UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

P.A., on behalf of minor child, **A.A.;**	*	
P.B., on behalf of minor child, **B.B.;**	*	
P.C., on behalf of minor child, **C.C.**	*	
Plaintiffs,	*	**CIVIL ACTION NO. 2:23-cv-02228**
	*	
v.	*	
	*	**JUDGE**
DORIS VOITIER in her official	*	**BRANDON S. LONG**
capacity, as Superintendent of	*	
St. Bernard Parish Public Schools; and	*	
ST. BERNARD PARISH	*	**MAGISTRATE**
SCHOOL BOARD	*	**JANIS VAN MEERVELD**
Defendants.	*	
	*	

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DEFENDANTS' REPLY TO PLAINTIFFS' OPPOSITION TO
DEFENDANTS' 12(c) MOTION FOR JUDGMENT ON THE PLEADINGS

MAY IT PLEASE THE COURT:

The Defendants in this matter, through undersigned counsel, respectfully submit this Reply to Plaintiffs' "Memorandum in Opposition to 12(c) Motion for Judgment on the Pleadings" (the "Opposition").[1]

ARGUMENT IN REPLY

The Defendants shall address multiple statements in the Opposition but shall not restate arguments in full as provided in the instant Motion.[2] First, Plaintiffs claim that the School Board excluded A.A., but this is not consistent with the facts. Indeed, A.A. did not attend a School Board school during the relevant period based on the Parent's agreement with an outside entity – not the School Board. Second, A.A. through his parent, litigated the manifestation determination review

[1] Rec. Doc. 25.
[2] *See* Rec. Doc. 22-1.

(MDR) issue – within the appropriate subject matter of an IDEA due process hearing – via the IDEA administrative process with the Louisiana Division of Administrative Law (DAL).[3] Third, A.A. and B.B. still do not allege that the School Board denied them anything that the respective Plaintiff requested.[4]

As to Plaintiffs' further statements regarding MDRs, Plaintiffs have made no allegations that the School Board did not hold MDRs.[5] Any issues about the results of non-prescribed MDRs were already addressed in Plaintiffs' prior IDEA due process hearing complaints and were not incorporated in this litigation. Further, Plaintiffs admit that the School Board held an MDR for C.C.[6]

Plaintiffs again make allegations regarding an IDEA due process ruling they did not incorporate in this litigation.[7] They also did not allege that the Rowley placement at the beginning of 2022-2023 school year was due to discipline. This placement was also already addressed in an IDEA due process hearing complaint. In addition, Plaintiffs' argument regarding B.B. was not incorporated in their claims.[8] Specifically, Plaintiffs alleged no failure to conduct an MDR nor explicitly a failure to properly conduct MDRs in their claims section.[9]

As to prescription, the Plaintiffs admit that older claims have prescribed.[10] Plaintiffs' claims (and alleged facts) that predate one year from the filing of the original complaint have prescribed under Louisiana law implementing IDEA.[11]

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[3] *See* Rec. Doc. 25 at 7.
[4] *See* Rec. Doc. 25 at 7-8.
[5] *See* Rec. Doc. 25 at 8-9.
[6] *See* Rec. Doc. 25 at 8-9.
[7] *See* Rec. Doc. 25 at 9-10.
[8] *See* Rec. Doc. 25 at 9-10.
[9] *See* Rec. Doc. 19 at 39-42.
[10] *See* Rec. Doc. 25 at 11-12. This subsumes, for example, all MDR-related claims as to any plaintiff.
[11] *See* La. Rev. Stat. 17:1946(B) (explaining Louisiana's one-year prescriptive period for IDEA claims); Rec. Doc. 22-1 at 17 (regarding prescriptive period under other laws).

Plaintiffs allege that they were "deprived" of their "interest in education" and experienced "total exclusion";[12] they do this in a conclusory manner in contrast with facts provided in the Defendants' answers.[13] Simply repeating the term with reference to Rowley does not make it a viable claim legally or factually. More specifically, Plaintiffs argue that *Swindle*[14] does not apply; however, they attempt to rely, in part, on caselaw that predates it.[15] For example, *Cole v. Newton Special Mun.* is unreported 1988 case without opinion.[16] Importantly, the *Swindle* court stated, "This court has consistently held that a student who is removed from her regular public school, but is given access to an alternative education program, has not been denied her entitlement to public education. *See Harris ex rel. Harris v. Pontotic Cnty. Sch. Dist.*, 635 F.3d 685, 690 (5th Cir. 2011); *Navares v. San Marcos Consol. Indep. Sch. Dist.*, 111 F.3d 25, 26 (5th Cir. 1997)."[17] Changes to Louisiana discipline law since *Swindle* do not affect the import of *Swindle*'s holding. Plaintiffs' minor children were provided the opportunity for "an alternative education program".[18] The School Board offered B.B. and C.C. Rowley as an alternative education program; however, their parents opted for virtual instruction.[19] It is incongruous for Plaintiffs to state that Rowley is an alternative school but then claim it is "total exclusion" or a "deprivation" of "interest in education". The respective Plaintiffs did not request expulsion appeals – with their associated opportunities to appeal to the School Board and then to State court. Plaintiffs apparently ignore what Rowley offers and provides students with and without disabilities and to those who attend Rowley for reasons other than "discipline". The bottom line is Plaintiffs argue that at no time should any one of the Plaintiffs' children have gone – nor any student go – to Rowley,

