IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

ANGELA SUTTNER, Individually, and as the Personal Representative of the ESTATE OF KENNETH SUTTNER,	)	
Plaintiffs,	)	
v.	)	No. 18-4163-CV-C-WJE
HOWARD COUNTY R-II SCHOOL DISTRICT, et al.,	)	
Defendants.	)	

ORDER

Pending before the Court is Defendants' Motion to Dismiss for Failure to State a Claim (Doc. 5), and suggestions in support thereof (Doc. 6). Plaintiff has filed suggestions in opposition to the motion (Doc. 7), to which Defendants have filed a reply (Doc. 8). The motion is now ripe for consideration. For the reasons that follow, Defendants' motion to dismiss is granted in part and the case is remanded to state court as set forth below.

I. BACKGROUND

Plaintiff Angela Suttner is the mother of Kenny Suttner (K.S.), and personal representative of his estate (Plaintiff). In July 2018, Plaintiff brought this action in state court against the Howard County School District (District) and several of its employees, in their respective official and individual capacities, including Superintendent Mike Reynolds, Assistant Superintendent Sonya Fuemmeler, Principal Stacey Kottman, and former Principal Krya Yung (collectively, Defendants). (Doc. 1-1).

In her Complaint, Plaintiff alleges that students and some District employees continuously bullied, harassed, and discriminated against K.S. based on his mental and physical disabilities throughout his time as a student in the District. *Id.* She further alleges that District employees did not adequately respond to a hostile, unsafe school environment, and did not follow anti-bullying rules, regulations, and laws. *Id.* Plaintiff ultimately alleges these conditions, and the failure of Defendants to remedy a hostile school environment, led to K.S.'s suicide. *Id.*

Plaintiff brings twelve claims against Defendants: Violations of Ministerial Duties in Count I, Discrimination in Public Accommodations in Count II, Wrongful Death – Negligence in Count III, Negligent Infliction of Emotional Distress in Count IV, Wrongful Death – Negligence in Count V, Negligent Infliction of Emotional Distress in Count VI, Wrongful Death – Violation of Title II and Section 504 of the Rehabilitation Act in Count VII, Wrongful Death – State Created Danger (42 U.S.C. § 1983) in Count VIII, Wrongful Death – Supervisory Liability for Participation in and Encouragement of Unconstitutional Misconduct by Subordinates (42 U.S.C. § 1983) in Count IX, Wrongful Death – Denial of Substantive Due Process Through Failure to Train and Supervise (42 U.S.C. § 1983) in Count X, Denial of Substantive Due Process Through a Policy, Custom, and Practice of Failing to Respond to or Prevent Bullying in its Schools (42 U.S.C. § 1983) in Count XI, and Violation of Individuals with Disabilities Education Act (IDEA) in Count XII. *Id.*

Defendants removed this suit to federal court based on federal question jurisdiction in August 2018, and shortly thereafter filed this motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). (Doc. 1, ¶ 4).

II. LEGAL STANDARD FOR MOTION TO DISMISS

Pursuant to Rule 8(a)(2), a claim for relief must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2) (2010). The purpose of the short and plain statement is to provide defendants with "fair notice of what … the claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007) (citation omitted). The rule requires more than an "unadorned" complaint, but requires less than "detailed factual allegations." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). Thus, in order to survive a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* at 678 (quoting *Twombly*, 550 U.S.C. at 570). Courts ruling on a motion to dismiss a complaint for failure to state a claim, must "construe the complaint in the light most favorable to the nonmoving party." *Carton v. Gen. Motors Acceptance Corp.*, 611 F.3d 451, 454 (8th Cir. 2010). Nevertheless, courts "are not bound to accept as true a legal conclusion couched as a factual allegation." *Iqbal,* 556 U.S. at 678. A court's evaluation of a plaintiff's complaint is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* (citation omitted).

Additionally, in ruling on a 12(b)(6) motion to dismiss, the court is not limited to the four corners of the complaint. *Outdoor Cent., Inc. v. GreatLodge.com, Inc.*, 643 F.3d 1115, 1120 (8th Cir. 2011) (citation omitted). "The court may consider the pleadings themselves, materials embraced by the pleadings, exhibits attached to the pleadings, and matters of public record." *Mills v. City of Grand Forks*, 614 F.3d 495, 498 (8th Cir. 2010) (citing *Porous Media Corp. v. Pall Corp.*, 186 F.3d 1077, 1079 (8th Cir. 1999)).

