IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

RYANNE PARKER, individually and on behalf of her minor daughter, N.P.,	)	
Plaintiffs,	)	
v.	)	**No. 20-cv-1044-STA-tmp**
WEST CARROLL SCHOOL DISTRICT,	)	
Defendant.	)	

REPORT AND RECOMMENDATION

Before the court is defendant West Carroll School District's Motion for Summary Judgment, filed April 12, 2021. (ECF No. 76.) Parker filed a response on April 26, 2021. (ECF No. 81.) West Carroll filed a reply on May 10, 2021. (ECF No. 85.) Pursuant to Administrative Order 2013-05 (Apr. 29, 2013), this case has been referred to the United States magistrate judge for management and for all pretrial matters for determination and/or report and recommendation, as appropriate. For the reasons below, it is recommended that the motion be granted.

I. PROPOSED FINDINGS OF FACT

As an initial matter, the undersigned notes that plaintiff Ryanne Parker did not provide citations to the record in her narrative of events or respond to defendant West Carroll School

District's ("West Carroll") statement of undisputed material facts.[1] (ECF No. 81.) Local Rule 56 requires that a party opposing a motion for summary judgment "must respond to each fact set forth by the movant by either: (1) agreeing that the fact is undisputed; (2) agreeing that the fact is undisputed for the purpose of ruling on the motion for summary judgment only; or (3) demonstrating that the fact is disputed." LR 56.1(b). Furthermore, "[e]ach disputed fact must be supported by specific citation to the record." Id. Similarly, Rule 56 of the Federal Rules of Civil Procedure requires that a party support or challenge factual assertions by:

> (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for

[1]A plaintiff's *pro se* status does not relieve him or her of the obligation to comply with the Local Rules and Federal Rules of Civil Procedure. Morgan v. AMISUB (SFH), Inc., No. 18-cv-2042-TLP-tmp, 2020 WL 5332946, at *3 n.5 (W.D. Tenn. Sept. 4, 2020) (collecting cases); see also Bass v. Wendy's of Downtown, Inc., 526 F. App'x 599, 601 (6th Cir. 2013) ("Non-prisoner *pro se* litigants are treated no differently than litigants who choose representation by attorneys.") (citations omitted). This includes at the summary judgment stage. See Viergutz v. Lucent Techs., 375 F. App'x 482, 485 (6th Cir. 2010) ("[Plaintiff]'s status as a *pro se* litigant does not alter his duty on a summary judgment motion."); see also McKinnie v. Roadway Express, Inc., 341 F.3d 554, 558 (6th Cir. 2003) ("Ordinary civil litigants proceeding *pro se*, however, are not entitled to special treatment, including assistance in regards to responding to dispositive motions."); Walker v. Lauderdale Cty., No. 2:16-cv-2362-STA-egb, 2019 WL 1179423, at *2 (W.D. Tenn. Mar. 13, 2019) ("District courts have no obligation to notify non-prisoner *pro se* parties of the requirements of Federal Rule of Civil Procedure 56 or to advise them of the consequences of failing to respond to a summary judgment motion.") (citing McKinnie, 341 F.3d at 558).

> purposes of the motion only), admissions, interrogatory answers, or other materials; or
>
> (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Fed. R. Civ. P. 56(c)(1). When a party fails to properly challenge an opposing party's assertion of fact, Rule 56(e) permits the court to "consider the fact undisputed for purposes of the motion" or "grant summary judgment if the motion and supporting materials — including the facts considered undisputed — show that the movant is entitled to it." Fed. R. Civ. P. 56(e)(2)-(3). In addition, the court need not consider any unsupported factual assertions or materials in the record not cited by the parties. Fed. R. Civ. P. 56(c)(3); see also Gunn v. Senior Servs. of N. Ky., 632 F. App'x 839, 847 (6th Cir. 2015) ("'[C]onclusory and unsupported allegations, rooted in speculation,' are insufficient to create a genuine dispute of material fact for trial.") (quoting Bell v. Ohio State Univ., 351 F.3d 240, 253 (6th Cir. 2003)). Accordingly, the following facts are deemed undisputed for the purpose of resolving this motion.[2]

This is an action under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-82 ("IDEA"), the Americans with

[2]In any event, the undersigned notes that Parker's response and its attached exhibits do not contradict the facts identified in West Carroll's motion.

