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**
	*	
VS.	*	
	*	
DORIS VOITIER in her official	*	**JUDGE BRANDON S.**
capacity, as Superintendent of	*	**LONG**
St. Bernard Parish Public Schools; and	*	
ST. BERNARD PARISH	*	**MAGISTRATE JANIS**
SCHOOL BOARD	*	**VAN MEERVELD**
Defendants.	*	
	*	

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MEMORANDUM IN SUPPORT OF
DEFENDANTS' 12(c) MOTION FOR JUDGMENT ON THE PLEADINGS

MAY IT PLEASE THE COURT:

INTRODUCTION

The St. Bernard Parish School Board ("School Board" or "District") is defending this lawsuit filed by parents of three students ("Plaintiffs") who were referred to C.F. Rowley Alternative School ("Rowley") because they did not comply with District disciplinary rules. The filed claims of the Plaintiffs do not state claims for which relief can be granted, and warrant dismissal on the pleadings under 12(c) of the Federal Rules of Civil Procedure.

PARTIES AND RELEVANT BACKGROUND

St. Bernard Parish Schools, a Defendant in this matter, is a public school district that is governed by the St. Bernard Parish School Board.[1] The School Board operates twelve schools within

[1] St. Bernard Parish Schools, About Us, https://www.sbpsb.org/domain/43 (last accessed on February 8, 2024).

St. Bernard Parish Louisiana.[2] Chalmette High School is the District's traditional high school.[3] Rowley is an alternative school that serves students in the middle and high school grades.

A.A. is a high school student who has been enrolled with St. Bernard Parish Schools at all times relevant to this litigation, and who qualifies for services under the Individuals with Disabilities Education Act (IDEA).[4] At the beginning of the 2022-2023 school year, A.A.'s IEP Team decided that he would begin the 2022-2023 school year at Rowley.[5] An administrative due process hearing was held on September 9, 2022 and September 12, 2022.[6] The presiding administrative law judge (ALJ) ultimately determined that A.A. could return to Chalmette High School and receive compensatory education services.[7] A.A. re-enrolled in Chalmette High School on or around September 22, 2022.[8] A.A. was involved in a fight in February of 2023.[9] Due to this disciplinary incident, the District recommended an assignment to Rowley.[10] The District held a Manifestation Determination Review (MDR) meeting concerning the recommended assignment to Rowley. However, an ALJ found that A.A. could not be assigned to Rowley because the February 2023 fight was a manifestation of his disability.[11] After the ALJ determined that A.A. could not be assigned to Rowley, an order from a legal proceeding—of which the Defendants were not a party—did not allow A.A. to return to Chalmette High School.[12]

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[2] St. Bernard Parish Schools, School Locations and Information, https://www.sbpsb.org/domain/225 (last visited on February 8, 2024).
[3] *Id.*
[4] Board Amended Answer, Rec. Doc. 20 at p. 23, ¶ 70.
[5] *Id.* at p. 25, ¶ 80.
[6] *Id.*
[7] *Id.* at p. 26, ¶ 82.
[8] *Id.* at ¶ 83.
[9] *Id.* at p. 27, ¶ 85.
[10] *Id.*
[11] *Id.* at p. 27, ¶ 89.
[12] *Id.* at p. 28, ¶¶ 90-91.

B.B. is a high school student with disabilities who has been enrolled in the District all times relevant to this litigation.[13] In September of 2022, the District referred B.B. to Rowley because she sprayed mace at another student while on school property.[14] The District held an MDR meeting concerning B.B.'s disciplinary referral to Rowley.[15] C.C. is a high school student with a disability who has been enrolled in the District all times relevant to this litigation.[16] The District referred C.C. to Rowley because she was involved in a group fight in September of 2023.[17] The District determined C.C. eligible under Section 504 in October 2023.[18] C.C. attended Rowley during the remainder of the first semester of the current, 2023-2024, school year.[19]

PLEADINGS AND RELEVANT PROCEDURAL HISTORY

Plaintiffs filed their initial complaint, at Record Document 1, on June 27, 2023. The School Board filed its initial Answer and Defenses, at Record Document 8, on August 26, 2023. On December 12, 2023, at Record Document 19, Plaintiffs filed their First Amended Complaint. The School Board filed its Answer and Defenses to the First Amended Complaint on December 26, 2023, at Record Document 20. In the complaint filed with the Court, Plaintiffs included seven (7) counts including alleged violations of state and federal disability discrimination laws, retaliation, procedural due process under the United States and Louisiana Constitutions, and the Individuals with Disabilities Education Act ("IDEA").[20]

[13] *Id.* at p. 26, ¶ 98.
[14] *Id.* at p. 32, ¶ 107.
[15] *Id.* at ¶ 109; First Amended Complaint, Rec. Doc. 19 at p. 28, ¶ 110.
[16] *Id.* at p. 34, ¶ 118.
[17] *Id.* at p. 35, ¶¶ 122-123.
[18] *Id.* at pp. 35-36, ¶ 126.
[19] *Id.* at p. 36, ¶ 127.
[20] Plaintiffs filed their initial complaint at Rec. Doc. 1. On December 12, 2023, Plaintiffs filed their First Amended Complaint. All references herein to the Plaintiffs' "Complaint" will be to the First Amended Complaint.

The current Scheduling Order states that all pretrial motions, including dispositive motions, "shall be filed in sufficient time to permit hearing thereon on no later than July 25, 2024."[21]

LAW AND ARGUMENT

I. Standard for Motions for Judgment on the Pleadings

Rule 12(c) provides that a party may move for judgment on the pleadings after the pleadings are closed.[22] The purpose of a 12(c) motion is to "dispose of cases where the material facts are not in dispute and a judgment on the merits can be rendered by looking to the substance of the pleadings and any judicially noticed facts."[23] The standard for a 12(c) motion is the same as a 12(b)(6) motion to dismiss, and focuses on ". . . the allegation in the pleadings . . ."[24] Accordingly, a complaint must have "enough facts to state a claim to relief that is plausible on its face."[25] "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."[26]

The Court must take the well-pleaded factual allegations of the complaint as true and view them in the light most favorable to the plaintiff.[27] However, plaintiffs' "obligation to provide the grounds of [their] entitled[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do."[28] Further, courts do not accept legal conclusions or mere conclusory statements as true, and "conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss."[29]

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[21] Scheduling Order, Rec. Doc. 12 at p. 1.
[22] Fed. R. Civ. P. 12(c).
[23] *35 Mendy Bros., LLC v. Bank of N.Y. Mellon*, 2017 WL 2558891, at *4 (E.D. La. June 13, 2017).
[24] *Ackerson v. Bean Dredging, LLC*, 589 F.3d 196, 209 (5th Cir. 2009).
[25] *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).
[26] *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).
[27] *Lane v. Halliburton*, 529 F.3d 548, 557 (5th Cir. 2008).
[28] *Ackerson*, 589 F.3d at 209.
[29] *Peters v. St. Charles Par. Sch. Dist.*, No. CV 15-6600, 2017 WL 1250961, at *3 (E.D. La. Apr. 5, 2017) (Quoting *S. Christian Leadership Conference v. Supreme Court of the State of La.*, 252 F.3d 781, 786 (5th Cir. 2001)).