III. DISCUSSION

Plaintiff brings a total of twelve federal and state claims. Defendants move to dismiss Plaintiff's Complaint against them in its entirety. For the following reasons, Plaintiff's federal law claims are dismissed and the remaining state claims are remanded to state court.

A. Violation of Ministerial Duties (Count I)

As an initial matter, Plaintiff's amalgam of claims in Count I are duplicative of other federal claims brought against Defendants in the instant case. Accordingly, Count I is dismissed insofar as it brings federal claims alleged elsewhere in the Complaint, including violations of 42 U.S.C. § 1983, Section 504 of the Rehabilitation Act, Title II of the Americans with Disabilities Act, and the Individuals with Disabilities Education Act. (Doc. 1, ¶ 150b.); *see Silva v. Metro. Life Ins. Co.*, 762 F.3d 711, 726 (8th Cir. 2014) (noting a party is allowed to plead alternative–but not duplicative–theories of liability); *Lewis v. Blue Springs Sch. Dist.*, No. 4:17-CV-00538-NKL, 2017 WL 5011893, at *7 (W.D. Mo. Nov. 2, 2017) (dismissing claims in count I that were duplicated in other counts).

B. IDEA Claim (Count XII) and Other Federal Claims (Counts VII, VIII, IX, X, and XI)

Defendants argue that Plaintiff's failure to exhaust all administrative remedies under the IDEA bars Count XII. As a consequence, Defendants allege Count XII, and all other claims that seek a Free Appropriate Public Education (FAPE) as relief, must be dismissed. Plaintiff does not contest that Counts VII through XI seek a FAPE, but contends she was not required to exhaust all procedures under the IDEA because the death of K.S. made these administrative remedies futile and inadequate. For the following reasons, Plaintiff's federal law claims (Counts VII through XII) are dismissed.

(1) Plaintiff was required to exhaust administrative remedies for Count XII.

The IDEA provides federal funding to States so long as they provide a FAPE to children with certain disabilities. *Fry v. Napoleon Cmty. Sch.*, 137 S. Ct. 743, 748 (2017); *see* 20 U.S.C. § 1401(3)(A)(i) (listing covered disabilities). The IDEA allows a party to "file a complaint relating to the 'identification, evaluation, or educational placement' of a child with a disability, or the provision of a [FAPE] to such a child." *Nelson v. Charles City Cmty. Sch. Dist.*, 900 F.3d 587, 591 (8th Cir. 2018) (quoting 20 U.S.C. § 1415(b)(6)(A)). Once filed, a complainant receives the opportunity to participate in "an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency." 20 U.S.C. § 1415(f)(1)(A). "An aggrieved party who has exhausted the IDEA's administrative procedures may bring an action in the federal district court." *Nelson*, 900 F.3d at 591 (citing 20 U.S.C. § 1415(g), (i)(2)(A)).

Importantly, "the IDEA exhaustion requirement is not limited to claims formally brought under the IDEA." *Id.* Instead, it also applies to claims that allege the denial of a FAPE, which is the relief available under the IDEA. *Id.* (citing 20 U.S.C. § 1415(l)). Therefore, claims seeking a denial of a FAPE brought "under the Constitution, the Americans with Disabilities Act, the Rehabilitation Act, and other federal laws protecting children with disabilities" must comply with the administrative exhaustion requirement of the IDEA. *Id.* (citing *Fry*, 137 S. Ct. at 752; 20 U.S.C. § 1415(l)) (internal marks omitted).

However, if a complainant does not exhaust all administrative procedures, three exceptions exist that nonetheless allow a civil lawsuit to proceed under the IDEA: "(1) futility, (2) inability of the administrative remedies to provide adequate relief, and (3) the establishment of an agency policy or practice of general applicability that is contrary to law." *Id.* at 593 (citation and internal marks omitted). The application of any one of these exceptions relieves Plaintiff of the requirement to exhaust administrative remedies. *Id.* Here, Plaintiff argues that administrative remedies were futile and would have afforded inadequate relief.

For futility, the Court examines whether Plaintiff could have invoked the IDEA's procedures at the time the challenged conduct began impacting Plaintiff's education. *See id.* at 593–95.

