UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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NT, *etc.*, *et alia*,

Plaintiffs,

- against -

New York State Education Department *et alia*,

Defendants.

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CV-02-5118 (CPS)

MEMORANDUM AND ORDER

SIFTON, Senior Judge.

Plaintiffs bring this action on behalf of their children, all of whom are disabled, against defendants the New York City Board of Education ("the Board"), the New York State Department of Education ("DOE"), and Joel Klein, as Chancellor of the New York City School District ("the Chancellor") (collectively, "defendants") alleging violations of 42 U.S.C. § 1983; the Fourteenth Amendment to the Constitution; the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 *et seq.* ("IDEA"), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 ("Section 504"); and the Americans with Disabilities Act, 42 U.S.C. §§ 12132 *et seq.* ("ADA"). Plaintiffs seek declaratory and injunctive relief based on their allegedly illegal exclusion from public schools in New York City and the denial of the educational services to which they claim to be entitled.

Defendants now move, pursuant to Rules 12(b)(1) of the Federal Rules of Civil Procedure, to dismiss certain plaintiffs' claims under the IDEA due to their failure to exhaust administrative remedies, as required by 20 U.S.C. § 1415 of the IDEA and to dismiss the claims of other plaintiffs who have exhausted their administrative remedies on grounds of mootness.

For the reasons set forth below, defendants' motion to dismiss is denied.

BACKGROUND

As both sides recognize, the IDEA requires states to offer parents of disabled students a variety of rights and procedural safeguards to ensure the free appropriate public education of their children. These rights include the right to examine all records relating to the child; the right to participate in meetings with respect to the identification, evaluation, and educational placement of the child; the right to written notice prior to any changes in the child's identification, evaluation, or educational placement; an opportunity to present complaints with respect to such matters; and, where a complaint is made, the right to an impartial due process hearing by the state educational agency or by the local educational agency. *See* 20 U.S.C. §§ 1415(b)(1), (b)(3), (b)(6), (f)(1), and (h), and 1515(a); *Polera v. The Board of Education of the Newburgh Enlarged City School District*, 288 F.3d 478, 482 (2d Cir. 2002).

Under New York State regulations, either a parent or a school district may initiate a hearing on matters relating to the identification, evaluation, or educational placement of a student with a disability or the provision of a free appropriate public education to the child. *See* 8 N.Y.C.R.R. § 200.50(I)(1); *Polera*, 288 F.3d at 482. A parent may request an expedited hearing when suspension and/or educational placement during suspension are at issue. *See* 8 N.Y.C.R.R. § 201.11. A review of the decision of the hearing officer may be obtained by either the parent or the board of education by an appeal to a state review officer in the State Education Department. *See* 8 N.Y.C.R.R. § 200.5(J)(2); *Polera*, 288 F.3d at 482.

The IDEA also provides for a federal cause of action to enforce any of the rights furnished under the act. However, the act imposes in most cases a requirement that a plaintiff first exhaust administrative remedies before bringing a federal action seeking any relief that could be granted under the IDEA, regardless of the statute under which the claim is asserted. *See* 20 U.S.C. 1415(1) ("Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) of this section shall be

exhausted to the same extent as would be required had the action been brought under this subchapter.") (statutory citations omitted); *Buffolino v. Board of Educ. of Sachem Cent. School Dist. at Holbrook*, 729 F. Supp. 240, 244-45 (E.D.N.Y. 1990).

In most circumstances, a plaintiff's failure to exhaust administrative remedies under the IDEA deprives federal courts of subject matter jurisdiction. *See Murphy v. Arlington Cent. Sch. Bd. of Educ.*, 297 F.3d 195, 199 (2d Cir. 2002); *Polera*, 288 F.3d at 483; *Hope v. Cortines*, 69 F.3d 687, 688 (2d Cir. 1995).

Plaintiff NT

At the time of filing this action, plaintiff NT was an 18-year-old woman. She has been diagnosed with bipolar disorder and has experienced behavioral and academic difficulties for years. In October of 2001, after being discharged from Lower Manhattan Outreach school and having missed at least four months of school, NT was enrolled at Borough Academy. She did not receive any special education services while at Borough Academy.