II. School Board has quasi-judicial immunity in this matter

School Board has qualified immunity from its actions related to disciplinary decisions in the captioned matters. Qualified immunity is a term applied to the action, discretion, etc., of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as the basis for their official action, and to exercise discretion of a judicial nature.[30] In *Menard*, the Court of Appeal held that DHH was entitled to absolute quasi-judicial immunity when making a judgment call as to whether to suspend an installer's license for violation of the Sanitary Code.[31] Based on this precedent, the School Board is likewise entitled to immunity concerning the disciplinary decisions it rendered concerning A.A., B.B., and C.C.

III. Plaintiffs cannot state a cause of action against the Superintendent in her "official capacity."

Plaintiffs' claims against the Superintendent Doris Voitier in their official capacity also fail. "It is well settled that a suit against a [defendant] in [her] official capacity is simply another way of pleading a claim against the governmental entity that employs the official."[32] Accordingly, the Court must treat actions against the Superintendent in her official capacity as actions against the School Board. Therefore, the Court should dismiss the Superintendent from this litigation as a matter of law.

IV. Plaintiffs have no claim under 42 U.S.C. 1983

"Municipal liability under Section 1983 requires proof of three elements: a policymaker; an official policy; and a violation of constitutional rights whose moving force is the policy or custom."[33] The *Zarnow* Court concluded that the "elements of the *Monell* test exist to prevent a collapse of the

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[30] *Menard v. Louisiana Dept. of Health & Hospitals*, 2011-1487 (La. App. 3 Cir. 4/4/12) 94 So. 3d 15.
[31] *Id.* at 19.
[32] *Kentucky v. Graham*, 473 U.S. 159, 165 (1985); *see also, Delouise v. Iberville Parish Sch. Bd.*, 8 F. Supp. 3d 789, 807 (M.D. La. 2014) ("Actions for damages against a party in his official capacity are, in essence, actions against the governmental entity of which the officer is an agent.").
[33] *Zarnow v. City of Wichita Falls, Tex.,* 614 F.3d 161, 166 (5th Cir. 2010).

municipal liability inquiry in to a *respondeat superior* analysis."[34] Furthermore, the "school district is responsible under Section 1983 if a final policymaker adopts a policy that is the moving force behind a constitutional violation."[35] However, the *Yara* Court concluded that generally school board employees "cannot be liable under 1983 based on a *respondeat superior* liability."[36]

"The first requirement for imposing municipal liability is proof that an official policymaker with actual or constructive knowledge of the constitutional violation acted on behalf of the municipality."[37] Under La. R.S. 17:81(A)(1), each local public-school board *shall* serve in a policymaking capacity that is in the best interests of all students enrolled in schools under the board's jurisdiction. The United States Supreme Court stated, "The determination of whether an official has final policymaking authority is a question of state law."[38] Louisiana mandates policymaking authority to the local school board only. Neither Superintendent Voitier, nor any other employee of the St. Bernard Parish School System serves in a policymaking capacity. The allegations in Plaintiffs' complaint imply that Superintendent Voitier and the St. Bernard Parish School System misapplied or negligently failed to develop and administer hearing policies concerning the protection of student's expulsion rights when parent plaintiffs did not request, and as a result School Board did not convene an expulsion hearing. However, it is well settled that negligence alone is insufficient to state a Constitutional claim; allowing such a theory to go forward would result in *de facto respondeat superior* liability—a result rejected by the Fifth Circuit.[39] Plaintiffs have failed to prove that an official policymaker with actual or constructive knowledge of the alleged constitutional violation acted on behalf of School Board.

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[34] *Id.*
[35] *Yara v. Perry Indep. Sch. Dist.*, 560 F. App'x 356, 359 (5th Cir. 2014).
[36] *Id.* at 358.
[37] *Id.*
[38] *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 737, 109 S. Ct. 2702, 105 L. Ed. 2d 598 (1989), (citing *St. Louis v. Praprotnik*, 485 U.S. 112, 123, 108 S. Ct. 915, 99 L. Ed. 2d 107 (1998)).
[39] *Anthony v. Sch. Bd. of Iberia Parish*, 692 F. Supp. 2d 612, 625 (W.D. La. 2010).

V. Plaintiffs' ADA and Section 504 Claims Cannot Survive Dismissal.

a. Applicable ADA and Section 504 Law

Title II of the Americans with Disabilities Act ("ADA") provides that, "[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."[40] Similarly, the Rehabilitation Act ("Section 504") prohibits any "otherwise qualified individual with a disability in the United States," from, "solely by reason of her or his disability, be[ing] excluded from the participation in, be[ing] denied the benefits of, or be[ing] subjected to discrimination under any program or activity receiving Federal financial assistance."[41] The remedies, procedures, and rights available under the Rehabilitation Act parallel those available under Title II,[42] and the two laws are generally interpreted *in pari materia.*[43]

While Court's generally conduct the same analysis of Section 504 and ADA claims, these statutes have different causation requirements. Under Section 504, the exclusion must be "solely by reason of her or his disability," per 29 U.S.C. § 794(a) while under the ADA, "discrimination need not be the sole reason" for the exclusion.[44] Additionally, claims under both Section 504 and the ADA must allege intentional discrimination.[45] There is no "general tort liability for educational malpractice" established under Section 504 or the ADA.[46] Accordingly, Plaintiffs must also allege facts that create "an inference of professional bad faith or gross misjudgment" to substantiate "a cause of action for intentional discrimination under § 504 or ADA against a school district predicated on a disagreement

