within the specified time may waive the right to raise those

See Martinez v. Ylst, 951 F.2d 1153, 1156 (9th Cir. 1991). IT IS FURTHER ORDERED that any reply to the objections shall be filed with the Court and served on all parties no later than September 14, 2021. IT IS SO ORDERED. Dated: August 17, 2021