In January 2002, NT was hospitalized due to her bipolar disorder. Upon her discharge, her grandmother attempted to re-enroll her at Borough Academy. NT's grandmother was informed that NT would not be permitted to re-enroll and that she would be forced to wait until the following fall to re-register. The school did not inform NT or her guardian of her rights regarding appropriate educational placements, and NT's mother was encouraged to sign NT out of the school. No services were offered to NT, and she missed the entire spring semester.

In September of 2002, NT and her mother were told by Borough Academy that due to her behavior she would not be allowed to return to the school because Borough Academy did not have the resources to address her needs. At no time during or prior to the 2001-2002 school year did any of the defendants or their employees or agents refer NT for an evaluation under the IDEA or Section 504 or provide her with other services or protections prescribed by law.

On September 11, 2002, NT's attorneys wrote a letter to the Chancellor's attorney informing him of the situation and requesting immediate placement. After the filing of this action, NT was evaluated by the Committee on Special Education and reinstated to a fifth school. NT began having difficulties in that school due to her medication and was readmitted into the hospital in November 2002.

On January 9, 2003, NT's attorneys informed defendants' counsel that NT had requested home instruction upon leaving the hospital on November 11, 2002, but had not yet received those services. According to plaintiffs, NT did not get home instruction until several weeks later.

Plaintiff EB

In the Spring of 2001, EB was classified as emotionally disturbed. In September 2002, he was suspended from school. EB's mother was never provided notice of, nor was she informed of her rights regarding, EB's suspension. EB did not receive instructional services while he was suspended. When EB returned

to school, he was placed in a self-contained class without appropriate instruction or services.

Plaintiff LB1

Plaintiff LB1 has an Individualized Education Program ("IEP")[1/] that classifies him as learning disabled and which recommends that he receive general education with support services. In September 2002, LB1 was discharged from high school and has been out of school since that time. Upon his discharge, school officials told LB1 that he could no longer attend his high school because he was too old and did not have enough credits. LB1's mother was never informed of his rights regarding his discharge from school. LB1 has missed eight months of school services this year.

In April 2003, LB1's attorneys filed a request for an impartial hearing under the IDEA and Section 504 on behalf of LB1 and his parent. A decision was rendered by an impartial hearing officer ("IHO") on July 17, 2003, finding no legal basis to issue an order directing the District to provide compensatory education.

[1/] The Second Circuit has described the Individualized Education Program, which is provided for in the IDEA and the relevant regulations, as follows:

> This Program contemplates a meeting between parents and school personnel for the purpose of jointly deciding what a handicapped child's needs are, what services will be provided to meet those needs, and what the anticipated outcome will be, together with a written record of the decisions made at the meeting.

J.G. by Mrs. G. v. Board of Educ. of Rochester City School Dist., 830 F.2d 444, 445 (2d Cir. 1987) (citing 20 U.S.C. § 1401(19); 34 C.F.R. Pt. 300, App. C § 60).

Plaintiff HG

Plaintiff HG is classified as learning disabled. In the spring of 2002, HG was told that he would have to transfer from John Jay High School to another school. HG's parents were never informed of his rights regarding the transfer. In the fall of 2002, HG's mother attempted to enroll HG in the Accorn School. Upon his arrival at Accorn, HG was told that he would not be permitted to enroll. As a result, HG was out of school for over eight months.

In March 2003, HG's attorneys filed a request for an impartial hearing on behalf of HG and his mother. Defendants claim that the IHO issued a decision in HG's favor.[2/] Defendants contend that the IHO's decision was initially complied with in substance but that the portion of the decision regarding home instruction presented special difficulties. On or about July 18, 2003, home instruction was arranged to provide HG with three hours per day of instruction during the 2003 summer

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[2/] According to defendants, the IHO ordered as follows: (1) HG was to receive a psychological evaluation at the Department's expense; (2) he was to receive tutoring on a one-to-one basis at the Huntington Learning Center, with all tuition and expenses prepaid by the Department; (3) if evidence was to emerge that HG was failing to utilize the Huntington Learning Center's services in terms of attendance or timeliness, after making due allowances, the Department could request a new hearing seeking permission to withdraw the Huntington services and replace them with services supplied by Department employees; (4) if HG was to require more time in school after his twenty-first birthday to complete the requirements for his diploma, the Department was to allow him to continue in school; (5) the Department was to provide HG with home instruction for the remainder of the school year and the summer of 2003, if his parent did not choose to enroll him in summer high school classes; and (6) during the period HG was enrolled in a high school curriculum, he was to be given the services of a certified special education teacher for one period per day, who was to assist him in beginning and completing assignments and in completing his courses. The teacher was also to remain in contact with the Huntington Learning Center and HG's teachers to monitor his needs and progress.