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[40] 42 U.S.C. § 12132.
[41] 29 U.S.C. § 794; *see also Cadena v. El Paso Cnty.*, 946 F.3d 717, 723 (5th Cir. 2020).
[42] *Delano-Pyle v. Victoria Cnty.*, 302 F.3d 567, 574 (5th Cir. 2002) (quoting 42 U.S.C. § 12133).
[43] *Hainze v. Richards*, 207 F.3d 795, 799 (5th Cir. 2000).
[44] *Bennett-Nelson v. La. Bd. of Regents*, 431 F.3d 448, 454 (5th Cir. 2005) (quoting *Soledad v. U.S. Dep't of Treasury*, 304 F.3d 500, 503–04 (5th Cir. 2002)); *see also Cadena v. El Paso Cnty.*, 946 F.3d 717, 723 n.1 (5th Cir. 2020).
[45] *D.A. ex rel. Latasha A. v. Houston Indep. Sch. Dist.*, 629 F.3d 450, 454 (5th Cir. 2010).
[46] *Id.*

over compliance with IDEA."[47] Courts have applied this same standard concerning claims for damages against school districts for various alleged violations of Section 504 or the ADA.[48] In fact, in *C.C. v. Hurst-Euless-Bedford Independ School District*, Fifth Circuit applied this standard in the context of a disciplinary removal to an alternative setting.[49] In its holding affirming the lower court's dismissal, the Fifth Circuit stated, "This court has also held that 'facts creating an inference of professional bad faith or gross misjudgment are necessary to substantiate a cause of action for intentional discrimination under § 504.'"[50]

b. Analysis of Plaintiffs' ADA and Section 504 Claims

Plaintiffs' Count I is a claim under Title II of the Americans with Disabilities Act ("ADA"). Plaintiffs state that the School Board violated ADA by allegedly taking various actions concerning A.A., B.B., and C.C. Within the applicable prescriptive period, which is June 2022 to current, Plaintiffs' claims concern disciplinary referrals of A.A., B.B., and C.C. to Rowley. It is uncontested that the referrals at issue were due to the behavior of the students.[51] The lone exception is A.A.'s attendance at Rowley in August and September of 2022, which was addressed via an expedited due process complaint and which Plaintiffs did not incorporate into this litigation.[52] The District later referred A.A. to Rowley due to a school fight that occurred in February of 2023.[53] The District referred B.B. to Rowley during the 2022-2023 school year due to discharging mace and "behavior causing major

[47] *Id.* at 455.
[48] *Est. of A.R. v. Muzyka*, 543 F. App'x 363 (5th Cir. 2013) (affirming summary judgment due to lack of evidence of bad faith, gross misjudgment, or deliberate indifference); *I.A. v. Seguin Indep. Sch. Dist.*, 881 F. Supp. 2d 770, 783 (W.D. Tex. 2012) (lack of evidence of bad faith or gross misjudgment concerning allegations of failure to accommodate and exclusion from educational programming).
[49] 641 F. App'x 423 (5th Cir. 2016).
[50] *Id.* at 426 (quoting *D.A.*, 629 F.3d at 454).
[51] Rec. Doc. 19 at pp. 22, 27-28, 30.
[52] *Id.* at p. 23, ¶ 89.
[53] *Id.* at p. 22, ¶ 85.

disruption of instruction and/or repeatedly violating any school rule in any areas."[54] The District also referred C.C. to Rowley due to an altercation with "six other girls who approached her to fight."[55]

i. Plaintiffs failed to plead intentional discrimination.

With the understanding of these fundamental facts of the Plaintiffs claims, the Court can adopt a simultaneous analysis of their ADA and Section 504 claims.[56] *D.A. v. Houston Independent School District* is a seminal case for the Court's analysis.[57] In *D.A.*, the Fifth Circuit explained the "long established rule" that, in order to have a viable ADA or 504 claim, a plaintiff must allege that a school district has refused to provide a requested accommodation.[58] The Firth Circuit also held that "the statute requires intentional discrimination against a student on the basis of disability."[59] Therefore, to plead viable claims, the Plaintiffs were required to allege a refusal to provide a requested accommodation and intentional discrimination. Instead, Plaintiffs generally alleged that the School Board violated the ADA by taking the following actions:

a. Denying Plaintiffs an opportunity to participate in and benefit from educational services that are equal to those afforded to non-disabled students;
b. Denying Plaintiffs educational services that are as effective in affording equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement as those provided to non-disabled students;
c. Denying Plaintiffs disciplinary protections required under Louisiana Revised Statutes § 17:416, where these disciplinary protections are required for nondisabled students;
d. Denying Plaintiffs the opportunity to receive educational programs and services in the most integrated setting appropriate to their needs, where such placement is appropriate to their needs, not opposed by Plaintiffs, and can be reasonably accommodated;
e. Failing to reasonably modify SBPPS programs and services as needed to avoid discrimination against Plaintiffs; and
f. Utilizing methods of administration that have the effect of defeating or substantially impairing the accomplishment of the objectives of Defendants' educational programs with respect to Plaintiffs.[60]

[54] *Id.* at pp. 27-28, ¶ 108.
[55] *Id.* at p. 30, ¶ 122.
[56] *Hainze*, 207 F.3d at 799.
[57] 629 F.3d at 454.
[58] *Id.* (quoting *Marvin H. v. Austin Indep. Sch. Dist.*, 714 F.2d 1348, 1356 (5th Cir. 1983)).
[59] *Id.*
[60] *Id.* at pp. 32-33. ¶ 132.

Likewise, Plaintiffs' based Count II on Section 504.[61] Plaintiffs stated that the School Board violated Section 504 by taking the same alleged actions listed at a-e above, in addition to the following:

f. Placing Plaintiffs outside the regular educational environment at Chalmette High School, where Plaintiffs can be educated in a mainstream school environment with the use of supplementary aids and services; and
g. Failing to allow Plaintiffs to participate in vocational programs, extracurricular services, and activities on the basis of their disabilities.[62]

Instead of alleging intentional discrimination due to the involved students' disabilities, Plaintiffs alleged a general failure to take the actions they contend that ADA and Section 504 require. However, Plaintiffs do not allege that they actually requested any ADA or 504 accommodations. Plaintiffs also do not allege that the Board "refused" any accommodation that any Plaintiff requested. Because there was no refusal of any requested accommodation, the Plaintiffs did not plead a claim that the School Board intentionally refused any requested disability accommodation.

ii. Plaintiffs failed to plead bad faith or gross misjudgment.

