THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

P.A., on behalf of minor child, **A.A.**; *et al.*	*	CIVIL ACTION NO.: 2:23-cv-2228
Plaintiffs,	*	
	*	JUDGE BRANDON S. LONG
v.	*	
	*	MAGISTRATE JUDGE JANIS VAN MEERVELD
DORIS VOITIER, *et al.*	*	
Defendants.	*	SECTION O

MEMORANDUM IN OPPOSITION TO 12(C) MOTION FOR JUDGMENT ON THE PLEADINGS

Plaintiffs A.A., by and through his parent P.A.; B.B., by and through her parent P.B.; and C.C., by and through her parent P.C. ("Students") oppose Defendants' motion for judgment on the pleadings.

INTRODUCTION

This lawsuit challenges St. Bernard Parish Public Schools' use of its alternative school to segregate its most vulnerable students and deprive them of education. The school district openly sends students to C.F. Rowley Alternative ("Rowley")—a school for expelled students—without due process required under state and federal law. The school district further denies students with disabilities accommodations and modifications required to avoid and exit alternative education, also in violation of federal law. As a result, the highest-needs students are segregated and isolated at Rowley and deprived of the opportunity to learn, participate in social activities like prom, play sports at a competitive level, or walk across the stage at graduation with their peers.

In their motion, Defendants demonstrate a fundamental misunderstanding of Students' claims and mischaracterize the applicable case law. The Court should disregard these distractions. Defendants' motion raises insufficient challenges to well-pled claims and seeks premature

adjudication of disputed facts, which are already being addressed in discovery. For this and all of the reasons explained below, the Court should readily dispose of Defendants' motion and allow this case to proceed efficiently to summary judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On June 27, 2023, Students A.A. and B.B. sued the St. Bernard Parish School Board ("SBPSB") and Doris Voitier, in her official capacity as Superintendent of St. Bernard Parish Public Schools ("SBPPS", and, collectively with SBPSB, the "Defendants" or the "District"). Students alleged violations of Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq*. ("ADA"), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq*. ("Section 504"), Louisiana Revised Statutes § 17:416, the Louisiana Constitution, and the Fourteenth Amendment to the U.S. Constitution. *See* Compl., Doc. 1 (June 27, 2023). They also appealed a decision by a due process hearing officer under the Individuals with Disabilities Education Act, 20 U.S.C. § 1415(i).

On December 12, 2023, Students filed their First Amended Complaint ("Complaint"), which added C.C. as a plaintiff and an additional claim under the Louisiana Human Rights Act ("LHRA"), La. Rev. Stat. § 51:2231 et seq.[1] *See* Doc. 19.

Since Defendants filed an Answer, discovery has been ongoing. *See* Answer, Doc. 8 (Aug. 26, 2023); Answer, Doc. 20 (Dec. 26, 2023). Defendants filed the instant motion on February 16, 2024. Doc. 22. Students now respond and concurrently file a motion for leave to amend. Doc. 26.

[1] As a result, there are now seven claims in the Complaint: (1) discrimination under the ADA on behalf of all plaintiffs ("Count I"); (2) discrimination under Section 504 on behalf of all plaintiffs ("Count II"); (3) retaliation under the ADA and Section 504 brought by Plaintiff A.A. ("Count III"); (4) denial of due process rights in school discipline under the U.S. and Louisiana Constitutions, on behalf of all plaintiffs ("Count IV"); (5) denial of due process rights under Louisiana state law § 17:416(A)(2)(c), on behalf of all plaintiffs ("Count V"); (6) appeal of a due process ruling dismissing a claim against Plaintiff B.B. ("Count VI"); and, (7) disability discrimination under the LHRA against all plaintiffs ("Count VII").

LEGAL STANDARD

"After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c). Because "the rule 12(c) motion is asserted as a vehicle to raise the defense of failure to state a claim upon which relief can be granted, . . . the same legal standard applied under 12(b)(6) is applied to this Rule 12(c) motion." *Ordemann v. Livingston*, No. CIV. A. 06-4796, 2008 WL 2073993, at *1 (E.D. La. May 14, 2008) (citing *Causey v. Par. of Tangipahoa*, 167 F.Supp.2d 898, 910 (E.D. La. 2001)); *see also Johnson v. Johnson*, 385 F.3d 503, 529 (5th Cir. 2004) ("The standard for dismissal under Rule 12(c) is the same as that for dismissal for failure to state a claim under Rule 12(b)(6)."). "As such, the 'central issue is whether, in the light most favorable to the plaintiff, the complaint states a valid claim for relief.'" *Id*. (citing *Brittan Communications Int'l Corp. v. Southwestern Bell Tel. Co.*, 313 F.3d 899, 904 (5th Cir. 2002)). Applying this standard, Defendants' motion should be denied.

ARGUMENT

I. SBPSB is not entitled to quasi-judicial immunity under Supreme Court precedent, and because no judicial proceeding occurred.

Defendants first seek "quasi-judicial" immunity for SBPSB. As recognized in the sole case cited by Defendants, quasi-judicial immunity is a state law doctrine that protects public administrative officers or bodies that investigate facts and draw conclusions from them in certain adjudicative proceedings. *Menard v. Louisiana Dep't of Health & Hosps.*, 94 So. 3d 15, 18-19 (La. App. 3 Cir. 4/4/12). Defendants cite no authority to suggest this state law doctrine applies to student disciplinary proceedings. Meanwhile, Supreme Court precedent has long established that judicial immunity is not an available defense in such proceedings. *See Wood v. Strickland*, 420 U.S. 308, 320 (1975) (refusing to afford judicial immunity to school board members in school discipline lawsuit because it would leave "students subjected to intentional or otherwise

inexcusable deprivations" without a remedy). To the extent "quasi-judicial" immunity[2] nonetheless applies, it is irrelevant here. There were no judicial or quasi-judicial proceedings here because Defendants failed to provide Students with expulsion hearings, and Defendants identify none.[3] *See* Doc. 22-1 at 6 (acknowledging that the "School Board did not convene an expulsion hearing" for A.A., B.B., or C.C.). As a result, this Court should reject Defendants' quasi-judicial immunity argument.

II. Students have properly stated a cause of action against Superintendent Voitier in her official capacity.

Defendant Doris Voitier is sued in her official capacity as the Superintendent of SBPPS. Doc. 19 ¶ 5. Though Defendants assert that Ms. Voitier does not "serve[] in a policymaking capacity," Doc. 22-1 at 6, this is a fact issue that cannot be determined at this stage of the proceedings. *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007). Defendants cite *Kentucky v. Graham*, 473 U.S. 159 (1985) for the proposition that a claim against an officer in their official capacity amounts to a claim against the relevant governmental entity, but stretch this holding to assert that Ms. Voitier must be dismissed from the instant suit as a matter of law. Doc. 22-1 at 6. Nothing in *Graham* can be read to imply that Ms. Voitier, as an official representative of SBPPS, is an improper party to this suit against SBPPS and SBPSB.