Plaintiffs claim that at the time that this action was filed, HG was not receiving any of the services that had been ordered and that, when he did receive instruction, it came five months after his hearing was held.

Plaintiff KSG

Plaintiff KSG is learning disabled and has Attention Deficit Hyperactivity Disorder ("ADHD") and a Traumatic Brain Injury ("TBI"). In the year preceding the filing of the complaint, KSG was repeatedly suspended, transferred, and warehoused in inappropriate suspension centers without services. KSG's parents were not notified by the Department of KSG's rights regarding transfers and suspensions. KSG has missed more than 50 days of appropriate instruction. At the time the complaint was filed, KSG continued to be in an alternative center that was not providing appropriate educational services.

KSG's attorneys filed a request for an impartial hearing on behalf of KSG and his mother and were awaiting a decision when the original complaint was filed. KSG eventually received a hearing in July 2003. The IHO ordered that (1) the manifestation determination review ("MDR") dated May 9, 2003, was invalid and was to be expunged; (2) the Department was to fund KSG's attendance at the Stevenson summer program; and (3) KSG was to receive three hours of daily home instruction.

Plaintiff AJ

Plaintiff AJ is autistic. From September to November 2002, AJ sat in a room at PS 178 with only a paraprofessional because the school and superintendent of District 23 refused to implement his IEP. AJ was excluded from all of his classes, and his guardians were never informed of his rights regarding the exclusion.

In September 2002, AJ's attorneys filed a request for an impartial hearing on behalf of AJ and his guardian. Although the IHO ordered that AJ be restored to his class with his IEP services, neither the District nor the school complied with that order. In October 2002, the IHO issued a second order directing AJ to be placed in his class, and defendants eventually reinstated AJ, although not before he had missed more than two months of instruction.

AJ's request for an impartial hearing was resolved pursuant to a settlement between the parties. According to the IHO's Statement of Agreement and Order dated December 3, 2002, at a hearing held on November 18, 2002, the parties had advised the IHO that they had met for a Committee on Special Education ("CSE") review on November 15, 2002, and had resolved their dispute. At the hearing, the parties requested that the IHO issue a written Statement of Agreement and Order memorializing

their agreement and directing the parties to comply with the agreement.[3/]

Defendants contend that, based on the results of the settlement, AJ's claims have been resolved and rendered moot.

Plaintiff SM

Plaintiff SM has ADHD. Although he took medication for his learning disability, he was decertified from special education in 1999 and was offered no services after that time. SM has been subject to numerous suspensions and behavioral referrals throughout his school career, and his father was never provided with adequate notice of his rights.

In November 2001, SM was allegedly assaulted on two different occasions at school. SM's father requested a safety transfer, but SM had to miss school for several months before a new school was provided.

In January 2001, SM's attorneys filed a request for an impartial hearing on behalf of SM and his father. As a result, SM is currently attending a residential school.

SM's request for an impartial hearing was resolved pursuant to a settlement agreed upon by the parties. The IHO issued an Order of Dismissal on June 17, 2002, which indicated

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[3/] The IHO ordered (1) that the Department implement AJ's November 15, 2002 IEP by placing him in a specifically identified general education fifth grade class at PS 178 and by providing him with the following services: special education teacher support services for ten periods per week; a full-time management paraprofessional; counseling for one individual session per week; and speech/language therapy for one individual session and two group sessions per week; (2) that the parties meet for a CSE review on or about March 31, 2003; and (3) that the New York City Department of Education direct either the PS 178K or P.77K at PS 178 school-based support team to perform two classroom observations of AJ in the month preceding the CSE review.

that on April 17, 2002, SM's father withdrew the hearing request after reaching an agreement with the Board concerning placement and services. Accordingly, the matter was dismissed without prejudice.

Defendants contend that SM's claims have been resolved and rendered moot as a result of the administrative process.

Plaintiff IP

Plaintiff IP received special education teacher support services ("SETTS") for his learning disabilities. In March of 2003, after being accused of a suspendable offense, IP was referred to two alternative placements, neither of which provided any instruction. As of April 2003, IP had not received a decision or disposition regarding his suspension. At some point, either IP or his mother was verbally informed that IP had been transferred to another school.