Critically, the Plaintiffs failed to plead the required element of "bad faith or gross misjudgment" in the descriptions of its ADA or Section 504 claims.[63] In order to state a claim, "something more than a mere failure to provide 'free appropriate education' required by [IDEA] must be shown."[64] The Fifth Circuit has explained that "experts often disagree on what special needs of a handicapped child may be and the proper placement of a child is often an arguable matter."[65] Importantly, it also held that there is no "general tort liability for educational malpractice."[66] The Fifth Circuit explained, "So long as state officials involved have exercised professional judgment, in such a way as not to depart grossly from accepted standards among educational professionals, we cannot

[61] *Id.* at p. 33, ¶ 136.
[62] *Id.* at p. 34, ¶ 140.
[63] Rec. Doc. 19 at pp. 31-35, ¶¶ 128-143.
[64] *D.A.*, 629 F.3d at 454.
[65] *Id.*
[66] *Id.*

believe that Congress intended to create liability under § 504."[67] Therefore, it held that "bad faith or gross misjudgment must be shown in order to state a cause of action under § 504."[68]

In addition to failing to plead bad faith or gross misjudgment, the Plaintiffs also failed to plead facts that would support either of these required elements. As an initial matter, the School Board notes the difficulty in determining which facts connect to which claims because Plaintiffs simply incorporated more than 120 proceeding paragraphs into Counts I and II.[69] As detailed above, the Plaintiffs do give some description of concerns about disciplinary referrals to Rowley.[70] However, the Plaintiffs do not allege or mention any facts that indicate that any of these referrals constituted bad faith or gross misjudgment.

Concerning A.A., Plaintiffs acknowledge that the District disciplined him for a February 15, 2023 fight on campus—and following the February 15th incident, the District gave a disciplinary placement to Rowley.[71] Despite various factual allegations concerning alternative school referral, nowhere in their Complaint do Plaintiffs show that District staff intentionally discriminated against A.A. due to his disabilities. Nor do Plaintiffs point to any facts that support professional bad faith or gross misjudgment. Plaintiffs do highlight their disapproval of Rowley in general, the February 2023 referral of A.A. due to a fight, and the overturned District determination that the behavior was not a manifestation of A.A.'s disability. However, here Plaintiffs wrongly assume a general tort for "educational malpractice" instead of alleging facts that sufficiently support the intentionality standard required for a cause of action under Section 504 or the ADA.[72] As explained above, courts have recognized that educational professionals can exercise professional judgment concerning students

[67] *Id.* at 454-455.
[68] *Id.* at 455.
[69] *Id.* at pp. 31, 35, ¶¶ 128, 144.
[70] *Id.* at pp. 22, 27, 30, ¶¶ 85, 107, 122-123.
[71] *Id.* at p. 22, ¶85.
[72] *See D.A.,* 629 F.3d at 454.

with disabilities within the bounds of accepted standards.[73] Further, the facts listed in the Complaint *do* clearly show that the District referred A.A. because of his involvement in a fight on campus.

As for B.B., Plaintiffs stated that the District referred her to Rowley in September of 2022 due to discharging mace during an altercation.[74] However, Plaintiffs pled no allegation of intentional discrimination due to B.B.'s disability or facts to support the required element of professional bad faith or gross misjudgment. The facts alleged by Plaintiffs also clearly indicate that the District referred B.B. to Rowley due to her behavior. C.C., who was added to Plaintiffs' First Amended Complaint, was referred to Rowley due to a school fight that occurred in September of 2023.[75] In the sections concerning C.C., Plaintiffs also fail to plead intentional discrimination due to C.C.'s disability or facts to support professional bad faith or gross misjudgment. Rather, as with the other students described, it is clear that the District referred the C.C. to Rowley due to her participation in a school fight.

Fifth Circuit precedent further illustrates that Plaintiffs' failure to allege—or provide factual support—for the element of professional bad faith or gross misjudgment is fatal to their ADA and Section 504 claims. In *Hurst-Euless-Bedford Independent School District*, the Fifth Circuit affirmed the lower court's dismissal of a plaintiff who claimed that a decision to transfer a student to an alternative school violated the IDEA and Section 504.[76] However, the Fifth Circuit found that the plaintiff did not allege any facts to indicate that the school district made the alternative school referral "for any reason other than" the student's multiple behavioral infractions.[77] In affirming the district court's dismissal of the plaintiff's claims under Section 504, the Fifth Circuit explained the requirement of "facts creating an inference of professional bad faith or gross misjudgment."[78] The Plaintiffs in this litigation also failed to plead facts that support any inference of professional bad faith or gross misjudgment.

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[73] *D.A.*, 629 F.3d at 454-455.
[74] Rec. Doc. 19 at pp. 27-28, ¶¶ 107-109.
[75] *Id.* at p. 30, ¶¶ 122-123.
[76] 641 F. App'x 423.
[77] *Id.* at 426.
[78] *Id.*

iii. Plaintiffs pled no departure from accepted standards.

Plaintiffs also do not, and cannot, allege any departure from accepted standards among educational professionals. This is because educational professionals have the discretion to refer students with disabilities to alternative schools if the referral is not a violation of Section 504 or the ADA. This discretion was explained in the July 2022 guidance issued by the U.S. Department of Education, Office for Civil Rights ("OCR"), entitled "Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973."[79] According to this guidance, when making a referral of a student with a disability to an alternative school, Section 504 requires an evaluation that is commonly referred to as an MDR.[80] The purpose of the MDR "is to decide whether the behavior for which discipline is proposed is based on the student's disability."[81] If the MDR evaluation does not lead to a conclusion that the examined behavior is based on the student's disability, then the school district may complete the disciplinary referral to an alternative school.[82] At this point, in order to comply with Section 504, the school district must simply discipline the student with a disability in the same manner as nondisabled students.[83] In this circumstance, if students without disabilities may be referred to an alternative school for a particular infraction, then students with disabilities may also receive the same consequence.

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[79] U.S. DEPARTMENT OF EDUCATION, 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), *available at https://www2.ed.gov/about/offices/list/ocr/docs/504-discipline-guidance.pdf.* The Office for Civil Rights enforces Section 504 and Title of the ADA nationally. About OCR, https://www2.ed.gov/about/offices/list/ocr/aboutocr.html (last visited Feb. 6, 2024). The Office for Civil Rights also issues guidance and proposed regulations for Section 504 and other civil rights statutes. Rulemaking and Regulations by the Office for Civil Rights, https://www2.ed.gov/policy/rights/reg/ocr/index.html (last visited Feb. 6, 2024).