III. Students have stated a claim under 42 U.S.C. § 1983 by suing a policymaker (SBPSB) about disciplinary policies it has sole discretion to promulgate.

Defendants next argue that Students have failed to allege a policymaker for the purposes of

[2] Defendants appear to use the terms "qualified immunity" and "quasi-judicial" immunity interchangeably. *See* Doc. 22-1 at 5. They are distinct. *See Strickland*, 420 U.S. at 320 (1975), *abrogated on other grounds by Harlow v. Fitzgerald*, 457 U.S. 800 (1982). To the extent Defendants argue qualified immunity protects SBPSB as an entity, or Doris Voitier in her official (rather than individual) capacity as Superintendent of SBPPS, that argument is misplaced. *Cf. Jaufre v. Taylor*, No. CIV.A. 03-0028, 2004 WL 1444945, at *2 n.2 (E.D. La. June 25, 2004), *with DeCossas v. St. Tammany Par. Sch. Bd.*, No. CV 16-3786, 2017 WL 3971248, at *15-*16 (E.D. La. Sept. 8, 2017).

[3] To be clear, Students have not appealed the outcome of C.C.'s alternative placement "appeal." Doc. 19 ¶ 126. Indeed, as noted *infra*, § XI, no procedural mechanism exists to appeal this decision. Rather, Students challenge here the lack of an expulsion hearing and other due process protections.

Monell liability, arguing that the § 1983 claims impermissibly seek *respondeat superior* liability for St. Bernard Parish School System employee actions. But Defendants concede that a school board is a "policymaker" under *Monell* where, as in Louisiana, local school boards have final policymaking authority under state law. Doc. 22-1 at 6; *see also Randolph v. E. Baton Rouge Par. Sch. Sys.*, 774 F. App'x 861, 865 n.1 (5th Cir. 2019) (citing La.Stat. Ann. § 17:81(A)(1) (2023)). Students have named SBPSB as a defendant and sufficiently alleged SBPSB policies that are the "moving force" behind the due process violations. *See* Doc. 19 ¶¶ 44-59. That is all that is required at this stage of the proceedings.[4] *See Ratliff v. Aransas Cnty., Texas*, 948 F.3d 281, 285 (5th Cir. 2020). Furthermore, Students do not, as Defendants argue, have to "prove" all elements of *Monell* liability before discovery is complete. Doc. 22-1 at 6. Accordingly, Students have properly alleged a claim under § 1983.

IV. Students have alleged facts, including allegations of intentional discrimination, sufficient to constitute claims under ADA and 504.

In their next argument, Defendants misstate the necessary elements of ADA and Section 504 claims and, again, seek premature fact disposition. Under the ADA and Section 504, Students need not plead or prove intentional discrimination for injunctive relief. *See Marvin H. v. Austin Indep. Sch. Dist.*, 714 F.2d 1348, 1356-57 (5th Cir. 1983) (imposing intentionality with respect to damages but not injunctive relief under 504); *Delano-Pyle v. Victoria Cnty, Tx.*, 302 F.3 567, 574 (5th Cir. 2002) ("A plaintiff asserting a private cause of action for violations of the ADA or [Section 504] may only recover compensatory damages upon a showing of intentional discrimination.") (internal citations omitted). Students seek injunctive relief. Doc. 19 at 41.

[4] The cases relied upon by Defendants, Doc. 22-1 at 6, adjudicate *Monell* claims at a later stage. *See Yara v. Perryton Indep. Sch. Dist.*, 560 F. App'x 356 (5th Cir. 2014) (summary judgment); *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701 (1989) (judgment); *Anthony v. Sch. Bd. of Iberia Par.*, 692 F. Supp. 2d 612-28 (W.D. La. 2010) (summary judgment).

Requiring Students to show intentional discrimination to obtain such relief would directly contradict the purpose of the ADA and Section 504. *See Alexander v. Choate*, 469 U.S. 287, 296-97 (1985) ("[M]uch of the conduct that Congress sought to alter in passing [Section 504] would be difficult if not impossible to reach were the Act construed to proscribe *only* conduct fueled by a discriminatory intent." (emphasis added)); *see also Frame v. City of Arlington*, 657 F.3d 215, 230 n.62 (5th Cir. 2011) (quoting *Choate* to note Congress's recognition in the ADA that disability discrimination is "most often the product, not of invidious animus, but rather of thoughtlessness and indifference—of benign neglect" and "primarily the result of apathetic attitudes rather than affirmative animus").

Nonetheless, to support their supplemental claims for damages, Students have pled facts sufficient to establish intentional discrimination for each of their disability discrimination claims.[5]

i. <u>Students have pled more than sufficient facts to allege intentional discrimination.</u>

Students have more than adequately pled facts alleging intentional discrimination. To argue otherwise, Defendants improperly narrow the scope of Students' allegations regarding their Section 504 and ADA claims to three lone referrals to the alternative school: A.A.'s referral to Rowley in February 2023, B.B.'s referral to Rowley in September 2022, and C.C.'s referral to Rowley in Fall 2023. Doc. 22-1 at 8-9. But A.A.'s placement and attendance at Rowley during August and September 2022 is also incorporated.[6] Doc. 19 ¶¶ 80-81. Defendants' suggestion that Students do not contest "that the referrals at issue were due to the behaviors of the students"

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[5] The Second Amended Complaint Students propose to file also incorporates the facts described in § IV(i)-(iii), *infra*, and contains allegations of repeated disciplinary actions against students with disabilities for behavior related to their disabilities, without Manifestation Determination Reviews. *See* Ex. 1 to Doc. 26.

[6] Specifically, Students allege that "at the start of the 2022-2023 school year, the District informed P.A. that A.A. would remain placed at Rowley for the remainder of the school year" because of its "therapeutic" environment and that "[n]o [MDR] meeting was held prior to the disciplinary placement." Doc. 19 ¶¶ 80-81.

misconstrues the Complaint.[7]

Students allege that Defendants excluded them from Chalmette High School without legally required disciplinary protections, including Manifestation Determination Reviews ("MDRs"), and because of behaviors that resulted from Students' disabilities. Doc. 19 ¶¶ 80, 82, 87, 89, 107-112, 122-127. These are not mere allegations of "behavioral infractions" only, without any connection to students' disabilities. *C.C. v. Hurst-Euless-Bedford Indep. Sch. Dist.*, 641 F. App'x 423, 427 (5th Cir. 2016). Indeed, an Administrative Law Judge ("ALJ") confirmed the disability-related nature of the "behavioral infractions" in A.A.'s case. Doc. 19 ¶¶ 87-89. Defendants pressed juvenile charges against A.A. because of this same disability-related behavior, then advocated for A.A.'s permanent exclusion and waiver of his education rights as a condition of release. *Id.* ¶¶ 90-97. To date, Defendants continue to exclude A.A. from in-person schooling, interactions with peers, and special education. *Id.* ¶¶ 82, 87-90, 97.