In April 2003, IP's attorneys contacted defendants' counsel concerning the child. IP was denied educational services until the second amended complaint was filed on May 2, 2003, and missed months of school.

Plaintiff JW

Plaintiff JW has ADHD and has a Section 504 plan to receive medication in school. In February 2002, JW was removed from his regular class due to behavioral problems and was placed in a dean's intervention room at his school for approximately one month. JW received no direct instruction at the dean's intervention room and was segregated from his peers. During this

time, JW's parents never received notice of the suspension or removal or of a hearing, conference, or manifestation determination review.

After JW's attorneys contacted his principal, JW was taken out of suspension but was not permitted to return to his regular class; instead, he was sent to a class of lower functioning students.

In March 2002, JW's attorneys filed a request for an impartial hearing. JW missed a month of school before the hearing was held. On May 3, 2002, a decision was issued in favor of the parent, and the District was ordered to transfer JW to another school with an appropriate class.[4/] However, despite the order, defendants did not transfer JW until September 2002, and JW suffered from three months of inappropriate instruction as a result.

Defendants contend that, due to the administrative resolution of JW's claims, the claims have been rendered moot.

Plaintiff DR

Plaintiff DR is disabled. DR spent much of the 2002-2003 school year out of his class, in the in-house suspension room and time-out rooms. DR's mother never received any notice or information about DR's rights regarding these exclusions.

4/ The IHO ordered that the District take all necessary steps to immediately transfer JW to another school at the appropriate grade level, inquiring about the availability of seats in two schools identified by the parents as possible sites for placement before considering other sites, and that a paraprofessional should continue to be assigned to JW wherever he was placed through the end of the 2001-2002 school year.

In March 2003, DR's school called a hospital, and DR was admitted for psychiatric observation. In April 2003, he was discharged from the hospital and eventually enrolled in a day treatment program. DR was excluded from school from early April 2003 until after the second amended complaint was filed.

DISCUSSION

Subject Matter Jurisdiction

In considering a motion to dismiss under Rule 12(b)(1) of the Federal Rules of Civil Procedure, a court must accept as true the factual allegations stated in plaintiffs' complaint, *see Zinermon v. Burch*, 494 U.S. 113, 118 (1990), and must draw all reasonable inferences in plaintiffs' favor. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hertz Corp. v. City of New York*, 1 F.3d 121, 125 (2d Cir. 1993). "However, argumentative inferences favorable to the party asserting jurisdiction should not be drawn." *Atlantic Mut. Ins. Co. v. Balfour MacLaine Int'l Ltd.*, 968 F.2d 196, 198 (2d Cir. 1992). In addition to examining the complaint, a "court may resolve disputed jurisdictional fact issues by reference to evidence outside the pleadings, such as affidavits." *Antares Aircraft, L.P. v. Fed. Republic of Nigeria*, 948 F.2d 90, 96 (2d Cir. 1991), *vacated for reconsideration on other grounds*, 505 U.S. 1215 (1992), *reaff'd on remand*, 999 F.2d 33 (2d Cir. 1993).

The Second Circuit has explained the rationale for the IDEA's exhaustion requirement as follows:

> Exhaustion of the administrative process allows for the exercise of discretion and educational expertise by state and local agencies, affords full exploration of technical educational issues, furthers development of a complete factual record, and promotes judicial efficiency by giving these agencies the first opportunity to correct shortcomings in their educational programs for disabled children."

Polera, 288 F.3d at 487 (quoting *Hoeft v. Tucson Unified Sch. Dist.*, 967 F.2d 1298, 1303 (9th Cir. 1992)). However, the Second Circuit has also recognized certain exceptions to the exhaustion requirement. Exhaustion is not required where (1) it would be futile to resort to the IDEA's due process procedures; (2) an agency has adopted a policy or pursued a practice of general applicability that is contrary to the law; or (3) it is improbable that adequate relief can be obtained by pursuing administrative remedies. *Murphy*, 297 F.3d at 199 (quoting *Mrs. W. v. Tirozzi*, 832 F.2d 748, 756 (2d Cir. 1987) (in turn quoting H.R. Rep. No. 296, 99th Cong., 1st Sess. 7 (1985))). The burden of proving the applicability of one of these exceptions falls on the party seeking to avoid exhaustion. *Id.*; *Polera*, 288 F.3d at 488 n.8.