Disabilities Act of 1990, 42 U.S.C. §§ 12132, *et seq.* ("ADA"), 42 U.S.C. § 1983, § 504 of the Rehabilitation Act, 29 U.S.C. § 701, *et seq.* ("§ 504"), and non-specific Tennessee state laws. Parker is the single mother of a child with autism, N.P. (ECF No. 45 at 2-3.) N.P. is enrolled as a high school student in West Carroll, where she receives special education services through an individualized education plan ("IEP"). Parker informed West Carroll about her dissatisfaction with N.P.'s education on December 14, 2018, and requested an IEP team meeting.[3] (ECF No. 76-4 at 4.) After her first request was ignored, Parker followed up on January 2, 2019.[4] (ECF No. 76-4 at 5.) An IEP team meeting was eventually held on February 16, 2019. (ECF No. 76-4 at 5.)

Months later, on May 21, 2019, N.P.'s IEP team convened to develop her annual IEP and consider her eligibility for extended school year ("ESY") services. (ECF No. 76-4 at 3.) During the meeting, members of the team suggested that N.P.'s ESY be reduced to twice a week with ninety-minute sessions. (ECF No. 76-4 at 3.)

[3]According to an email attached to Parker's response, this request came a day after Parker met with West Carroll officials to engage in an IDEA mediation session about N.P.'s compensatory education before Judge D. Kim Summers. (ECF No. 81 at 33.) According to the email, which Dana Carey (West Carroll's supervisor of special programs) sent to Steve Sparks (an IDEA complaints investigator) on January 2, 2019, the mediation session was unsuccessful. (ECF No. 81 at 33.)

[4]According to the January 2 email, West Carroll had been advised not to schedule any further IEP meetings until after the mediation was complete. (ECF No. 81 at 33.)

Parker objected, insisting that N.P.'s IEP continue to include ESY sessions meeting three times per week and lasting three hours per session. (ECF No. 76-4 at 3.) When neither side agreed to the other's proposal, West Carroll wrote "parent refused to sign" on the IEP form in place of the parent participation signature and finalized N.P.'s IEP in accordance with its proposal, effective immediately. (ECF No. 76-4 at 3.)

At some point in July of 2019, Parker filed Administrative Complaint #19-68, alleging (1) that West Carroll denied her time to review N.P.'s May 21, 2019 IEP before finalizing it and (2) that West Carroll failed to convene an IEP team meeting after her request in December of 2018. (ECF No. 76-4 at 2.) In response to her complaint, on July 18, 2019, the Tennessee Department of Education ("TDOE") found that West Carroll had denied N.P. a free and appropriate public education by finalizing the May 21, 2019 IEP without waiting the requisite fifteen days for Parker to request a due process hearing. (ECF No. 76-4 at 4.) The TDOE also found that West Carroll had committed a procedural violation of state special education law by not convening an IEP team meeting within ten days of Parker's request; however, the TDOE found that this had not amounted to a substantive denial of N.P.'s right to a free and appropriate public education. (ECF No. 76-4 at 5.) In accordance with its findings, the TDOE directed West Carroll to implement several corrective measures, such as requiring that N.P.

be provided with 31.5 hours of ESY services before the commencement of the 2019-2020 school year; requiring that N.P.'s IEP team convene no later than August 2, 2019, to discuss N.P.'s IEP for the upcoming school year; and mandating that West Carroll review its violations and implement training for all appropriate staff no later than September 1, 2019. (ECF No. 76-4 at 7-8.) Additionally, the TDOE required that West Carroll document its compliance to the TDOE. (ECF No. 76-4 at 7-8.) On August 26, 2019, the TDOE sent a letter to Parker confirming that its corrective actions had been completed. (ECF No. 76-5.)

On October 15, 2019, Parker submitted a Due Process Hearing Request form to the TDOE, asserting that N.P.'s Response to Intervention ("RTI") placement process had failed to acknowledge N.P.'s secondary diagnosis of a specific learning disorder. (ECF No. 76-6.) A hearing before an administrative law judge ("ALJ") was set for December 9, 2019. (ECF No. 76-7 at 2.) However, on November 1, 2019, Parker sent an email to the presiding ALJ asking to withdraw her request for a due process hearing. (ECF No. 76-8.) Based on this request, the matter was dismissed on November 6, 2019.[5] (ECF No. 76-8.) In the meantime, Parker also filed a Discrimination/Harassment Complaint Form with West Carroll,