Students also allege equally disturbing actions against B.B. and C.C., even after the District received notice of the illegal and discriminatory nature of its disciplinary action against A.A. *Id.* ¶¶ 103-106, 119-121. First, the District failed to provide B.B. and C.C. accommodations, instead allowing them to struggle academically and behaviorally for years. Then, the District segregated them at Rowley for disability-related behaviors, without MDRs or other disciplinary protections. *Id.* ¶¶ 107-112, 122-127. At Rowley, the District failed to provide the students with any of the accommodations, services, and supports required by law, even after 504 Plans had been created. *Id.* ¶¶ 97, 112-114, 126-127. The District was aware that both students had disabilities and had even

[7] To the extent this inaccurate statement suggests Students have not adequately pled causation, *i.e.* that Defendants' actions were taken *because of* Students' disabilities, the same allegations, *supra and infra* §§ IV(i)-(iii), are sufficient to state a claim. Moreover, discrimination based on disability exists when, as alleged here, a public entity denies reasonable accommodations, unjustifiably segregates on the basis of disability, or employs methods of administration that effectuate discrimination. *See, e.g.*, *Bennett-Nelson v. La. Bd. of Regents*, 431 F.3d 448, 454-55 (5th Cir. 2005); *see also Lewis v. Cain*, No. CV 15-318-SDD-RLB, 2023 WL 7299130, at *49 (M.D. La. Nov. 6, 2023).

sought psychiatric hospitalization for B.B. because of her behaviors at school. *Id.* ¶¶ 99, 104, 126. These actions alone are sufficient to show intentional discrimination. But the Complaint goes further and alleges discriminatory policies and practices designed to exclude students with disabilities from mainstream schools. *See id.* ¶¶ 44-69. To the extent the District contests or seeks to justify these well-pled policies and practices, those are fact issues inappropriate for resolution here.

ii. Students have pled more than sufficient facts to allege bad faith and gross misjudgment.

This Court should also disregard Defendants' complaint about the "difficulty" of ascertaining Students' allegations of bad faith because Counts I-II incorporate preceding paragraphs. Doc. 22-1 at 11. The detailed and specific allegations in the Complaint, including the incorporated paragraphs, are more than sufficient to create an "inference of professional bad faith or gross misjudgment."[8] *D.A. ex rel. Latasha A. v. Houston Indep. Sch. Dist.*, 629 F.3d 450, 455 (5th Cir. 2010).

Unlike the precedent cited by Defendants, this is not a case about a single, misguided decision to refer a child to an alternative school. Doc. 22-1 at 12 (citing *C.C.*, 641 F. App'x at 426). Rather, this case involves repeated, involuntary placements of students at alternative schools without MDRs. Doc. 19 ¶¶ 80-82, 122-127. The school district in *C.C.* conducted an MDR before removing the student to an alternative school, and the student was only removed temporarily for 60 days, not indefinitely or permanently like A.A. and B.B. *C.C.*, 641 F. App'x at 425; *cf.* Doc. 19 ¶¶ 80, 87-97, 109-117. Here, even where MDRs were held, Defendants removed Students to a

[8] Although Defendants argue whether Students have pled "bad faith and gross misjudgment" separately from "intentional discrimination" and "departure from accepted standards", none of the cases cited suggest that these are separate pleading requirements for an ADA or Section 504 claim. *See D.A.*, 629 F.3d at 453-55. For the sake of clarity only, Students defend against each argument separately.

disciplinary alternative school for disability-related behaviors, despite multiple due process complaints alerting them to the illegality of their actions. Doc. 19. ¶¶ 80, 82, 87-90, 107-112, 122-127. No such allegations were included in *C.C.* Students' allegations are therefore sufficient to create an inference of bad faith or professional misjudgment.

iii. Students have pled more than sufficient facts to allege departure from accepted standards.

Finally, Students pled facts well beyond "educational malpractice." *D.A.*, 629 F.3d at 454 (citation omitted). Defendants defend their actions by citing to U.S. Department of Education Office for Civil Rights ("OCR") Guidance as evidence that they have followed accepted professional standards; however, this guidance in fact confirms Students' position that Defendants' actions fall far short of the norm. U.S. Dep't of Educ., Office for Civil Rights, Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973 (2022).[9] The OCR guidance makes clear that an MDR is required prior to alternative school transfer under Section 504. *Id.* at 14-16. Moreover, Defendants acknowledge that an MDR is required before alternative school transfer. Doc. 22-1 at 13 n.80. However, there is no dispute that no MDR occurred prior to A.A.'s placement at the beginning of the 2022-2023 school year, as found by an Administrative Law Judge. Doc. 19 ¶¶ 80, 82. Likewise, no MDR was held for C.C. before her placement at Rowley, despite having been identified as a student with a disability since elementary school. *Id.* ¶¶ 122-127.

Further, contrary to Defendants' assertion that Students do not challenge the sufficiency of MDRs or allege students were disciplined differently than similarly situated students without disabilities, Students do just that. The Complaint reflects that while an MDR was technically held for B.B. prior to her removal to Rowley, it was woefully insufficient because it failed to consider

[9] https://www2.ed.gov/about/offices/list/ocr/docs/504-discipline-guidance.pdf.

her mental health diagnoses of Disruptive Mood Dysregulation Disorder, ADHD, and Major Depressive Disorder. *Id.* ¶¶ 103-110. Defendants had been aware of these mental health diagnoses since at least the sixth grade, yet failed to acknowledge, accommodate, or provide services for them. *Id.* Likewise, Students have alleged they were denied disciplinary due process protections required for non-disabled students under state law. *See, e.g.*, *id*. ¶¶ 87, 109-111, 123-124, 132(c), 140(c). For these reasons and for all those cited in §§ IV(i)-(ii), *supra*, Students have sufficiently pled facts to support an inference of departure from accepted professional standards and thus intentional discrimination.