[80] U.S. DEPARTMENT OF EDUCATION, 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), at p. 14. For the sake of the simplifying the analysis, the Board equites alternative school referrals to "significant changes in placement" due to discipline, which are more thoroughly discussed at pages 14-16 of the cited guidance.

[81] *Id.* at p. 14.

[82] *Id.* at p. 21.

[83] *Id.* at p. 26.

In their Complaint, Plaintiffs do not allege any failure to conduct an MDR for any involved student, do not challenge the sufficiency of any MDR held by the District, and do not allege that the involved students were disciplined differently than similarly situated students without disabilities. Instead, Plaintiffs attempt to argue that the involved students are entitled to the same programming that they would have accessed if they *did not* commit the behavioral infractions that led to their referrals to Rowley. However, Plaintiffs cite no legal support for this contention; and it is not contained in the OCR Section 504 discipline guidance.

In short, the Plaintiffs have failed to provide any facts to demonstrate a deviation from "accepted standards among educational professionals" concerning the discipline of students with disabilities.[84] This failure further illustrates Plaintiffs' failure to supply facts to support the element of professional bad faith or gross misjudgment. For this reason, and the others explained above, the Court should dismiss Plaintiffs' Counts I and II.

VI. The Court should Dismiss the Plaintiff's Retaliation Claim

Count III of the Plaintiffs' Complaint alleges retaliation under the ADA.[85] The Plaintiffs opted not to claim retaliation under Section 504. Plaintiffs claim that the District retaliated against A.A. for filing an expedited due process complaint under IDEA on March 29, 2023.[86] Plaintiffs further allege that a staff member retaliated by allegedly appearing in juvenile court and advocating for the permanent exclusion of A.A. from Chalmette High School.

To establish a *prima facie* case of retaliation under the ADA the Plaintiffs must show that "(1) she engaged in an activity protected by the ADA, (2) she suffered an adverse [. . .] action, and (3) there is a causal connection between the protected activity and the adverse action."[87] The Plaintiffs'

[84] *D.A.*, 629 F.3d at 455.
[85] Rec. Doc. 19, at p. 35, ¶ 145.
[86] *Id.* at p.
[87] *Lyons v. Katy Indep. Sch. Dist.*, 964 F.3d 298, 304 (5th Cir. 2020); *see also Round Rock Indep. Sch. Dist. v. Amy M.,* 540 F. Supp. 3d 679, 696 (W.D. Tex. 2021).

Complaint fails to properly plead the first prong, which is the requirement to engage in protected activity under the ADA. Plaintiffs alleged that they filed a due process complaint under IDEA concerning school discipline. However, Plaintiffs did not allege that they made any allegations protected by the ADA in their due process complaint.[88] Conversely, the Plaintiffs did plead that the March 7, 2023 claim concerning B.B. alleged violations of the ADA.[89] Yet the only alleged ADA retaliation claim concerns A.A.

The Board has found no binding authority that states that a due process complaint under IDEA is, *de facto*, protected activity under the ADA. Without an allegation that the Plaintiffs were seeking ADA accommodations through the alleged protected activity—or that their due process complaint opposed an act unlawful under the ADA—the Plaintiffs have not pleaded the first prong of ADA retaliation.[90] For this reason, the School Board urges that the Court dismiss Plaintiff's Count III.

VII. Plaintiffs' claims have prescribed

Since the limitation period for Plaintiffs federal and state law claims is one year, any allegations or claims that occurred more than one year before Plaintiffs filed the Complaint have prescribed by operation of law and should be dismissed.

a. Plaintiffs' IDEA claims have prescribed

In Louisiana, state law and IDEA implementing regulations give parents the right "to initiate a request for a special education due process hearing shall prescribe within one year of the date the parent or public agency knew or should have known about the alleged action that forms the basis of

[88] Rec. Doc. 19 at p. 23, ¶ 89.
[89] *Id.* at p. 29, ¶ 115.
[90] *Cf. Smith ex rel. C.R.S. v. Tangipahoa Par. Sch. Bd.*, No. CIVA 05-6648, 2006 WL 3395938, at *13 (E.D. La. Nov. 22, 2006) (Plaintiffs arguing that "attempts to secure educational accommodations" were protected activities).

the request."[91] Although the Complaint alleges Plaintiffs filed two due process hearing requests within the prescriptive period, it does not include any specific IDEA-related violations, acts, or inaction by School Board that occurred within one year before filing. Since the specific IDEA allegations in Plaintiffs' Complaint occurred beyond the one-year limit, they have prescribed and should be dismissed because a "hearing must be brought within one year of the event that serves as the basis for the complaint."[92] The Fifth Circuit has been consistent in holding that any IDEA-related "[c]laims accruing outside the one-year limit are barred."[93]

Any IDEA procedural claims or appeal rights rising from the due process hearings have also prescribed. The IDEA and State regulations give parties the right to appeal a due process hearing decision within "90 days from the date of the decision of the hearing officer or, if applicable, the decision of the State review official, to file a civil action".[94] Louisiana regulations follow the 90–day period provided in federal law and regulations.[95] The Complaint does not allege Plaintiffs filed this civil action within 90 days after the due process hearing decisions were rendered. Similar to the reviewing Court in *J.A. v. Texas Educ. Agency*, this Court should find that since Plaintiffs "did not do so, any potential claims under the IDEA are time-barred."[96]

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[91] La. Rev. Stat. § 17:1946(B)(1) (2024); *See also*, Bulletin 1706 §507(A)(2) (2024) ("Prescription. The due process hearing request shall allege a violation that occurred not more than one year before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the request for due process hearing")

[92] *Reyes v. Manor Indep. Sch. Dist.,* 850 F.3d 251, 253 (5th Cir. 2017).

[93] *Washington ex rel. J.W. v. Katy Indep. Sch. Dist.,* 447 F. Supp. 3d 583, 591 (S.D. Tex. 2020); *See also*, *T.B. b/n/f Bell v. Nw. Indep. Sch. Dist*., No. 4:18-CV-985-BJ, 2020 WL 13607872, at *11 (N.D. Tex. June 2, 2020) ("the Hearing Officer did not err in applying the one-year statute of limitations and dismissing Plaintiff's Request).

[94] *C.B. v. Argyle Indep. Sch. Dist*., No. 4:11CV619, 2012 WL 695834, at *3 (E.D. Tex. Feb. 7, 2012), *report and recommendation adopted*, No. 4:11CV619, 2012 WL 695833 (E.D. Tex. Mar. 1, 2012).