[5]While Parker asserts in her response brief that she satisfied the IDEA's exhaustion requirement by utilizing alternative means, she does not dispute the fact that the scheduled IDEA due process hearing was cancelled at her request.

alleging that West Carroll and Tammy Davis (N.P.'s special education teacher) had abused their power in finalizing N.P.'s IEP in May 2019. (ECF No. 76-9.) West Carroll reviewed Parker's complaint and issued a report on July 12, 2019, recommending that the district's special education supervisor be in attendance or on the phone for all of N.P.'s future IEP meetings. (ECF No. 76-10 at 4.) On August 30, 2019, Parker sent an email to Crystal Polinski (West Carroll's ADA/Section 504 coordinator), stating that she believed her complaint had not been fully investigated. (ECF No. 76-11 at 9.) On September 24, 2019, Polinski issued a subsequent report on Parker's complaint, finding that N.P. had not been discriminated against by anyone at West Carroll. (ECF No. 76-11 at 9.)

Then, on October 8, 2019, Parker filed a request with West Carroll for an ADA/Section 504 Due Process hearing. (ECF No. 76-12.) According to the request, N.P.'s IEP was withheld for more than two months and West Carroll did not conduct an IEP team meeting until after Parker had contacted the state, all while N.P. was considered a "high risk" student. (ECF No. 76-12.) The hearing was held on November 19, 2019, before a hearing officer. (ECF No. 76-13 at 2.) According to the hearing officer's decision, the hearing was conducted "pursuant to the provisions of Section 504 of the Rehabilitation Act of 1973." (ECF No 76-13 at 2.) In his decision, the hearing officer acknowledged the TDOE's previous

findings that West Carroll had committed substantive violations of the IDEA by not providing a free and appropriate public education to N.P. (ECF No. 76-13 at 3.) Based on the record and testimony in the hearing, the hearing officer imposed seven § 504 accommodations for N.P., including (1) ESY services for not less than two times per week, for two hours per session each week, following the end of the 2019-2020 school year and continuing until the start of the 2020-2021 school year; (2) monthly testing by West Carroll beginning December 1, 2019; (3) quarterly IEP team meetings for the purpose of reviewing and analyzing testing and evaluation data produced since any previous IEP team meeting; (4) assigning Polinski as N.P.'s IEP case manager; (5) continued intervention services tailored by N.P.'s IEP/504 Review Committee team to her most recent testing data; (6) continued compensatory services with instructional time not less than what N.P. was being provided at the time by West Carroll; and (7) requiring that West Carroll continue to adhere to the requirements imposed by the TDOE. (ECF No. 76-13 at 5-6.)

Following the decision by the ADA/Section 504 hearing officer, Parker filed the instant lawsuit in state court on January 23, 2020. (ECF No. 1 at 1.) West Carroll (along with defendants Dexter Williams, Carey, and Davis, all of whom have since been dismissed from the case) removed the case to this court on February 21, 2020. (ECF No. 1.) Parker filed a motion to remand on February

26, 2020. (ECF No. 9.) The defendants filed their first motion to dismiss on February 27, 2020. (ECF No. 12.) Parker filed a motion to amend her complaint to name N.P. as an additional plaintiff on March 12, 2020. (ECF No. 20.) On May 27, 2020, the undersigned submitted a Report and Recommendation, recommending that West Carroll's motion to dismiss be granted in part and denied in part, Parker's motion to remand be denied, and Parker's motion to amend be granted. (ECF No. 32.) After neither party filed an objection to the undersigned's Report and Recommendation, the presiding district judge adopted the recommendation in its entirety. (ECF No. 40.) Parker's attorney withdrew on August 4, 2020, and she subsequently filed a second amended complaint on September 4, 2020. (ECF Nos. 41, 44, 45.) Parker's second amended complaint asserts claims under non-specific Tennessee state laws, the IDEA, the ADA, § 1983, and § 504.[6] (ECF No. 45.)

In conjunction with filing an answer to the second amended complaint, West Carroll filed a Partial Motion to Dismiss Amended Complaint on September 18, 2020. (ECF Nos. 47-1 at 3-5; 48.) The undersigned issued a Report and Recommendation on November 24,

[6]Parker did not actually raise § 504 as a claim in her second amended complaint, though she did make a passing reference to the statute in her Background Allegations. (ECF No. 45 at 5.) In light of Parker's *pro se* status and for the sake of completeness, the undersigned construed the second amended complaint as raising a § 504 claim when analyzing West Carroll's partial motion to dismiss. (ECF No. 54 at 9 n.3.)

