

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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C.T., by and through his parents and  
guardians, RICHARD G. TREVORROW  
and CHERYL L. TREVORROW,  
RICHARD G. TREVORROW and  
CHERYL L. TREVORROW,

Plaintiffs,

v.

NECEDAH AREA SCHOOL DISTRICT,  
CHARLOTTE PREISS, PETER KLAUSS,  
TAMI STOWERS, COOPERATIVE  
EDUCATION SERVICE AGENCY 5,  
DEB JENSEN, RON SCHELFHOUT  
and JACK HEESCH,

Defendants.

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OPINION AND  
ORDER

01-C-0031-C

This is a civil action for monetary relief for violations of the Individuals with Disabilities Act (IDEA), 42 U.S.C. § 1983, the Rehabilitation Act of 1973, the Americans with Disabilities Act, the due process clause of the Fourteenth Amendment to the United States Constitution and state tort law. Plaintiffs Richard G. Trevorrow and Cheryl L. Trevorrow, on behalf of themselves and their child C.T., allege that defendant Necedah Area

School District failed to provide C.T. a free and appropriate public education. In addition, plaintiffs allege a state tort law claim for negligent supervision against defendants Charlotte Preiss, Peter Klauss, Tami Stowers, Cooperative Educational Service Agency 5, Deb Jensen, Ron Schelfhout, and Jack Heesch. Jurisdiction is present. See 28 U.S.C. § 1331.

Now before the court are defendants' motions to dismiss the entire action for plaintiffs' failure to exhaust administrative remedies as required by the IDEA. Defendants' motions to dismiss the federal claims will be granted because plaintiffs have not exhausted the administrative remedies available to them before filing this action and their claims do not fall within an exception to the requirement of administrative exhaustion. I will decline to exercise supplemental jurisdiction over plaintiffs' state law claims.

For purposes of deciding these motions to dismiss, plaintiffs' allegations are accepted as true. See Harrell v. Cook, 169 F.3d 428, 431 (7th Cir. 1999).

#### ALLEGATIONS OF FACT

Plaintiff C.T. is a minor child who was enrolled in Necedah Area School District at all relevant times. C.T. has a disability as defined under 34 C.F.R. § 300.17. Plaintiffs Richard G. Trevorrow and Cheryl L. Trevorrow are the biological parents of C.T.

C.T.'s parents asked for a due process hearing, but declined to pursue this remedy after they removed C.T. from the school and chose to teach him at home.

## OPINION

A plaintiff bringing an action under the IDEA must first exhaust available administrative remedies before bringing an action in federal court. Pursuant to the IDEA, a party aggrieved by the result of an administrative hearing “shall have the right to bring a civil action with respect to the complaint presented pursuant to this section . . .” 20 U.S.C. § 1415(i)(2)(A). The IDEA goes further: it extends the exhaustion requirement to other federal laws. See 20 U.S.C. § 1415(1) (before a civil action seeking relief under other federal laws may be initiated, “the [administrative] procedures under subsection (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this chapter.”). “This exhaustion rule serves a number of important purposes, including (1) permitting the exercise of agency discretion and expertise on issues requiring these characteristics; (2) allowing the full development of technical issues and a factual record prior to court review; (3) preventing deliberate disregard and circumvention of agency procedures established by Congress; and (4) avoiding unnecessary judicial decisions by giving the agency the first opportunity to correct any error.” Association for Retarded Citizens of Alabama v. Teague, 830 F.2d 158, 160 (11th Cir. 1987). However, “[c]ourts have recognized that the exhaustion of the administrative process is not required where resort to these remedies would be futile or inadequate.” Id. at 161; see also Honig v. Doe, 484 U.S.

312, 326-27 (1988). Plaintiffs have the burden of demonstrating the futility or inadequacy of administrative review. See Honig, 484 U.S. at 327.

Plaintiffs have failed to meet their burden. Plaintiffs concede that they failed to exhaust their administrative remedies as required by the IDEA. See Pl.'s Br., dkt. #12, at 5. However, plaintiffs argue that their claims fall within the futility exception to the requirement of the exhaustion of administrative remedies. Plaintiffs contend that the exhaustion of administrative remedies would be futile because C.T. no longer attends school in the Necedah Area School District and his parents have no intention of ever placing him back at the school. See id. However, as noted by the Court of Appeals for the Sixth Circuit, “[p]arents' unilateral act of removing their child from a public school . . . does not mean that the procedures in the [IDEA] may be by-passed. Absent a showing that exhaustion of the administrative process would be futile or inadequate, parents and guardians must use the state process which the act specifies shall be provided to them.” Doe v. Smith, 879 F.2d 1340, 1343 (6th Cir. 1989) (citations omitted). C.T.'s withdrawal from school does not make plaintiffs' exhaustion of administrative remedies futile.

Plaintiffs did not pursue their due process hearing to completion and have failed to specify any exceptional circumstances that might cause them to fall within an exception to the exhaustion requirement. Moreover, because the IDEA requires plaintiffs to exhaust their administrative remedies before pursuing other federal claims, plaintiffs are precluded from

pursuing their federal claims under the Rehabilitation Act of 1973, the Americans with Disabilities Act and 42 U.S.C. § 1983 in this court. Therefore, all of plaintiffs' federal claims will be dismissed for failure to exhaust administrative remedies. Because all of plaintiffs' federal claims will be dismissed, I will decline to exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over plaintiffs' state tort law claims.

#### ORDER

IT IS ORDERED that the motions to dismiss of defendants Necedah Area School District, Charlotte Preiss, Peter Klauss, Tami Stowers, Cooperative Educational Service Agency 5, Deb Jensen, Ron Schelfhout, and Jack Heesch is GRANTED with respect to all claims. The clerk of court is directed to enter judgment for defendants and to close this case.

Entered this 18th day of July, 2001.

BY THE COURT:

BARBARA B. CRABB  
District Judge