[95] *See*, 20 U.S.C. § 1415(i)(2)(B), 34 C.F.R. § 300.516(b), and La. Admin. Code tit. 28, pt. 43, § 516(B) (2024) ("90 days from the date of the decision of the hearing officer to file a civil action.")

[96] *J.A. v. Texas Educ. Agency*, No. 1:19-CV-921-RP, 2022 WL 1143326, at *5 (W.D. Tex. Apr. 15, 2022), *report and recommendation adopted sub nom. Alvarez v. Texas Educ. Agency*, No. 1:19-CV-921-RP, 2022 WL 2920423 (W.D. Tex. June 27, 2022), *aff'd*, No. 22-50656, 2023 WL 4418224 (5th Cir. July 10, 2023).

b. Plaintiffs' Section 504, ADA, 42 USC § 1983, and state law claims have prescribed

Courts in the Fifth Circuit have recognized that, "The claims arise under the Americans with Disabilities Act ("ADA"), Section 504 Rehabilitation Act ("Rehabilitation Act"), and 42 U.S.C. § 1983, which do not include designated prescription periods. . . and the 'general rule' is that we borrow the most analogous period from state law."[97] "This Court has previously concluded that claims arising from the ADA and Rehabilitation Act have the one-year prescription period as dictated by state tort law."[98] The prescriptive period for Plaintiff's state law claims is also one year.[99] A review of the Complaint confirms Plaintiffs filed two due process hearing requests within the prescriptive period, but it does not include any specific dates of ADA, Rehabilitation Act, or 1983-related alleged violations, acts, or inaction by the School Board that occurred within one year before the Complaint was filed. Since the specific ADA, Rehabilitation Act, or 1983-related allegations contained in Plaintiffs' Complaint are either not dated or occurred beyond the one-year limit, they have prescribed and should be dismissed because "Plaintiff's claims that arose outside of the one-year limitation—or before [June 6, 2022]—are time barred."[100]

VIII. Plaintiffs' procedural due process deprivation claims lack merit

A state law that prescribes certain procedures does not mean those procedures acquire a federal constitutional dimension.[101] The fact that there is procedural language in La. R.S. § 17:416 does not necessarily mean that the state law on school discipline procedures inherit a justiciable federal constitutional component. The Due Process Clause of the Fourteenth Amendment provides: "Nor

[97] *Boyle v. Greenstein*, No. CIV.A. 11-3192, 2012 WL 1932947, at 2-3 (E.D. La. May 29, 2012) (citing, *Frame v. City of Arlington,* 657 F.3d 215, 236 (5th Cir. 2011)).
[98] *Boyle.*, at 3; See also, *Minnis v. Bd. of Sup'rs of Louisiana State Univ. & Agric. & Mech. Coll.*, 55 F. Supp. 3d 864, 874 (M.D. La. 2014).
[99] La. Civ. Code art. 3492 (2024).
[100] *Frankola v. Louisiana State Univ. Sch. of Med.*, No. CV 15-5933, 2017 WL 372520, at *3 (E.D. La. Jan. 26, 2017).
[101] *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993)

shall any State deprive any person of life, liberty, or property without due process of law." It is well-settled that state law creates an entitlement to public education.[102] Congruently, the Fifth Circuit has also recognized that Louisiana law provides, generally, that when a child is suspended or expelled, the student is not automatically deprived of all educational benefits; the Court stated, "Rather, a student generally remains under the supervision of the governing authority of the city, parish, or local public school system taking such action using alternative education programs."[103] The Fifth Circuit determined, "This rule is consistent with *Goss's* directive that, where state law creates an entitlement to public education, it is a student's *total exclusion from the educational process* for more than a trivial period that constitutes a deprivation of protected property and liberty interests subject to due process constraints."[104]

a. Plaintiffs' claims lack a constitutionally protected property interest—alternative school transfers

In this case, Plaintiffs alleged violations of due process under the Fourteenth Amendment and Louisiana Constitution, Article 1 § 3. Plaintiffs in this case lack federal standing to challenge the law or School Board's actions because the student plaintiffs were not expelled but transferred to an alternative school, and neither the student plaintiffs nor any other student attending the St. Bernard Parish School System's alternative school were denied disciplinary due process. The Fifth Circuit has consistently held, "A student's transfer to an alternative education program does not deny access to public education and therefore does not violate a Fourteenth Amendment Interest."[105]

The Fifth Circuit considered similar facts and legal arguments made in Plaintiffs' Complaint after a principal transferred a student to an alternative education program for violating school rules.[106]

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[102] *Goss v. Lopez,* 419 U.S. 565, 576, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975).
[103] *Id.*
[104] *Swindle v. Livingston Parish Sch. Bd.*, 08-31249 655 F.3d 386, 394 (5th 2011) (citing *Goss v. Lopez,* 419 U.S. 565, 576, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975)).
[105] *Decossas v. St. Tammany Parish Sch. Bd.*, No. 16-3786 2017 WL 3971248 (E.D. La. Sept. 8, 2017) (citing *Harris ex rel. Harris v. Pontotoc Cnty. Sch. Dist.,* 635 F.3d 685, 690 (5th Cir. 2011)).
[106] *Nevares v. San Marcos Consol. Indep. Sch. Dist.,* 111 F.3d 25, 27 (5th Cir. 1997).

In *Nevares* the Fifth Circuit confirmed it has long held that "no protected property interest is implicated in a school's denial to offer a student a particular curriculum" or "participation in interscholastic athletics."[107] The *Nevares* Court also ruled, "A transfer to a different school for disciplinary reasons has also been held not to support the court's jurisdiction on constitutional grounds."[108] The *Nevares* Court recognized the following during the school transfer process:

> [T]he student and parents must be treated fairly and given the opportunity to explain why anticipated assignments may not be warranted. But that is for Texas and the local schools to do. We would not aid matters by relegating the dispute to federal litigation. And because the United States Constitution has not been offended in the present dispute, we retire from it.[109]

The Fifth Circuit again affirmed its position in another alternative school transfer case when it stated, "Consistent with this admonition, we have previously held that a student's transfer to an alternative school for disciplinary reasons implicates no constitutionally-protected property interest."[110] There are no constitutional causes of action resulting from School Board's transfer of the student plaintiffs, or any other student, to an alternative school for disciplinary violations.