2020, recommending that Parker's individual ADA and § 504 claims, Parker's § 1983 claims, and N.P.'s claims be dismissed. (ECF No. 54 at 9-10.) The presiding district judge entered an order adopting the undersigned's recommendation in its entirety on January 8, 2021. (ECF No. 63.) Accordingly, the court dismissed all of the pending claims in this case except for Parker's individual claim under the IDEA and her state law claims. West Carroll filed the instant motion for summary judgment on Parker's remaining claims on April 12, 2021, arguing that summary judgment is appropriate because Parker did not exhaust her administrative remedies under the IDEA and, in the alternative, that any relief under the IDEA would be moot because of recent developments in N.P.'s special education services. (ECF Nos. 76, 76-1.) Additionally, West Carroll argues that the court should decline to exercise supplemental jurisdiction over the state law claims. (ECF No. 76-1 at 12-13.)

II. PROPOSED CONCLUSIONS OF LAW

A. Standard of Review

Federal Rule of Civil Procedure 56 provides that "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); see also Geiger v. Tower Auto., 579 F.3d 614, 620 (6th Cir. 2009). In reviewing a motion for summary judgment, the court must view the

evidence in the light most favorable to the nonmoving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (citation omitted). "The moving party bears the initial burden of production." Palmer v. Cacioppo, 429 F. App'x 491, 495 (6th Cir. 2011) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)). Once the moving party has met its burden, "the burden shifts to the nonmoving party, who must present some 'specific facts showing that there is a genuine issue for trial.'" Jakubowski v. Christ Hosp., Inc., 627 F.3d 196, 200 (6th Cir. 2010) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). "[I]f the nonmoving party fails to make a sufficient showing on an essential element of the case with respect to which the nonmovant has the burden, the moving party is entitled to summary judgment as a matter of law." Thompson v. Ashe, 250 F.3d 399, 405 (6th Cir. 2001); see also Gordon v. Louisville-Jefferson Cty. Metro Gov't, No. 3:08-cv-0029, 2011 WL 777939, at *4 (W.D. Ky. Feb. 28, 2011) ("[T]o survive summary judgment, [the nonmovant] must provide evidence 'beyond his pleadings and his own conclusory statements, to establish the existence of specific triable facts.'" (quoting Maki v. Laako, 88 F.3d 361, 364 (6th Cir. 1996)). "In order to survive a motion for summary judgment, the non-moving party must be able to show 'sufficient probative evidence' [that] would permit a finding in [her] favor on more than mere speculation, conjecture, or fantasy." Lewis v. Philip Morris Inc., 355 F.3d 515, 534 (6th

Cir. 2004). "The central issue 'is whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" Palmer, 429 F. App'x at 495 (quoting Anderson, 477 U.S. at 251-52).

B. Failure to Exhaust

West Carroll's primary argument in favor of summary judgment is that Parker's claim under the IDEA must be dismissed for failure to exhaust her administrative remedies. The IDEA is a federal law that offers funds to states if they agree to furnish a free and appropriate public education to children with disabilities. Fry v. Napoleon Cmty. Sch., 137 S. Ct. 743, 748 (2017). Before a plaintiff can bring a lawsuit seeking relief for the denial of a free and appropriate public education, the IDEA requires that a plaintiff exhaust the IDEA's administrative procedures or show that a recognized exception applies. F.C. v. Tenn. Dep't of Educ., 745 F. App'x 605, 608 (6th Cir. 2018) (citing Fry, 137 S. Ct. at 752). One court has described the IDEA's exhaustion requirement as a three-step process: "complaint resolution, mediation, [then] due process hearings." I.L. through Taylor v. Knox Cty. Bd. of Educ., 257 F. Supp. 3d 946, 954 (E.D. Tenn. 2017), aff'd on other grounds, I.L. by & through Taylor v. Tenn. Dep't of Educ., 739 F. App'x 319 (6th Cir. 2018) (citing 34 C.F.R. § 300.500). The process begins by filing a complaint with the applicable state agency or local

school authority. 20 U.S.C. § 1415(b)(6). This initiates the complaint resolution procedure, which gives parents the right to petition to the state department of education about a local school's "failure to provide appropriate services[.]" 34 C.F.R. § 300.151. The department then investigates. Id. If the department determines that the local school has failed to provide appropriate services, the department can order appropriate remedies. Id. If this procedure fails, the parties can then agree to mediate the dispute pursuant to 20 U.S.C. § 1415(e).