Plaintiffs do not dispute that NT, EB, IP, and DR have not exhausted state administrative remedies. Plaintiffs contend, however, that administrative exhaustion is not required in this case because the claims fall under a number of exceptions to the IDEA's exhaustion requirement.

Plaintiffs NT, EB, LB1, AJ, SM, and DR[5/] contend that they should be exempted from the IDEA's exhaustion requirement for the simple reason that they were not provided notice of the administrative remedies that were available to them. 20 U.S.C. § 1415 specifically requires written prior notice to the parent of a child whenever an agency either proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child. *See* 20 U.S.C. § 1415(b)(3). Where proper notice is not sent to the parent, the exhaustion requirement is excused. *See Mason By and Through Mason v. Schenectady City School Dist.*, 879 F. Supp. 215, 219 (N.D.N.Y. 1993) (citing *id.*; *Buffolino v. Board of Educ. of Sachem Cent. School Dist.*, 729 F. Supp. 240 (E.D.N.Y. 1990)).

According to the allegations of their complaint, which must be accepted as true for purposes of this motion, the parents of plaintiffs NT, EB, and DR received no notice of their procedural rights to address the educational deprivations they allegedly suffered. They are therefore exempted from the IDEA's exhaustion requirement.

Systemic Violations

Plaintiffs also argue that they are exempted from the IDEA's exhaustion requirement because the third amended complaint asserts systemic violations on the part of defendants and requests structural, rather than case-by-case, remedies, *i.e.*,

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5/ Because plaintiffs LB1, AJ, and SM have, despite their lack of notice, exhausted their administrative remedies, the exemption discussion in this context is only relevant to plaintiffs NT, EB, and DR.

that defendants have "adopted a policy or pursued a practice of general applicability that is contrary to the law."

The third amended complaint contains specific allegations that the members of the putative class were excluded from school for illegal reasons without adequate process and that the exclusion was a result of a policy or practice that effectively warehoused students in alternative programs that did not even purport to offer the minimum educational services required by law. (3d Am. Compl. ¶¶ 3, 71-96, 121-23.) In addition to the plaintiffs named in this action, the third amended complaint describes 17 other students who have allegedly been subject to illegal exclusions and/or long-term denial of access to school.

In *Mrs. W. v. Tirozzi*, 832 F.2d 748 (2d Cir. 1987), the Second Circuit held that the plaintiffs' claims satisfied the systemic exception to the exhaustion requirement. In that case, parents of handicapped children brought suit against various state agencies responsible for administering education in Connecticut. The pleadings asserted that the state agencies had adopted a policy or pursued a practice of general applicability that failed to provide adequate psychologist staff to the plaintiffs or to provide for triennial evaluations of disabled children. The court determined that the plaintiffs were exempted from the exhaustion requirement because the complaint contained allegations that a due process hearing officer lacked the authority to effectuate class action and system-wide relief.

Plaintiffs make similar arguments here. *See Mrs. W.*, 832 F.2d at 757.

In essence, then "[t]he dispute over exhaustion reduces to one issue: whether there is a meaningful administrative enforcement mechanism for the vindication of personal rights. It is a well established principle of administrative law that exhaustion is not required if the only available administrative remedy is plainly inadequate." *Mrs. M.*, 96 F. Supp. 2d at 129 (D. Conn. 2000) (quoting *Riley v. Ambach*, 668 F.2d 635, 641 (2d Cir. 1981) (internal punctuation omitted)). Plaintiffs also contend that the relief that can be offered through the state administrative system is inadequate because plaintiffs' complaints are extraordinarily time-sensitive and plaintiffs can not attain timely relief for the deprivations or imminent deprivations from which they claim to suffer.

The Second Circuit has recognized that, in certain situations, the ability of state review agencies to offer timely relief for a deprivation requiring immediate remedial action is limited. For example, in *Murphy*, the Second Circuit held that an exemption from the exhaustion requirement was appropriate where the plaintiffs sought to challenge an alleged violation of the IDEA's "stay-put" provision. 297 F.3d at 199-200. As the Court explained,

> [The IDEA establishes a student's right to a stable learning environment during what may be a lengthy administrative and judicial review. If the child is ejected from his or her current educational placement while the administrative process sorts out where the

> proper interim placement should be, then the deprivation is complete. A belated administrative decision upholding a student's stay-put rights provides no remedy for the disruption already suffered by the student. Hence, as a practical matter, access to immediate interim relief is essential for the vindication of this particular IDEA right.