V. Students have pled the "protected activity" required for retaliation claims under Section 504 and the ADA.

Defendants' argument regarding Students' retaliation claim is likewise meritless. Without citing any authority, Defendants argue that filing a special education due process complaint is not a "protected activity" under the ADA and Section 504.[10] But the ADA and Section 504 prohibit retaliation based on reporting or complaining about "any act or practice made unlawful," *i.e.* disability discrimination, under those statutes. 42 U.S.C.A. § 12203.[11] Accordingly, a request for accommodations is a well-recognized protected activity. *Smith v. Tangipahoa Par. Sch. Bd.*, No. CIVA 05-6648, 2006 WL 3395938, at *13 (E.D. La. Nov. 22, 2006). Defendants do not dispute that the special education services, accommodations, and placement sought in the due process hearing are reasonable accommodations necessary for A.A. to access education services available to non-disabled students. *See* Doc.19 ¶¶ 91-92, 95, 147-48. Nor can they. *See infra* § X(i). That Students did not plead an ADA claim in the due process complaint (although not a fact alleged in

[10] Defendants again misread the Complaint when they assert retaliation is alleged only under the ADA. Doc. 22-1 at 14. The caption of Count III clearly states that the claim is brought for "retaliation against plaintiff A.A. in violation of Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act." Doc. 19 at 35.

[11] Title II of the ADA and Section 504 are interpreted *in pari materia*. *Frame v. City of Arlington*, 657 F.3d 215, 223 (5th Cir. 2011).

the Complaint) therefore is irrelevant.

VI. Students' claims have not prescribed.

i. Students' sole claim under the IDEA is timely.

Defendants' argument that Students' "IDEA allegations" have prescribed misunderstands the claims at issue. Doc. 22-1 at 15-16. Count VI is Students' *only* IDEA claim, and it is an appeal of a ruling in B.B.'s due process proceedings. *See* Doc. 19. Further, the IDEA claim in Count VI is timely. The ruling in question was issued by the ALJ on March 29, 2023. Doc. 19 at 115 n.9. Under the IDEA, B.B. had 90 days to appeal. *See* 20 U.S.C. § 1415(i)(2)(A)-(B) ("The party bringing the action shall have 90 days from the date of the decision of the hearing officer to bring such an action . . . ."); *see also* La. Admin. Code tit. 28, pt. XLIII, § 516(A)-(B) (2024). She did so, by filing an appeal as part of the original complaint on June 27, 2023. Doc. 1.

ii. Students' ADA, Section 504, § 1983, and state law claims are timely.

Students' ADA, Section 504, § 1983, and state law claims were also raised within the statute of limitations, as construed by Defendants. Each of the Students was placed at Rowley, in an isolated setting without appropriate disability-related services and accommodations, during the 2022-2023 school year—within one year of when the current suit was filed on June 27, 2023.[12] *Id.* ¶¶ 122-127. To the extent facts alleged in Students' complaint fall outside any applicable one-year statute of limitations, those facts remain relevant to Students' claims; therefore, they are properly

[12] Of note, the following events occurred after June 27, 2022. First, Defendants unlawfully placed A.A. at Rowley at the start of the 2022-2023 school year—and again, despite a due process hearing decision order to the contrary, involuntarily transferred A.A. to Rowley in February of 2023. Doc. 19 ¶¶ 80-97. Second, Defendants unlawfully placed B.B. at Rowley in September of 2022, where she remained through the end of the 2022-2023 school year. *Id.* ¶¶ 98-117. Finally, all allegations regarding C.C. fall within the statute of limitations as she did not become a SBPSS student until August 2022. *Id.* ¶ 121. Defendants unlawfully placed C.C. at Rowley during the current school year in September of 2023, where she remained until December of 2023. The Second Amended Complaint Students propose to file, *see* Doc. 26, also contains timely allegations of unlawful transfer to and segregation in Rowley, where D.D. attended Rowley in the 2022-2023 school year and was initially denied reenrollment in January 2024. E.E. and F.F. also attended Rowley in the 2022-2023 school year. *See* Ex. 1 to Doc. 26.

pled. *See Cortes v. Maxus Exploration Co.*, 977 F.2d 195, 200 (5th Cir. 1992) (internal citation omitted).

VII. Students have sufficiently alleged procedural due process violations because they have identified a constitutionally protected interest and a deprivation of that interest without due process.

Defendants conflate separate prongs of the procedural due process inquiry and oversimplify Fifth Circuit precedent. To establish a due process violation under the state or federal constitution, a plaintiff must show: (1) the existence of a constitutionally protected property or liberty interest; and (2) deprivation of the property or liberty interest without appropriate due process protections. *See Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 569-71 (1972); *Adams v. City of Harahan*, No. 22-30218, 2024 WL 655979, at *3 (5th Cir. 2024). Defendants conflate these separate prongs of inquiry, arguing that there is no constitutionally protected interest at issue by excessively narrowing the inquiry to whether a right attaches to "alternative school transfer" or "exclu[sion] from education programs." Doc. 22-1 at 18-19. But this misses the main issue: whether Students have been deprived of the well-recognized constitutionally protected interest in education. This inquiry, moreover, must be conducted separately for the federal and state constitutional claims, which Defendants fail to do.

i. Students have sufficiently alleged a constitutionally protected property or liberty interest in public education.

Defendants argue that no constitutionally protected liberty or property interest is at stake in this case. Not so. As Defendants recognize, for over fifty years since the U.S. Supreme Court's decision in *Goss v. Lopez*, courts have recognized "public education as a property interest that is protected by the Due Process Clause." 419 U.S. 565, 574 (1975); *see also* Doc. 22-1 at 17-18. The *Goss* Court further recognized a procedural due process interest in liberty that protects an individual's "good name, reputation, honor, or integrity." *Goss*, 419 U.S. at 574 (citation omitted).

And the Court held that this constitutionally protected interest is implicated by allegations of misconduct at school. *Id*. at 574-75. The students in *Goss* were suspended for very short periods of no longer than ten days, but the Court still recognized that the accusations could seriously damage the students' standing with their fellow pupils and their teachers as well as interfere with later opportunities for higher education and employment. *Id.* at 575. It is well-pled that Students suffered the same, if not worse, detrimental impacts. Doc. 19 ¶¶ 35-56, 76-97, 109-113, 123-127.