For inadequacy, "the IDEA's exhaustion requirement remains the general rule, regardless of whether the administrative process offers the particular type of relief that is being sought." *Id.* at 594 (noting that "future litigants could avoid the exhaustion requirement simply by asking for

relief that administrative authorities could not grant") (citations omitted). Moreover, as the Eighth Circuit has noted, administrative proceedings can provide at least some relief in the form of monetary compensation, as the statute "permits the recovery of attorney's fees and costs, 20 U.S.C. § 1415(i)(3)(B), and compensatory education or reimbursement for educational services that a school district should have provided." *Nelson*, 900 F.3d at 594 (citing *J.B. ex rel. Bailey v. Avilla R-XIII Sch. Dist.*, 721 F.3d 588, 593–94 (8th Cir. 2013)).

Furthermore, when examining the inadequacy exception, the Court

> must consider the student's status at the time of the challenged conduct when the parents could have invoked administrative procedures. A contrary approach, allowing a plaintiff to forego administrative remedies and then sue later for damages after finishing school, "would frustrate the IDEA's carefully crafted process for the prompt resolution of grievances through interaction between parents of disabled children and the agencies responsible for educating those children."

Id. (quoting *Polera v. Bd. of Educ. of Newburgh Enlarged City Sch. Dist.*, 288 F.3d 478, 490 (2d Cir. 2002).

Here, Plaintiff was required to exhaust all administrative procedures before bringing a lawsuit. As an initial matter, it would not have been futile for Plaintiff to file a complaint alleging a denial of a FAPE at some point before the death of K.S. Plaintiff alleges that K.S. was bullied for over a decade in the school system. The Court is required to examine the status of the student at the time of the challenged conduct. It is from this perspective that the Court must find Plaintiff could have brought an administrative complaint under the IDEA during the long time-frame of K.S.'s alleged bullying. While Plaintiff asserts she did complain to school faculty numerous times over the years, such actions alone are insufficient to exhaust administrative remedies under the IDEA. Plaintiff therefore cannot show it would have been futile to exhaust administrative options.

Similarly, Plaintiff is unable to show administrative procedures would have provided inadequate relief. The fact that money damages are now the only form of relief that could redress K.S.'s death cannot satisfy the inadequacy exception. Instead, considering the student's status at the time of the challenged conduct, Plaintiff could have invoked administrative remedies at any point throughout the twelve years of bullying. Furthermore, at least some monetary compensation could have been afforded to Plaintiff. As previously discussed, the IDEA allows for the recovery of attorneys' fees and certain educational reimbursement. Accordingly, Plaintiff cannot show administrative procedures would have provided inadequate relief. She was therefore required to

exhaust administrative remedies before bringing a claim under the IDEA in a subsequent civil lawsuit.

Plaintiff argues that, in the Third Circuit, a lawsuit brought under the IDEA does not require exhausting all administrative procedures when the student involved is deceased. *Taylor v. Altoona Area Sch. Dist.*, 737 F. Supp. 2d 474, 482 (W.D. Pa. 2010); *see also W.B. v. Matula*, 67 F.3d 484, 496 (3d Cir. 1995). However, as discussed, binding precedent from the Eighth Circuit appears on point, as *Nelson* is similar to the instant case and stands in contrast to the ruling in *Taylor*. *See* 900 F.3d at 593–94; 737 F. Supp. 2d at 482. While the student in *Nelson* was not deceased, the plaintiff in that case was in a comparable situation to Plaintiff here. That is to say, she brought a civil lawsuit without exhausting administrative remedies under the IDEA and sought only monetary damages as relief. Just as the Eighth Circuit in *Nelson* found the plaintiff's claim barred, so too must the Court dismiss Plaintiff's IDEA claim in the instant case.

(2) Counts VII-XI also seek a FAPE as relief and must be dismissed.

Given that Plaintiff was required to exhaust administrative remedies before bringing her IDEA claim, the Court must dismiss Counts VII through XI that also seek a FAPE as relief. The Court examines the substance of Plaintiff's other claims, rather than simply their form, to determine whether other claims seek a FAPE. *Id.* at 592–93. In *Fry*, the United States Supreme Court discussed two questions that may offer a "clue to whether the gravamen of a complaint against a school concerns the denial of a FAPE, or instead addresses disability-based discrimination":

> First, could the plaintiff have brought essentially the same claim if the alleged conduct had occurred at a public facility that was *not* a school—say, a public theater or library? And second, could an *adult* at the school—say, an employee or visitor—have pressed essentially the same grievance? . . . [W]hen the answer is no, then the complaint probably does concern a FAPE, even if it does not explicitly say so; for the FAPE requirement is all that explains why only a child in the school setting (not an adult in that setting or a child in some other) has a viable claim.