b. Plaintiffs' claims lack a constitutionally protected property interest—not excluded from education programs

However, even if it is assumed these students were expelled, which is at all times disputed, School Board did not deprive parents or students of their substantive due process rights. In *Swindle,* after a confirming a student was expelled, the Fifth Circuit established "it is a student's *total exclusion from the educational process* for more than a trivial period that constitutes a deprivation of protected property and liberty interests subject to due process constraints."[111] In this case, the pleadings confirm School Board transferred the student plaintiffs to its alternative school and provided education and

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[107] *Nevares.,* 111 F.3d at 27 (5th Cir. 1997*)* (citing *Arundar v. DeKalb Cty. School Dist.,* 620 F.2d 493 (5th Cir.1980) *and Walsh v. Louisiana High Sch. Athletic Ass'n,* 616 F.2d 152 (5th Cir. 1980))
[108] *Id.* (citing *Seamons v. Snow,* 84 F.3d 1226, 1234–1235 (10th Cir.1996)).
[109] *Id.*
[110] *Langley v. Monroe Cnty Sch. Dist.*, 264 F.App'x 366 (5th Cir. 1/31/08.)
[111] *Swindle v. Livingston Parish Sch. Bd.*, 08-31249 655 F.3d 386, 394 (5th Cir. 2011) (citing *Goss v. Lopez*, 419 U.S. 565, 576, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975)).

related services at that site. But unlike *Swindle,* there was never a *total exclusion*, or any exclusion for that matter, from the educational process, and it is total exclusion for a substantial period that is required to create a deprivation of a constitutionally protected privilege. Applying well-established Fifth Circuit precedent, Plaintiffs' disciplinary due process violation claims lack merit.

IX. No federal question in Plaintiffs' state discipline law allegations

Based on the facts that the School Board transferred the student plaintiffs to an alternative school and did not exclude them from the education process, the Court should dismiss Plaintiffs' claim that School Board violated state law, because it lacks federal subject matter jurisdiction.

Since Plaintiffs did not assert that School Board's suspension policy or La. R.S. § 17:416, the statutory basis for that policy, is unconstitutional, that claim is foreclosed. This is because the constitutionality of the statute has been upheld by the federal court, as described above in the *Swindle* case. Further, Plaintiffs have not established an issue of material fact which would preclude a judgement on the pleadings in favor of School Board based on any unconstitutional administrative procedure or policy claims.[112]

The federal question statute provides district courts with "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."[113] The courts ordinarily apply the well-pleaded complaint rule to determine whether a case is one "arising under" federal law.[114] Since School Board's administrative suspension procedures and related authorizing statute are presumed constitutional, Plaintiffs have failed to plead any allegations that would attach federal subject matter jurisdiction. The federal district court "has the power to dismiss for lack of subject matter jurisdiction on any one of three separate bases: (1) the complaint alone; (2) the complaint

[112] *Trahan v. Baudoin*, 252 So. 2d 740, 743 (La. Ct. App. 1971) ("if the statute is viewed as an administrative procedure, as it was by the trial judge, then it is clearly constitutional and does not violate the due process or equal protection provisions of either the State or Federal Constitutions.").
[113] 28 U.S.C. § 1331 (2023).
[114] *PCI Transp., Inc. v. Forth Worth & W. R.R. Co.*, 418 F.3d 535, 543 (5th Cir. 2005).

supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts."[115] Plaintiffs are asserting federal jurisdiction in this case and have the burden of proving by a preponderance of the evidence that subject matter jurisdiction exists.[116] A review of the pleadings confirms it does not.

There are no federally protected rights and issues raised because the plaintiff students were not totally excluded from education. Absent allegations of total exclusion, Plaintiffs' allegations that School Board violated a state discipline law fail to state a claim arising under federal law. La. R.S. § 17:416 is presumptively constitutional state law that includes expulsion procedures. A plain reading of the state law confirms it states who must recommend expulsion, verifies the school board's authority to modify or deny an expulsion recommendation, and substantiates who is responsible to offer education to expelled students. However, the statute does not provide for "civil actions arising under the Constitution, laws, or treaties of the United States."[117]

Plaintiffs also imply a constitutional violation from by School Board's alleged failure to hold hearings for suspensions and alternate education transfers approved by the superintendent. However, this implication in the pleading fails for two reasons. First, the principal recommended and, ultimately more importantly, the only discipline the student plaintiffs received were suspensions or transfer to the alternative school. La. R.S. § 17:416 contains the grounds and procedures for both suspending and expelling a student. "Under state law, in cases where the student is merely suspended and not expelled, review of the disciplinary decision is limited to review by the Superintendent."[118]

Additionally, the parent plaintiffs have also failed to state a claim for which relief can be granted outside of what is provided by state law. The state expulsion law procedures provide relief to

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[115] *Williamson v. Tucker*, 645 F.2d 404, 413 (5th Cir.1981).
[116] *Howery v. Allstate Ins. Co.*, 243 F.3d 912, 919 (5th Cir. 2001) and *Paterson v. Weinberger*, 644 F.2d 521, 523 (5th Cir. 1981).
[117] 28 U.S.C. § 1331 (2023).
[118] *Anthony v. Sch. Bd. of Iberia Parish*, 692 F. Supp. 2d 612, 626 (W.D. La. 2010).

parents who want to dispute the facts and justification for expulsion. The law includes administrative procedures that give parents the right to request a hearing before School Board, and the right to judicial review by a state district court judge to contest a recommended or actual expulsion decision. Plaintiffs have not alleged that they requested a School Board review to contest the alleged expulsion decisions. The parent plaintiffs have not been deprived of any constitutionally protected rights, and state law provides and limits their remedies for any alleged factual or procedural error claims.

X. Administrative due process hearings have limited jurisdiction

In Louisiana, an Administrative Law Judge (ALJ) presiding over IDEA hearings has limited jurisdiction under federal law, state statues, and Louisiana implementing regulations. The IDEA specifically permits ALJs to hear a "complaint to request a due process hearing on any matter relating to the identification, evaluation, or educational placement of a child with a disability or the provision of FAPE to the child."[119] In Louisiana, state regulations codified the ALJ's jurisdiction and limited it to "any of the matters described in §504.A.1 and 2 (relating to the identification, evaluation, or educational placement of a student with a disability, or the provision of FAPE to the student)."[120] Deciding whether School Board did or did not violate state expulsion law procedures outlined in La. R.S. § 17:416 , and if so, determining what relief should be granted is beyond the very specific scope and limited jurisdiction afforded to ALJs in IDEA due process hearings.