After or in lieu of mediation, either party can request an impartial due process hearing. 20 U.S.C. § 1415(f). Under this procedure, an aggrieved parent files a due process complaint and has a hearing before an ALJ, with the hearing conducted "under the authority of either the school district or the state educational agency." I.L., 257 F. Supp. 3d at 954–55. If the hearing is conducted by the state educational agency, the ALJ's decision is final. Id. If the hearing is conducted by the school district, either party may appeal to the state educational agency and get another hearing. Id.; see 20 U.S.C. § 1415(g). It is only after a party has "been aggrieved by the findings and decision made" following an impartial due process hearing that the IDEA provides for a private cause of action.[7] 20 U.S.C. § 1415(i)(2)(A); see

[7]The IDEA also allows for a private cause of action where a party is harmed under subsection (k). 20 U.S.C. § 1415(i)(2)(A).

I.L., 257 F. Supp. 3d at 954–55 ("Once the state ALJ issues a decision, the parties may sue in federal court.").

In Parker's response, she contends that she exhausted her administrative remedies under the IDEA by filing administrative complaints and by participating in mediation and dispute resolution meetings. Merely filing a complaint and beginning the IDEA grievance procedure does not trigger a private cause of action. See Tyler B. v. San Antonio Elementary Sch. Dist., 253 F. Supp. 2d 1111, 1118 (N.D. Cal. 2003) ("The initiation of a state level review which did not proceed to a due process hearing is not literal exhaustion or its equivalent."). The IDEA's exhaustion requirement clearly "requires the party to raise her claims in a due process hearing," not just file a complaint or take the first steps through the process. Kelly O. v. Taylor's Crossing Pub. Charter Sch., No. 4:12-cv-00193-CWD, 2013 WL 4505579, at *8 (D. Idaho Aug. 21, 2013). The same is true for engaging in mediation under 20 U.S.C. § 1415(e) or a preliminary dispute resolution hearing as authorized by 20 U.S.C. § 1415(f)(1)(B)(i), which by its terms must occur "[p]rior to the opportunity for an impartial

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Subsection (k) deals with situations where a disabled student is placed in an alternative educational settings based on his or her behavior in school. 20 U.S.C. § 1415(k). Nothing in the record suggests that N.P. has ever been placed in an alternative educational setting and, therefore, this subsection is not relevant to the present dispute.

due process hearing."[8] See Traverse Bay Area Intermediate Sch. Dist. v. Mich. Dep't of Educ., No. 5:06-CV-139, 2006 WL 8456075, at *3 (W.D. Mich. Oct. 6, 2006) (reasoning that "a district court's review under that section 'is limited to review of the final findings and decision of the administrative proceedings'" and finding that, "[b]ecause the state administrative process is not complete, administrative remedies have not been exhausted") (quoting M.E. ex rel. C.E. v. Buncombe Cty. Bd. of Educ., 72 F. App'x 940, 941 (4th Cir. 2003)).

In the instant case, Parker withdrew her request for a due process hearing and the matter was dismissed shortly thereafter. (ECF No. 76-8.); see Long, 197 F. App'x at 433-34 (holding that the exhaustion requirement was not met where plaintiffs initiated due process procedures against a school district but "abandoned it almost immediately" because "it [could] only be speculated what [student] would have received had the . . . family not abandoned the federally appealable administrative procedure"). Requesting a due process hearing falls short of completing one and allowing the administrative process to take its course. See Bishop v. Oakstone

[8]The IDEA carves out a narrow exception to the exhaustion requirement for a plaintiff who engaged in a successful mediation session. 20 U.S.C. § 1415(e)(2)(F)(iii). Specifically, a plaintiff need not fully exhaust his or her administrative remedies under the IDEA where "a resolution is reached to resolve the complaint through the mediation process." Id. No such resolution was reached in this case.