Defendants' argument to the contrary relies upon a misreading of applicable Fifth Circuit precedent. *See Swindle v. Livingston Par. Sch. Bd.*, 655 F.3d 386, 394 (5th Cir. 2011); *Harris ex rel. Harris v. Pontotoc Cnty. Sch. Dist.*, 635 F.3d 685, 690 (5th Cir. 2011); *Nevares v. San Marcos Consol. Indep. Sch. Dist.*, 111 F.3d 25, 26 (5th Cir. 1997).[13] In each of these cases, the Fifth Circuit recognized a constitutionally protected interest in public education. *See Swindle*, 655 F.3d at 389 (citing *Goss*, 419 U.S. at 565); *Harris*, 635 F.3d at 590; *Nevares*, 111 F.3d at 26. Rather, these cases address a distinct issue that Defendants ignore: whether Defendants *deprive* students of their entitlement to public education by transferring them to an alternative school program without due process. That issue is addressed below.

ii. Students have alleged that they were deprived of their property interest in education without due process.

Defendants' argument also oversimplifies Fifth Circuit precedent. Although in *Swindle* the Fifth Circuit held that a student's "total exclusion from the educational process" triggers constitutional due process protections, this case is distinguishable on several grounds. *See Swindle*, 655 F.3d at 394 (quoting *Goss*, 419 U.S. at 576). First, *Swindle* addressed an entirely separate problem: whether *alternative education* could be denied without due process. The Fifth Circuit

[13] Defendants also cite *Langley v. Monroe Cnty. Sch. Dist.*, 264 F. App'x 366 (5th Cir. 2008). This case is unpublished, and also states not that there is no constitutionally protected interest – but, rather, that the constitutionally protected interest in education is not implicated by alternative school transfer. *Id*. at *1.

held it could not. *See Swindle*, 655 F.3d at 394.

Second, the reasoning in *Swindle*, to the extent it applies at all, is based upon outdated Louisiana law. At the time *Swindle* was decided, Louisiana's discipline statute prohibited certain categories of expelled students from attending alternative school altogether. *Swindle*, 655 U.S. at 395 (citing La. Stat. Ann. § 17:416(B) & (C)(2), amended by 2012 La. Sess. Law Serv. Act 831 (H.B. 1209)). School districts also had the authority to waive their obligation to provide alternative school programming, meaning certain expelled students were not guaranteed an opportunity to attend alternative school. *Id*. Following legislative amendments in 2012, *see* 2012 La. Sess. Law Serv. Act 831 (H.B. 1209), school districts are now required to send children to alternative school programs if they are suspended or expelled, *see* La. Rev. Stat. §§ 17:416(A)(2)(c), (C)(1); *id*. § 17:416.2(A). In other words, "total exclusion" from enrollment in any public-school program, as it was understood in *Swindle*, is no longer an option in Louisiana.

The cases upon which *Swindle* relied emerged from the same outdated statutory schemes permitting "total exclusion" from educational programming for suspended or expelled students. *See Swindle*, 655 F.3d at 394 (citing *Harris*, 635 F.3d at 690; *Nevares*, 111 F.3d at 26-27). *Nevares* arose in Texas, and *Harris* arose in Mississippi; at the time, and still today, both states permit disciplinary removals, without alternative school placement, for certain categories of serious discipline offenses. *See, e.g.*, Tex. Educ. Code Ann. § 37.006(m); 7 Miss. Code R. Pt. 3, R. 7.1. If this Court applies those cases to Louisiana, despite its entirely different statutory scheme, school districts in this state will be able to eschew well-established constitutional due process protections for any disciplinary action.

Third, Defendants fail to recognize a well-recognized exception to the "total exclusion" rule originally stated by the Fifth Circuit in *Nevares*, and later reiterated in *Swindle*. As stated by

the Southern District of Mississippi, in a case affirmed on appeal by the Fifth Circuit:

> A student could be excluded from the educational process as much by being placed in isolation as by being barred from the school grounds. The primary thrust of the educational process is classroom instruction; in both situations the student is excluded from the classroom. . . . It is unclear from the undisputed facts developed through pleadings . . . whether or not the isolation at issue here involved sufficient educational deprivation to warrant its being treated as the equivalent of a suspension. Consequently, the defendants have failed to meet their burden of showing that they are entitled to judgment as a matter of law. . . . . .

Cole v. Newton Special Mun. Separate Sch. Dist., 676 F. Supp. 749, 752 (S.D. Miss. 1987), *aff'd*, 853 F.2d 924 (5th Cir. 1988). Although this case preceded *Nevares*, it has not been overruled. *See Riggan v. Midland Indep. Sch. Dist.*, 86 F. Supp. 2d 647, 655 (W.D. Tex. 2000) (finding plaintiff raised a genuine fact issue as to whether alternative placement amounted to an effective deprivation of access to education "because [the student] was prohibited from participating in or benefitting from comments of his teacher and peers"). Even after *Nevares*, "[w]hen assignment to an alternate education program effectively acts as an exclusion from the educational process, due process rights may be implicated." *Id*. And courts in other circuits have affirmed that this exception remains. *See, e.g.*, *Zamora v. Pomeroy*, 639 F.2d 662, 670 (10th Cir. 1981) (suggesting a viable due process claim where education at an alternative program is so "inferior [as] to amount to an expulsion from the educational system"); *see also C.B. v. Driscoll*, 82 F.3d 383, 389 (11th Cir. 1996) (citing *Zamora*, 539 F.2d at 670, with approval).

Finally, even if *Swindle* or *Nevares* is controlling, the facts alleged suffice to demonstrate "total exclusion." Indeed, the allegations go beyond denial of access to a particular curriculum and lack of access to interscholastic activities. *Cf. Arundar v. DeKalb Cnty. Sch. Dist.*, 620 F.2d 493-94 (5th Cir. 1980); *Walsh v. Louisiana High Sch. Athletic Ass'n*, 616 F.2d 152, 159-60 (5th Cir. 1980). A.A. has not been in a classroom setting for over a year. Doc. 19 ¶¶ 85-97. Similarly, B.B.

and C.C. have been denied classroom participation in SBPPS for well over ten days—in B.B.'s case for nearly her entire tenth-grade year. *Id*. ¶¶ 109-113, 122-127. Throughout these periods, the Complaint alleges that Students have been denied instruction and special education. *Id*. ¶¶ 97, 113. This amounts to Students' effective exclusion from public education, and under these circumstances, *Nevares* and its progeny are not controlling. And to the extent Defendants wish to contest that such allegations did not totally exclude Students from the educational process, that is a factual dispute reserved for summary judgment.[14] *Cf. Riggan*, 86 F. Supp. 2d at 855.

iii. There is no grounds for dismissal of Students' claim under the Louisiana Constitution.