XI. Plaintiffs Louisiana Human Rights Act claims should be dismissed

a. Plaintiffs did not request a reasonable accommodation

Under state law, the Louisiana Human Rights Act (LHRA) makes it "a discriminatory practice for a person to deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation."[121] The federal

[119] 34 C.F.R. § 300.507(a) (2023).
[120] La. Admin. Code tit. 28, pt. 43, § 507(A)(1) (2023).
[121] 34 C.F.R. § 300.507(a) (2023).

courts acknowledge that no Louisiana court has specifically "interpreted the LHRA's definition of 'discriminatory practice' in the context of disability discrimination"[122] or more importantly specifically whether it extends or should be applied to the education disciplinary rights of public school students.

In this case, Plaintiffs' pleadings infer that School Board's decision to transfer the plaintiff students to the alternative school prevented their "full and equal enjoyment" of their education rights and violated the LHRA.[123] Assuming *in arguendo* that student plaintiffs are qualified individuals with a disability and the schools under School Board's jurisdiction are places of public accommodation, the LHRA claims fail on their face because the plaintiffs did not and did not allege that they requested a reasonable accommodation from School Board for their disabilities. Significantly, a common factual and jurisprudential element for an actionable LHRA claim is an allegation or undisputed fact that a qualified individual with disability made an accommodation request. In *Greer*, the Fifth Circuit found the lack of an accommodation request to be a legally significant factual claim, because "[t]aken together, there is a balance to be struck between a disabled individual's need to request accommodations when limitations are not obvious or apparent and a public entity's duty to provide accommodations without further notice or a request."[124] Given the numerous, specific, and extensive procedural safeguards and due process rights available to students with disabilities under federal and state law, Plaintiffs failure to request an accommodation is fatal to advancing their state law claims under the LHRA.

b. Plaintiffs failed to exhaust administrative remedies under the Louisiana Human Rights Act

When the Louisiana legislature enacted the LHRA, it also created a commission that is currently active and statutorily empowered to "perform certain functions to eradicate widespread

[122] *Smith v. Bd. of Commissioners of La. Stadium and Exposition Dist.,* 385 F. Supp. 3d 491, 506 (E.D. La. 2019).
[123] La. Rev. Stat. § 51:2247 (2023).
[124] *Greer vs. Richardson Indep. Sch. Dist.,* 472 F.App'x 287, 296 (5th Cir. 2012).

discrimination" and the courts confirmed the law established "new substantive rights, a new enforcement scheme, and new remedies."[125] Federal courts examining public accommodation discrimination claims have dismissed them when a plaintiff does not "notify a state agency before filing suit when the state had an established state agency."[126] Since this state law created a currently active commission and granted it discrimination investigation and enforcement authority, before asserting rights under this enforcement scheme, Plaintiffs were required to "file [their] complaint with the Louisiana Commission on Human Rights which was created by statute in 1988 prior to seeking relief from this Court."[127] Plaintiffs did not and cannot advance their state LHRA claims.

XII. Plaintiffs state expulsion law claims are premature

School Board asserts the student plaintiffs were transferred to an alternative educational placement. However, even assuming the transfers meet the state law definition for expulsion, the plaintiff parents' state expulsion law claims are premature because they failed to exhaust the administrative remedies available to contest long-term suspension and expulsion recommendations under the state's educational due process system.

Louisiana expulsion law affords administrative procedures and remedies to parents who want to dispute the recommendation, facts, and justification for long-term suspension or expulsion. The administrative procedures available in the state expulsion law specifically grants parents the right to "within five days after the decision is rendered, submit a request to the city, parish, or other local public school board to review the findings of the superintendent or his designee" and also affords administrative remedies including School Board's authority to "affirm, modify, or reverse the action previously taken. The parent or legal guardian of the student shall have such right of review even if

[125] *E.E.O.C. v. Dillard Dept. Stores, Inc.,* No. 92–3552, 1994 WL 396307 (E.D. La. July 27, 1994) (citing *Deloach v. Delchamps, Inc.,* 897 F.2d 815, 825 (5th Cir. 1990)).
[126] *Dunaway v. Cowboys of Lake Charles Inc.,* No. 2:07 CV 1138, (W.D. La. May 28, 2010).
[127] *Dillard Dep't Stores, Inc.*, 1994 WL 396307, at *2.

the recommendation for expulsion is reduced to a suspension."[128] Only after exhausting that administrative remedy are parents then entitled to file an action in district court.[129] Since Plaintiffs did not and have not alleged that they asked School Board to review the transfer decisions or any alleged expulsion, their expulsion-related claims are premature because they did not exhaust the remedies available under the state's expulsion due process system and "the plaintiffs must exhaust their administrative appeal before invoking the powers of the federal court."[130]

XIII. Plaintiffs' declaratory relief claims should be dismissed

Although Plaintiffs are requesting declaratory relief for alleged violations of state disciplinary law, "A plaintiff cannot evade the well-pleaded complaint rule by using the declaratory judgment remedy to recast what are in essence merely anticipated or potential federal defenses as affirmative claims for relief under federal law."[131] In this case, the well-pleaded complaint rule asks whether "the declaratory judgment defendant brought a coercive action to enforce its rights, that suit would necessarily present a federal question."[132] To apply this analysis to the Plaintiff's declaratory judgement request, the answer is no. As such, their request must be dismissed.

CONCLUSION

The School Board's actions were lawful and in line with the afforded discretion of educational professionals to enforce student discipline standards in their schools. As detailed in this memorandum, 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).

Respectfully Submitted,

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[128] La. Rev. Stat. § 17:416(C)(4) (2023).
[129] *A.V. v. Plano Indep. Sch. Dist.*, 585 F. Supp. 3d 881, 88 (2022) ("Plaintiffs timely and properly appealed the School's disciplinary decision using the District's appeals process. The District upheld the decision. After exhausting their administrative remedies, Plaintiffs sued the District.")
[130] *Griffin v. DeFelice,* 325 F. Supp. 143, 146 (1971).
[131] *New Orleans & Gulf Coast Ry. Co. v. Barrois*, 533 F.3d 321, 329 (5th Cir. 2008).
[132] *TTEA v. Ysleta del Sur Pueblo*, 181 F.3d 676, 681 (5th Cir.1999).

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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 16th day of February 2024.

/s/ Timothy J. Riveria
TIMOTHY J. RIVERIA