[12] *See* Rec. Doc. 25 at 12-13.
[13] *See* Rec. Docs. 8 and 20.
[14] *Swindle v. Livingston Par. Sch. Bd.*, 655 F.3d 386 (5th Cir. 2011).
[15] *See* Rec. Doc. 25 at 14-15.
[16] 853 F.2d 294 (5th Cir. 1988).
[17] *Swindle*, 655 F.3d at 394.
[18] As stated previously, A.A. did not attend a School Board school based on the parent's agreement with an outside entity – not the School Board. *See* Rec. Doc. 25 at 15.
[19] *See* Rec. Doc. 25 at 16.

notwithstanding the success students experienced, including Plaintiffs' children, and the academic and behavioral successes students with and without disabilities continue to experience.

Plaintiffs make no argument that the School Board treated other student – with and without disabilities at Rowley – any differently than A.A., B.B., and C.C. Indeed, they make no claim that they did not get services afforded students without disabilities (or, for that matter, with disabilities).[20]

Plaintiffs' argument that expulsions are appealable under IDEA[21] ignores the State law mechanism afforded students in Louisiana. Louisiana law provides for all students the opportunity for a hearing before the superintendent/designee; then, the parent may appeal the hearing officer's decision (presumably adverse – at least in part – to the parent) to the school board, with a final parental appeal of the school board's decision to State court.[22] As such, an IDEA due process hearing does not afford review per se of the State's discipline procedures that the Parents accessed or did not access for students generally – as the School Board here afforded the Plaintiffs' minor children in the "same manner" as students without disabilities. In Commentary to the IDEA regulations, the United States Department of Education stated,

> the manifestation determination [review] [MDR] provision in paragraph (e) of this section [530], and the right of a parent to request an expedited due process hearing in [34 C.F.R.] § 300.532, regarding the disciplinary placement or manifestation determination [review], *are sufficient to ensure* that schools implement disciplinary policies that provide for a uniform and fair way of disciplining children with disabilities in line with the discipline expectations for non-disabled students. A primary intent of Congress in revising section 615(k) of the [IDEA] was to provide for a uniform and fair way of disciplining all children—both for those children with disabilities and those children without disabilities.[23]

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[20] *See* Rec. Doc. 25 at 18-19.
[21] *See* Rec. Doc. 25 at 18-19.
[22] *See* La. Rev. Stat. 17:416(C)(5) (explaining the required sequence).
[23] 71 Fed. Reg. 46715 (Aug. 14, 2006) (emphasis added). IDEA requires nothing more than to what the parents availed themselves under State law. Further, the School Board will not abridge substantive due process rights when State law affords a legal remedy to address district-student conduct. *See S.B. ex rel. S.B. v. Jefferson Par. Sch. Bd.*, No. 22-30139, 2023 WL 3723625, at 5 (5th Cir. May 30, 2023) (unpublished) (regarding parents' State law remedies for district employee conduct toward students' behavior).

As to Plaintiffs' claims in the LHRA section of the Amended Complaint, where they describe their claims,[24] they do not allege the School Board's failure to comply with a request of any Plaintiff. Further, Plaintiffs do not say that they requested any accommodations. As to A.A., Plaintiffs attempt bring claims regarding a failure to implement an IEP and BIP, when they did not explicitly allege those in the Amended Complaint.[25] The ADA and Section 504 complaints are about removal to Rowley – not about a failure to provide accommodations.

Finally, as to exhaustion, Defendants have raised affirmative defenses of exhaustion under multiple laws, not just LHRA.[26]

CONCLUSION

The Defendants' actions were lawful and in line with the afforded discretion of educational professionals to enforce student discipline standards in their schools. As detailed in the memorandum in support of the motion and as further addressed in this Reply, all claims pleaded by Plaintiffs fail to state a claim for which the Court can be grant relief. Therefore, the School Board is entitled to an order of dismissal with prejudice of all claims under Rule 12(c).

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[24] *See* Rec. Doc. 25 at 20.
[25] *See* Rec. Doc. 25 at 21. P.A. had a full and fair opportunity to address such claims in the due process hearing below. To the extent that Plaintiff has raised additional claims, those claims have not been exhausted under applicable law or have prescribed.
[26] *See* Rec. Doc. 20 at 2-3 (affirmative defenses 4-6).

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that I have this day caused a copy of the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will forward a copy to all attorneys of record.

Baton Rouge, Louisiana this 1st day of April 2024.

s/Wayne T. Stewart
WAYNE T. STEWART