To the extent that Defendants seek judgment on Students' state constitutional claims,[15] their motion should be denied. This Court should not readily assume that the Louisiana Supreme Court would agree with *Swindle* and *Nevares* as relevant to procedural due process claims under the Louisiana Constitution. *See State v. Peart*, 621 So. 2d 780, 790 (La. 1993) (describing the Louisiana Supreme Court as "the final arbiter of the meaning of the state constitution . . ."); *see also State v. Hernandez*, 410 So. 2d 1381, 1385 (La. 1982) (affirming that a state constitution may impose a "higher standard of individual liberty than that afforded by the jurisprudence interpreting the federal constitution"). Indeed, Louisiana state courts, including the Louisiana Supreme Court,

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[14] So too are other, ancillary factual issues raised in this section of Defendants' brief. Specifically, Defendants argue that Students "were not expelled" or "denied disciplinary due process." Doc. 22-1 at 18. There are well-pled allegations to the contrary. Doc. 19 ¶¶ 73-74, 76-78, 80-82, 85-88, 109-112, 123, 153. Such allegations must be accepted as true at this stage of the proceedings. *Ronaldson*, 502 F. Supp. 3d at 296. And, as a final note, to the extent that Defendants argue that these factual disputes create "federal standing" issues, *see* Doc. 22-1 at 18, these same allegations satisfy the requirements of standing under Article III: a harm (expulsion as defined under Louisiana law); caused by Defendants (who involuntarily transferred students to Rowley without due process); that is redressable by Court action (including the systemic injunctive relief and individual damages sought in this lawsuit). *See Inclusive Communities Project, Inc. v. Dep't of Treasury*, 946 F.3d 649, 655 (5th Cir. 2019) (outlining requirements of Article III standard). The Court therefore should disregard these additional arguments raised by Defendants.

[15] Students' reading of Defendants' brief is that they do not move for judgment on this state constitutional claim specifically, and, therefore, this argument is waived. *See Jones v. Gusman*, 515 F. Supp. 3d 520, 540 (E.D. La. 2021), *aff'd*, 38 F.4th 472 (5th Cir. 2022).

considering such claims have consistently recognized a property or liberty interest in education that is impacted by exclusionary discipline such as suspensions or expulsions, even where the result of the exclusionary discipline is transfer to an alternative school program. *See, e.g.*, *Christy v. McCalla*, 79 So. 3d 293, 299 (La. 2011); *McCall v. Bossier Par. Sch. Bd.*, 785 So. 2d 57, 66 (La. App. 2d Cir. 3/16/2001) (citing *Goss*, 95 S. Ct. at 736). Even if this Court disagrees with Students that they have stated a claim for relief under the Fourteenth Amendment to the U.S. Constitution, their state constitutional claims should not be dismissed.

VIII. This Court has ample grounds under 28 U.S.C. § 1367 for exercising jurisdiction over Students' state discipline law allegations.

Defendants' next argument misconstrues this Court's jurisdiction. Students do not dispute that the state discipline law claim under § 17:416 (Count V) is a state law claim. Therefore, standing alone, it cannot confer federal jurisdiction under 28 U.S.C. § 1331, even though declaratory relief is requested.[16] Defendants do not argue, however, that this Court cannot exercise supplemental jurisdiction over this and other state law claims.[17] Nor can they.

Supplemental jurisdiction under 28 U.S.C. § 1367 is properly exercised here. Both the federal and state claims in this case concern the same core factual issue: whether Students' involuntary transfer to an alternative school was lawful. *Mendoza v. Murphy*, 532 F.3d 342, 346 (5th Cir. 2008) (citing *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 725 (1966)). Furthermore, none of the § 1367(c) factors weigh against jurisdiction. *Id*. There is no novel or complex issue of state law, and whether due process was provided under § 1367(c) does not predominate over the federal constitutional due process violations alleged. Defendants identify no

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[16] Regarding Count VI, Defendants do not dispute that this Court has jurisdiction over any claim raised as an appeal of an Individuals with Disabilities Education Act ("IDEA") due process hearing decision by an aggrieved party pursuant to 20 U.S.C. § 1415(i)(2); *see also* 20 U.S.C. § 1415(i)(3)(A).

[17] The state law claims raised in the Complaint include due process violations under the Louisiana Constitution (Count IV); state statutory violations of § 17:416 (Count V); and violations of the LHRA (Count VII).

other exceptional circumstances cautioning against jurisdiction. Nor can they, where, if this Court declined jurisdiction, it would create a risk of "dual track litigation." *Id*. Unless all claims over which this Court has jurisdiction under 20 U.S.C. § 1415 and 28 U.S.C. § 1331 are dismissed, supplemental jurisdiction therefore is proper, and this Court should not dismiss the state law counts.[18]

IX. This Court has jurisdiction over the IDEA appeal raised in Count VI because it relates to whether B.B. was provided FAPE.

Defendants' argument that the ALJ properly dismissed B.B.'s IDEA claim for lack of jurisdiction misunderstands the nature of the claim at issue. Defendants contend that an ALJ cannot determine whether school boards have violated state expulsion law. But B.B. did not seek such a determination from the ALJ; she claimed that Defendants denied her a Free and Appropriate Public Education ("FAPE") under the IDEA by changing her educational placement without providing her with the disciplinary protections *all* students are entitled to, namely an expulsion hearing by an impartial Hearing Officer. This question falls within the jurisdiction of an ALJ presiding over IDEA hearings and therefore was improperly dismissed.

ALJs have broad authority to hear any matter related to the provision of a FAPE and the placement of a student with a disability. 20 U.S.C. § 1415(b)(6)(A)(ii)(III) (noting due process may be filed "with respect to *any* matter relating to the . . . *educational placement* of the child, or the provision of a free appropriate public education") (emphasis added); *see also* La. Admin. Code tit. 28, pt. XLIII, § 507. The IDEA has procedures to provide FAPE to students with disabilities facing discipline, which are contained in the MDR process. Defendants do not dispute that the decision from an MDR is properly adjudicated by a due process hearing officer and may

[18] In the event this Court does dismiss all federal law claims, the state law claims should be dismissed without prejudice so they may be adjudicated in state court. *Miller v. Am. Int'l Grp., Inc.*, 91 F. App'x 930, 931 (5th Cir. 2004).

be appealed, along with the resulting school placement.

Defendants fail to recognize another requirement. If an Individualized Education Plan ("IEP") team holds an MDR and finds the conduct in question is not a manifestation of the student's disability, the IDEA and state law provide that the school district may only apply the relevant disciplinary procedures to students with disabilities "in the same manner and for the same duration as the procedures would be applied to students without disabilities." La. Admin. Code tit. 28, pt. XLIII, § 530(C); 20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. § 300.530(b)(1). Defendants failed to do so here, where, although they claim to provide due process protections for all students as required under state and federal law, they failed to ever hold an expulsion hearing—or hearing of any kind—for B.B. before her indefinite, involuntary placement at Rowley. *See* Doc. 19 ¶¶ 163-168. This failure to apply uniform disciplinary procedures is not a *per se* violation of FAPE. However, like other procedural violations of the IDEA, it is relevant to and informs whether there has been a FAPE violation. *See E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 766, 770-71 (5th Cir. 2018) (procedural violations of the IDEA can constitute FAPE violations where they lead to "loss of educational opportunity").