Acad., 477 F. Supp. 2d 876, 883 (S.D. Ohio 2007) ("Plaintiffs withdrew their request for a due process hearing and pursued no other administrative remedies before bringing this action. Thus, Plaintiffs failed to exhaust their administrative remedies as the IDEA requires."). Parker's actions were therefore insufficient to satisfy the IDEA's exhaustion requirement. See F.C., 745 F. App'x at 608 ("States and localities historically have had a strong interest in education. And states, not the federal courts, ought to have primary responsibility for the programs that Congress tasked states to administer.") (citing Hoeft v. Tucson Unified Sch. Dist., 967 F.2d 1298, 1303 (9th Cir. 1992)); Fry v. Napoleon Cmty. Schs., 788 F.3d 622, 625 (6th Cir. 2015), rev'd on other grounds, 137 S. Ct. 743 (2017) ("The IDEA calls for highly fact-intensive analysis of a child's disability and her school's ability to accommodate her. The [established] procedures . . . ensure that the child's parents and educators, as well as local experts, are first in line to conduct this analysis.").

Next, Parker points to the fact that she completed an ADA/Section 504 Due Process hearing to suggest that she successfully exhausted her administrative remedies. While the Sixth Circuit has not yet addressed the issue, other courts have held that exhausting administrative procedures under other federal laws (such as § 504 or the ADA) do not satisfy a plaintiff's exhaustion requirement under the IDEA. See, e.g., Weber v. Cranston

Sch. Comm., 212 F.3d 41, 53 (1st Cir. 2000) ("IDEA's mandate is explicit: plaintiffs must exhaust IDEA's impartial due process hearing in order to bring a civil action under subchapter II of IDEA[.] . . . [S]tate and federal complaint procedures other than the IDEA due process hearing do not suffice for exhaustion purposes."); Tveter v. Derry Coop. Sch. Dist. SAU #10, No. 16-cv-329-PB, 2018 WL 3520827, at *4 (D.N.H. July 20, 2018) ("[A] party's participation in a general 'due process hearing' is not sufficient to satisfy the exhaustion requirement.") (citing Weber, 212 F.3d at 53); Avoletta v. City of Torrington, No. 3:07CV841 (AHN), 2008 WL 905882, at *6 (D. Conn. Mar. 31, 2008) ("It is the exhaustion of the IDEA's administrative procedures, not procedures under Section 504, that is the prerequisite for bringing an action in federal or state court alleging the denial of a FAPE under the IDEA, Section 504, the ADA, Section 1983, or any other cause of action.") (citing Myslow v. New Milford Sch. Dist., 3:03cv496(MRK), 2006 WL 473735, at *10 n.2 (D. Conn. Feb. 28, 2006) and 20 U.S.C. § 1415(l)).

By its own terms, the due process hearing in this case was held "pursuant to the provisions of Section 504 of the Rehabilitation Act of 1973" — not the IDEA – and was intended to determine what, if any, § 504 accommodations West Carroll owed to N.P. (ECF No. 76-13 at 2.); see L.G., 775 F. App'x at 230 (observing that the IDEA and § 504 "overlap and complement one another" but

that they "are not entirely co-extensive, and in some instances, plaintiffs may deem it more appropriate to pursue relief under only one law or the other"). As such, the hearing officer's findings in the ADA/Section 504 Due Process hearing did not "constitute[] a 'finding and decision' within the meaning of § 1415(i)(2)(A) *of the IDEA* or that such a ruling is 'made under' subsection § 1415(i) *of the IDEA*" because "[t]he IDEA and Section 504 are separate, distinct statutes." Sch. Bd. of Lee Cty. V. M.P. by and through E.P., No: 2:15-cv-730-FtM-99MRM, 2016 WL 8716258, at *8 (M.D. Fla. Sept. 30, 2016) (emphasis in original).

C. Exceptions to Failure to Exhaust

The IDEA's exhaustion prerequisite to filing suit is not absolute. Courts recognize two notable exceptions to the IDEA's exhaustion requirement. See F.C., 745 F. App'x at 608. First, a plaintiff may bypass the IDEA's exhaustion requirement "when the use of administrative procedures would be futile or inadequate to protect the plaintiff's rights." Id. (citing Covington v. Knox Cty. Sch. Sys., 205 F.3d 912, 917 (6th Cir. 2000) and Honig v. Doe, 484 U.S. 305, 326 (1988)). Second, courts will excuse the exhaustion requirement "when the plaintiff was not given full notice of his procedural rights under the IDEA."[9] Id. (citing

[9]This exception does not apply in this case, as the record clearly shows that Parker was aware of her procedural rights under the IDEA.

same). The burden is on the party seeking to skip the IDEA's exhaustion procedures to establish that either exception applies in a given case. Id. (citing Covington, 205 F.3d at 917).