137 S. Ct. at 756; *Nelson*, 900 F.3d at 592–93 (finding a Rehabilitation Act claim that alleged defendants "failed to make reasonable accommodations to enable C.N. to receive education free from discrimination based upon her disabilities" substantively claimed a denial of a FAPE).

Here, the Court finds (and Plaintiff does not contest) that Counts VII through XI seek a FAPE. In essence, the facts in support of these Counts allege respectively that K.S. was bullied in

school due to his disabilities, Defendants did not take adequate measures to stop continual discrimination and harassment against him, and as a result K.S. was denied his constitutional right to enjoy a safe, public education. (Doc. 1-1 at 40-41, 42-43, 46-48, 49-51, 53-54, 57-58). As a consequence, both questions posed in *Fry* are answered in the negative. For the first, Plaintiff could not bring these claims in another public facility, such as a library, alleging that Defendants' inadequate prevention of bullying deprived K.S. of his right to an education free from harassment. And second, neither could an adult employee of the District have brought essentially the same claims. The Court therefore finds that Counts VII through XI seek a FAPE. For the reasons discussed above, Plaintiff was required to exhaust all administrative remedies under the IDEA before bringing any subsequent civil lawsuit seeking a FAPE as relief. The Court must accordingly dismiss Counts VII-XI.

C. Remaining State Law Claims (Count I in Part, and Counts II, III, IV, V, and VI)

Federal courts "have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331; *see also CMH Homes, Inc. v. Goodner*, 729 F.3d 832, 837 (8th Cir. 2013) ("[T]he protection of federal rights and interpretation of federal law are matters that Congress deemed sufficiently important to warrant federal-court attention."). Moreover, "subject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006) (citing *U.S. v. Cotton*, 535 U.S. 625, 630 (2002)). The Court accordingly has a duty "to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party." *Id.* (citing *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999)). If the Court dismisses "all claims over which it has original jurisdiction," then it has discretion whether to exercise supplemental jurisdiction. *Arbaugh*, 546 U.S. at 514; 28 U.S.C.A. § 1367; *see also Molloy v. Delta Home Care, Inc.*, No. 1:11-CV-00077-SNLJ, 2011 WL 2633254, at *3 (E.D. Mo. July 5, 2011) (dismissing *sua sponte* the plaintiff's federal law claim and remanding the remaining two state law claims to state court).

The Court's discretion is broad when determining whether to apply supplemental jurisdiction "over state law claims after all claims over which the [Court] had original jurisdiction have been dismissed." *Elmore v. Harbor Freight Tools USA, Inc.*, 844 F.3d 764, 767 (8th Cir. 2016), *cert. denied*, 138 S. Ct. 316 (2017) (citing *Crest Constr. II, Inc. v. Doe*, 660 F.3d 346, 359 (8th Cir. 2011)). "In exercising its discretion, the [Court] should consider factors such as judicial

economy, convenience, fairness, and comity." *Id.* (citing *Brown v. Mort. Elec. Registration Sys., Inc.*, 738 F.3d 926, 933 (8th Cir. 2013); 28 U.S.C. § 1367(c)(3)).

Here, the Court declines to exercise supplemental jurisdiction over Plaintiff's remaining state law claims. Defendants removed this suit to federal court based on federal question jurisdiction stemming from Plaintiff's federal claims (a portion of Count I, and Counts VII through XII). (Doc. 1, ¶ 4). The Court has dismissed these claims. As a consequence, the Court determines it would be more fair and convenient to allow a Missouri state court to hear a case involving Missouri residents on claims based in Missouri law, and comity suggests such a result. Moreover, the instant case is in its nascent stages. Remanding to state court does not impact judicial economy in a substantial enough manner to warrant the exercise of supplemental jurisdiction.

In sum, the Court declines to exercise its supplemental jurisdiction and therefore *sua sponte* remands Plaintiff's remaining state law claims–Count I, insofar as it brings state law claims, and Counts II, III, IV, V, and VI–to state court.

IV. CONCLUSION

Accordingly,

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss for Failure to State a Claim (Doc. 5) is GRANTED as to the federal claims brought in Count I, Count VII, Count VIII, Count IX, Count X, Count XI, and Count XII.

IT IS FURTHER ORDERED that the clerk is instructed to remand this case to the Circuit Court, Howard County, Missouri, Case No. 18HD–CC00077.

IT IS SO ORDERED.

Dated this 12th day of October, 2018, at Jefferson City, Missouri.

Willie J. Epps, Jr.

Willie J. Epps, Jr.
United States Magistrate Judge