Separate from and in addition to the right to appeal an MDR decision, the IDEA and state and federal special education regulations also grant parents the right to appeal "any decision regarding placement," including disciplinary change of placement decisions for students with disabilities. La. Admin. Code, tit. 28, pt. XLIII, § 532(A) (granting the right to appeal placement decisions made under §§ 530 and 531); *see also* 20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 532(a). Those kind of placement decisions occur in an expulsion hearing, and whether the expulsion hearing occurred informs whether placement is proper for a student with a disability, regardless of

whether an MDR was conducted.[19] No such expulsion hearing was ever held for B.B., and she was placed in a disciplinary placement accordingly. The IDEA mandates the adjudication of whether such school district actions deny FAPE.

X. Students have adequately pled a cause of action under the LHRA.

i. Students requested and were denied reasonable accommodations.

Defendants' argument for dismissal of the LHRA claim relies on a fundamental misunderstanding of applicable law and facts. Defendants assert that "no Louisiana court" has ever interpreted the LHRA's definition of a "discriminatory practice." *See* Doc. 21-1 at 23 (citing *Smith v. Bd. of Comm'rs of La. Stadium and Exposition Dist.*, 385 F. Supp. 3d 491, 506 (E.D. La. 2019)). But the court in *Smith* does define discriminatory practices under the LHRA, by incorporating the definition of disability discrimination found in the ADA. *Smith*, 385 F. Supp. at 506 (analyzing "the legal standard under the LHRA" because "no other court has ever determined the LHRA's definition of 'discriminatory practice' in the context of disability discrimination"). Under the ADA, a plaintiff does not necessarily need to request a reasonable accommodation before raising a claim. Defendants mistakenly rely on *Greer v. Richardson Independent School District*, 472 Fed. App'x 287, 296 (5th Cir. 2012) to support their argument to the contrary. But this case also clarifies that "a disabled person's failure to expressly 'request' an accommodation is not fatal to an ADA claim where the defendant otherwise had knowledge of the individual's disability and needs but took no action." *Greer*, 472 Fed. App'x at 296 (citing *McCoy v. Texas Dep't of Crim. Just.*, No. C–05–370, 2006 WL 2331055, at *7–*8 (S.D. Tex. Aug. 9, 2006) (collecting cases from multiple

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[19] In Louisiana, school districts make the decision regarding long-term changes of placement known as expulsions at mandatory hearings that must be held for disabled and non-disabled students alike. La. Stat. Ann. § 17:416(C)(1). These hearings afford students an opportunity to be heard and are conducted by the school district's superintendent or a hearing officer acting as the superintendent's designee. *Id.* Prior to expelling a student, the superintendent or designated hearing officer must make a determination as to the facts and make a finding that the student is "guilty of conduct warranting expulsion." *Id.*

circuits)). Here, Defendants were aware of Students' disabilities, their limitations, and the resulting need for accommodations, but failed to take action to accommodate them. *See, e.g.*, Doc. 19 ¶¶ 70, 89, 97, 98-99, 103-104, 113, 118-119, 126-127.

And even if a request for reasonable accommodations is required for LHRA claims, Students did, in fact, request reasonable accommodations, which were denied by Defendants. At the beginning of the 2022-2023 school year, A.A. requested placement at Chalmette High School with appropriate supports and services as set forth in his IEP; yet Defendants denied him placement and told him that the therapeutic supports and behavioral interventions he required were only available at Rowley. Doc. 19 ¶¶ 80-81. Then, in spring 2023, Defendants again denied accommodations as requested and required by A.A.'s IEP and Behavior Improvement Plan ("BIP") at Chalmette High School, resulting in another placement at Rowley. Doc. 19 ¶¶ 80-81, 89-90. After a *second* due process hearing, at which A.A. prevailed *again*, Defendants continue to date to deprive A.A. of special education instruction, accommodations, and services as listed in his IEP and BIP and as ordered by an ALJ while in a virtual-only placement. *Id.* ¶¶ 89-90, 97. Similarly, C.C. requested accommodations through the development of a 504 Plan in October 2023. *Id.* ¶ 126. She did not receive those accommodations when placed in the virtual school at Rowley after she was removed for disciplinary reasons. *Id.* ¶ 127. Likewise, B.B. did not receive needed accommodations as listed in her 504 Plan during the 2022-2023 school year while she was in a virtual-only placement at Rowley. *Id.* ¶¶ 113-114. Further, although Defendants raise a concern about whether reasonable accommodations requested in the school context are protected by the LHRA, they do not dispute that school districts are places of "public accommodation" as defined

under the statute.[20] Thus, Defendants' argument regarding reasonable accommodations is not a factual or legal ground for dismissal.

ii. Students were not obligated to exhaust their LHRA claims in the Louisiana Commission on Human Rights ("LCHR") prior to filing.

Defendants' exhaustion argument is also incorrect. Contrary to Defendants' assertions, an aggrieved individual is not required to file a charge of discrimination with the LCHR prior to filing a civil rights lawsuit based on the same claims. *Coutcher v. Louisiana Lottery Corp.*, 710 So.2d 259 (La. App. 1 Cir. 11/7/97); *see also Salard v. Lowe's Home Ctrs., Inc*., 904 F. Supp. 569, 571-72 (W.D. La. Sept. 27, 1995) (finding that "both the Fifth Circuit and commentators have recognized . . . that a plaintiff may forego the administrative remedies available through the Commission and proceed directly to a Louisiana district court and seek relief under the substantive provisions of the [LHRA]"); *Deloach v. Delchamps, Inc*., 897 F.2d 815, 825 (5th Cir. 1990) ("The statute also allows persons who have been injured by an alleged violation of the statute to file a civil suit to enjoin further violations and to recover damages actually sustained."). In *Coutcher*, the court found that the plain meaning of the Louisiana Commission on Human Rights statute makes it clear that complainants "may" file a complaint with the LCHR, but it is not necessary prior to filing a lawsuit. *Id.* at *2-*3. Defendants do not cite any relevant contradictory authority.[21]

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[20] Under the LHRA, a place of public accommodation is "any place . . . which is supported directly or indirectly by government funds. . . ." La. Stat. Ann. § 51:2232(10). St. Bernard Parish School Board and its schools are directly supported by both federal and state funds. In Defendants' Answer, Defendants admit that they are the recipient of federal funds. Doc. 20 at 8-9.