The futility exception applies where "the injuries alleged by the plaintiffs do not 'relate to the provision of a FAPE [free appropriate public education]' as defined by the IDEA, and when they cannot 'be remedied through the administrative process' created by that statute."[10] Fry, 788 F.3d at 627 (quoting F.H. ex rel. Hall v. Memphis City Sch., 764 F.3d 638, 644 (6th Cir. 2014)). However, "most courts have held that a plaintiff seeking money damages is required to exhaust administrative remedies under the IDEA, even if money damages are not available under the IDEA or through the administrative process." Covington, 205 F.3d at 916; see S.E. v. Grant Cty. Bd. of Educ., 544 F.3d 633, 642 (6th Cir. 2008). The futility exception to the exhaustion requirement has been applied sparingly by the Sixth Circuit, apparently limited to a narrow set of cases where the plaintiff-student was a victim of

[10]The futility exception can also apply where "relief is sought on the basis of systemic IDEA violations." C.P. v. Tenn. Dep't of Educ., No. 3:16-cv-02938, 2018 WL 1566819, at *4 (M.D. Tenn. Mar. 30, 2018) (citing N.S. v. Tenn. Dep't of Educ., No. 3:16-cv-0610, 2016 WL 3763264, at *9-10 (M.D. Tenn. July 14, 2016)). This exception does not apply in situations (such as the present case) "where . . . the complaint focuses on the particularized concern of one family for the denial of . . . a FAPE to their child" as opposed to "seeking meaningful relief from structural problems with the state or local systems that implement IDEA mandates." Id. (citing Bishop, 477 F. Supp. 2d at 885).

abuse in an educational setting. See, e.g., Hall, 764 F.3d at 644; Covington, 205 F.3d at 916.

In the May 27 Report and Recommendation on West Carroll's first motion to dismiss, the undersigned opined that Parker was exempt from the exhaustion requirement because of the futility exception. (ECF No. 32 at 14.); Parker v. W. Carroll Special Sch. Dist., No. 20-1044-STA-tmp, 2020 WL 3443426, at *4 (W.D. Tenn. May 27, 2020), report and recommendation adopted by, 2020 WL 3442178 (W.D. Tenn. June 23, 2020). Relying on Covington, the undersigned found that "[t]he gravamen of the complaint is . . . denial of a free and appropriate public education," which would typically trigger the IDEA's exhaustion requirement. Id. The undersigned then found that exhaustion would have been futile because Parker had already "obtained what relief the administrative process could provide" and therefore she was only "seeking money damages in this suit." Id. Upon a closer review of the caselaw that has analyzed Covington, it now appears to the undersigned that the Covington decision was based on "unique circumstances" that do not apply to the instant case. In Covington, the plaintiff alleged that school officials disciplined him on several occasions by locking him inside a "vault-like" time-out room for several hours at a time. 205 F.3d at 913. He filed a § 1983 complaint against the school district, alleging violations of his Fourth, Fifth, and Fourteenth Amendment rights along with state-law claims of intentional

infliction of emotional distress and false imprisonment. Id. at 914. Because the plaintiff was a disabled student receiving special education services and the lawsuit was filed before any due process hearing was conducted, the defendant-school district moved for summary judgment on failure to exhaust grounds. Id. The district court granted the school district's motion, finding that the school's disciplinary practices were contemplated in Covington's IEP and thus his case was subject to the IDEA's exhaustion requirements. Id.

On appeal, the Sixth Circuit reversed, holding that exhaustion was not required because the IDEA's administrative procedures would have been futile in the plaintiff's case. Id. at 917. In reaching this conclusion, the court noted that its holding was based on the "unique circumstances" of the plaintiff's case. Id. Specifically, the Sixth Circuit observed that the plaintiff had already graduated from the school and that his injuries were premised on abuses that were "wholly in the past." Id.; see also Hall, 764 F.3d at 644 (holding that exhaustion was not required under the IDEA where a plaintiff "ha[d] graduated and [sought] compensation for [§ 1983] injuries suffered at the hands of his abusive aides"). Since Covington (and Hall), appellate and district court opinions from this circuit have uniformly interpreted Covington to apply in situations where the plaintiff's "injuries are non-educational in nature and cannot be remedied

