

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

J.P., by his foster mother and next friend,  
ALISHA OGDEN,

Plaintiffs,

v.

BELTON SCHOOL DISTRICT 124,  
MISSOURI STATE BOARD OF  
EDUCATION, DEPARTMENT OF  
ELEMENTARY AND SECONDARY  
EDUCATION, and OFFICE OF SPECIAL  
EDUCATION,

Defendants.

Case No. 4:20-CV-00189

**DEFENDANT BELTON SCHOOL DISTRICT #124'S  
MOTION FOR JUDGMENT ON THE PLEADINGS  
ON COUNT III OF PLAINTIFF'S AMENDED COMPLAINT**

**COMES NOW** Defendant Belton School District #124 (“District” or “Belton”), by and through the undersigned counsel, pursuant to Federal Rules of Civil Procedure 12(c), and for its Motion for Judgment on the Pleadings, states as follows:

1. On March 13, 2020, Plaintiff J.P., by his foster mother and next friend, Alisha Ogden, (“Plaintiff”) filed a two-count complaint alleging violations of the Individuals with Disabilities Education Act, 20 U.S.C. § 1412(a)(1) and the Americans with Disabilities Act of 2008 (“ADA”). [Doc. 1].

2. On July 27, 2020, Plaintiffs filed an Amended Complaint adding Count III which alleged the District retaliated against Plaintiff in violation of the Americans with Disabilities Act of 2008 (“ADA”) and Section 504 of the Rehabilitation Act of 1973 (“Section 504” or “504”). [Doc. 38].

3. Before a party may file a civil action for a violation of the Constitution, Section 504 or the ADA, and seek relief that is also available under the IDEA, the party must first exhaust their administrative remedies under the IDEA. 20 U.S.C. § 1415(l); *Bailey v. Avilla*, 721 F.3d 588, 592-593 (8<sup>th</sup> Cir. 2013); *Lamkin v. Lone Jack C-6 School District*, No. 11-CV-1072-DW-W, 2012 WL 8969061, at \*3 (W.D. Mo. March 1, 2012).

4. Plaintiff did not raise retaliation in the due process hearing from which this matter originates and could not have given that the alleged retaliatory actions continued after the date of the hearing. Accordingly, judgment on the pleadings must be granted in the District's favor on Count III in Plaintiff's Amended Complaint because Plaintiff was required as a matter of law to exhaust his administrative remedies under the IDEA.

5. The District's arguments in support of this Motion are set forth more fully in the Suggestions in Support of Defendant's Motion for Judgment on the Pleadings filed contemporaneously herewith.

**WHEREFORE**, for the foregoing reasons described herein and set out in Defendant Belton School District #124's Memorandum of Law in Support of its Motion for Judgment on the Pleadings on Count III of Plaintiff's Amended Complaint, filed simultaneously herein and incorporated herein by reference, Defendant respectfully requests that this Court grant its Motion for Judgment on the Pleadings on Count III of Plaintiff's Amended Complaint and enter Judgment in its favor, and grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

**MICKES O'TOOLE, LLC**

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 5<sup>th</sup> day of January, 2021, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

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