[21] Defendants cite two cases to support their argument. Doc. 22-1 at 24. Both are inapposite. The first case, *EEOC v. Dillard Dep't. Stores, Inc*., is fact-specific to employment discrimination where an EEOC complaint was filed prior to the enactment of the LHRA. No. 92–3552, 1994 WL 396307 (E.D. La. July 27, 1994). The second case Defendants cite is *Dunaway v. Cowboys*, No. 2:07 CV 1138, 2010 WL 2265142 (W.D. La. May 28, 2010). This case is also irrelevant. In *Dunaway*, the plaintiff filed a lawsuit claiming instances of racial discrimination and charging that the defendant's conduct violated two federal civil rights laws—42 U.S.C.A. § 1981 and 42 U.S.C.A. § 2000a—and two Louisiana state law provisions, including the LHRA. *Dunaway*, 2010 WL 2265142, at *1. The court dismissed the LHRA claims because, under the federal laws at issue, exhaustion through a state agency was required under the federal statute prior to suit. *Id*. at *2. Defendants have not argued that any such statutory exhaustion requirements exist under Section 504 and the ADA.

This Court therefore should follow *Coutcher* and permit Students to file a civil lawsuit without exhausting any remedy through the LCHR.

XI. Students have sufficiently stated claims under La. Rev. Stat. § 17:416, and those claims are not premature.

Defendants also argue that Students' claims under Louisiana Revised Statute § 17:416 are "premature" because they did not exhaust their administrative remedies. But neither case cited by Defendants suggests that exhaustion of administrative remedies is grounds for dismissal under Rule 12(c). *See A.V. v. Plano Indep. Sch. Dist.*, 585 F. Supp. 3d 881 (2022); *Griffin v. DeFelice*, 325 F. Supp. 143 (1971).[22] This is unsurprising because exhaustion of administrative remedies is an affirmative defense. *See Wilson v. Kimberly-Clark Corp.*, 254 Fed. App'x. 280, 287 (5th Cir. 2007); *see also Johnson*, 385 F.3d at 529. Dismissal of a plaintiff's well-pled claims at the pleadings stage based on an affirmative defense like exhaustion is *only* warranted where "the [d]efendant's affirmative defense appears clearly on the face of the pleadings." *Sivertson v. Clinton*, No. 3:11-CV-0836, 2011 WL 4100958 (N.D. Tex., Sept. 14, 2011) (quoting *Clark v. Amoco Prod. Co.*, 794 F.2d 967, 970 (5th Cir. 1987)). Defendants do not identify this standard or argue they meet it. Doc. 22-1 at 24-25. Nor can they.

A plaintiff is only required to exhaust under Louisiana law[23] when administrative remedies are available and adequate. *See Haygood v. Dies*, 114 So. 3d 1206, 1214 (La. Ct. App. 2d Cir. 5/15/2013). These exceptions apply here. Defendants point out that § 17:416(c) affords students

[22] Both are also factually distinct. In *A.V.*, the plaintiffs did not raise claims under § 17:416, and, contrary to Defendants' suggestion, the court did not hold that plaintiffs must exhaust state remedies before challenging expulsions in federal court. *A.V.*, 585 F.Supp.3d at 887. Indeed, the *A.V.* court did not undertake any exhaustion analysis at all—it simply noted that plaintiffs *had* exhausted their administrative remedies before filing their complaint. *Id*. at 891. Although *Griffin* involves claims under § 17:416, the plaintiffs in that case *received* disciplinary hearings prior to their expulsions but failed to exercise their right to appeal the decisions rendered at those hearings—an adequate and available remedy. *Griffin*, 325 F. Supp. at 144.

[23] Although federal law dictates procedural issues here, the Fifth Circuit has found the issue of administrative exhaustion to be substantive. *See Lamar Co., L.L.C. v. Miss. Transp. Comm'n*, 786 Fed. App'x 457, 460-61 (5th Cir. 2019). Louisiana state law therefore governs exhaustion. *Id*.

the right to appeal decisions *rendered at expulsion hearings* from the Superintendent, arguing that Students should have exhausted this avenue prior to seeking judicial review. *See* Doc. 22-1 at 24-25 (citing La. Stat. Ann. § 17:416(c)(4)). But Defendants neglect to acknowledge that there are no decisions for Students to appeal, because Defendants failed to provide Students with expulsion hearings. *See* Doc. 19 ¶ 161; Doc. 22-1 at 6 (acknowledging that the "School Board did not convene an expulsion hearing" for A.A., B.B., or C.C.). Having made administrative remedies under § 17:416 unavailable to Students by denying them expulsion hearings required under § 17:416, Defendants cannot now assert that Students should have exhausted them. *See Gray v. State*, 923 So.2d 812 (La. App. 3d Cir. 2/15/2006) (holding that no adequate remedy was available for an incarcerated plaintiff where prison officials interfered with the plaintiff's ability to pursue any available administrative remedies). Further, even if the appeal described by Defendants is "available" to Students, it is inadequate. Although in some circumstances a post-deprivation alternative placement "appeal" hearing may be requested and held, there is no procedure in § 17:416 permitting or requiring further appellate review.[24]

XII. Students' declaratory relief claims are properly raised.

Defendants' final argument again relies upon a misreading of the Complaint. Students have alleged both federal and state law claims and seek declaratory relief accordingly, including for violations of the U.S. Constitution, the ADA, and Section 504. Doc. 19 ¶¶ 128-155; *id.* at 41. Students are not seeking declaratory relief only for violations of the Louisiana Constitution and Louisiana Revised Statute § 17:416. To the extent Defendants argue that Students' request for declaratory relief is insufficient to confer jurisdiction over these state law claims, Students do not

[24] Further, at least one involuntary alternative placement at issue—of A.A. at the start of the 2022-2023 school year—was effectuated not only without an MDR, as determined by the ALJ, but without even a notice of or an opportunity to request a post-transfer, post-deprivation "appeal." Doc. 19 ¶¶ 80-82.

disagree. The basis for this Court's jurisdiction over these state law claims is explained in § VIII, *supra*. Where jurisdiction is properly exercised over these and other state law claims, the prayer for declaratory relief under 28 U.S.C. §§ 2201-02 is proper. Accordingly, Defendants' arguments to the contrary should be dismissed.

CONCLUSION

Defendants raise insufficient challenges to well-pled claims and seek premature adjudication of disputed facts, which are already being addressed in discovery. For this and all of the foregoing reasons, the Court should deny Defendants' motion for judgment on the pleadings.

Respectfully submitted,

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