through the administrative process." Hall, 764 F.3d at 644; see also Gean v. Hattaway, 330 F.3d 758, 774 (6th Cir. 2003) (observing that the Sixth Circuit's "holding [in Covington] was based not upon the fact that the plaintiff sought monetary damages, but on the fact that the IDEA did not provide a remedy for the type of harm allegedly suffered by plaintiff, which was more in the nature of a tort than a violation of a federal entitlement scheme"); Sorah v. Tipp City Exempted Vill. Sch. Dist. Bd. of Educ., No. 3:19-cv-120, 2020 WL 1242882, at *7 (S.D. Ohio Mar. 16, 2020) (holding that where a plaintiff's "alleged injuries are almost entirely educational in nature, predicated on the denial of a FAPE," Covington and Hall did not support a finding that exhaustion would be futile because "[t]he plaintiffs in Covington and Hall complained of physical and/or sexual abuse at school, giving rise to tort-like claims that were redressable only by compensatory damages" (emphasis omitted)); B.H. v. Portage Pub. Sch. Bd. of Educ., 2009 WL 277051, at *10 (W.D. Mich. Feb. 2, 2009) (finding that, "unlike claims of physical abuse," claims that a school district failed to provide a student with a free and appropriate public education and failed to identify a disabled child "fall within the heartland of the IDEA" and reasoning that "[t]his is the very basis on which the Sixth Circuit has itself distinguished Covington") (citing Gene, 330 F.3d at 774).

Returning to the instant case, the undersigned submits that it would not have been futile for Parker to exhaust her administrative remedies. Unlike the plaintiffs in Covington and Hall who asserted claims for physical abuse under § 1983 and various torts, Parker's remaining claims center on the amount and sufficiency of N.P.'s ESY services. As such, the gravamen of Parker's case relates directly to "the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child," rather than any physical harm, abuse, or tortious conduct. 20 U.S.C. § 1415(b)(6) (defining the scope of complaints that are encompassed by the IDEA). That she primarily seeks compensatory damages and has already received some injunctive relief as directed by the TDOE does not compel a conclusion to the contrary. See Hall, 764 F.3d at 643 (holding that "[a]ppellants are not excused from exhaustion merely because they request compensatory damages" that an IDEA hearing officer may not award). Because "[t]he thrust of [Parker's] claims is that. . . [N.P.] was deprived of educational services," she was required to fully exhaust her administrative remedies under the IDEA prior to filing suit. Sorah, 2020 WL 1242882, at *7. She did not do so. Thus, the undersigned submits that West Carroll is entitled to summary judgment due to Parker's failure to exhaust.[11]

[11]West Carroll also argues that summary judgment is appropriate because any recovery under the IDEA would be moot. Because the

D. State Law Claims

In light of the above recommendation to grant summary judgment and dismiss the IDEA claim, the only remaining claims are based on state law. Without a basis for federal jurisdiction, the court should not exercise supplemental jurisdiction over any state law claims brought by Parker. See 28 U.S.C. § 1367(c)(3) ("The district court may decline to exercise supplemental jurisdiction over a claim under subsection (a) if . . . the district court has dismissed all claims over which it has original jurisdiction."); see also Matthews v. City of Collierville, No. 13-2703-JDT-tmp, 2014 WL 69127, at *7 (W.D. Tenn. Jan. 8, 2014). Accordingly, it is recommended that Parker's state law claims be dismissed pursuant to 28 U.S.C. § 1367(c)(3).

III. RECOMMENDATION

For the reasons above, the undersigned recommends that West Carroll's motion for summary judgment be granted, that the IDEA claim be dismissed, and that the state law claims be dismissed without prejudice.

Respectfully submitted,

s/ Tu M. Pham
TU M. PHAM
Chief United States Magistrate Judge

undersigned submits that Parker failed to exhaust her administrative remedies and that summary judgment is appropriate on that basis, the undersigned need not reach the mootness argument.

May 27, 2021
Date

NOTICE

WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THIS REPORT AND RECOMMENDED DISPOSITION, ANY PARTY MAY SERVE AND FILE SPECIFIC WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS AND RECOMMENDATIONS. ANY PARTY MAY RESPOND TO ANOTHER PARTY'S OBJECTIONS WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b)(2); L.R. 72.1(g)(2). FAILURE TO FILE OBJECTIONS WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND FURTHER APPEAL.