Id. Plaintiffs contend that the IDEA violations they allegedly suffered are of a similarly time-sensitive nature. Each plaintiff has alleged that he or she has already missed significant time from school and that he or she may be beyond school age before being able to receive any relief from state administrative agencies. Indeed, although defendants make much of the fact that six of the plaintiffs received favorable decisions as a result of their administrative hearings, they all either experienced long delays before receiving a hearing, all the while suffering from the exclusions of which the complained, or waited long periods of time before the hearing bodies' decisions were enforced.[6/] As this Court has noted, where a student's exclusion from school can affect their advancement to the next grade or other long-term consequences, "the harm they will suffer will be irreparable." *LIH ex rel. LH v. New York City Bd. of Educ.*, 103 F. Supp. 2d 658, 665 (E.D.N.Y. 2000). In such situations, the opportunity to pursue speedy relief in

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[6/] For example, according to the complaint, despite winning decisions from hearing officers, JW waited more than five months before his decision was implemented, and SM missed school even after he notified defendants and filed a hearing. (Compl. ¶¶ 113, 117.) The complaint is rife with additional allegations of lengthy delays, during which many of the plaintiffs were excluded from school. (*See, e.g., id.* ¶¶ 126-31, 134-35, 138-39, 142-57.)

federal court takes precedence over state administrative bodies' entitlement to review individual complaints.

Defendants urge that this Court follow the holding in *Mrs. M. v. Bridgeport Bd. of Educ.*, 96 F. Supp. 2d 124, 129 (D. Conn. 2000), and find that an exception to the exhaustion requirement is not appropriate in this case. That decision considered a class action suit instituted on behalf of minority children in the Bridgeport, Connecticut school system who were allegedly misidentified by the Bridgeport Board of Education as mentally retarded. The defendants moved to dismiss the claims brought by plaintiffs who had failed to exhaust their administrative remedies. Plaintiffs argued that exhaustion was not required because they had alleged that the agency had adopted a policy or pursued a practice of general applicability that was contrary to law. The court held that an exemption from the exhaustion requirement was inappropriate because the plaintiffs' complaints were capable of being remedied through the available state administrative process. *See Mrs. M*, 96 F. Supp. 2d at 130-31. According to the court, assuming that there existed eligibility criteria and methodology employed by the state agency in identifying children as mentally retarded, which could be classified as a policy or practice of general applicability, the criteria or methodology were "'classic examples of the kind of technical questions of educational policy best resolved with the benefit of agency expertise and a fully developed administrative

record.'" *Id.* (quoting *Hoeft v. Tucson Unified Sch. Dist.*, 967 F.2d 1298, 1305 (9th Cir. 1992)).

This case is distinguishable from *Mrs. M.* because, as explained above, the available state administrative process is not capable of providing a timely remedy to plaintiffs, notwithstanding its expertise in dealing with technical questions of educational policy.

I find that the allegations here, if sustained at trial, suffice to demonstrate the existence of a policy or practice depriving plaintiffs of their rights guaranteed under the IDEA and that state administrative review would not provide adequate relief to plaintiffs. These factors justify an exemption of all plaintiffs from the IDEA's exhaustion requirements.

Mootness

Defendants also contend that the plaintiffs who did seek administrative review of their claims lack standing to bring this action, since their claims are moot.

The threshold question in every suit brought in federal court is whether the plaintiff has standing to invoke the authority of the federal judiciary. At a minimum, to satisfy the core requirements derived from Article III, a plaintiff must allege: (1) personal injury or threat of injury; (2) that the injury fairly can be traced to the action challenged; and (3) that the injury is likely to be redressed by the requested relief. *Heldman*, 962 F.2d at 155 (citing *Valley Forge Christian*

College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 472 (1982)).

The question of mootness goes to the redressability requirement. "To satisfy the redressability hurdle, a plaintiff must demonstrate the likelihood that the relief requested would, in principle, redress the injury alleged." *Id.* at 157 (quoting *Orr v. Orr*, 440 U.S. 268, 271-72 (1979)). For this reason, courts may only adjudicate "actual, ongoing controversies." *Honig v. Doe*, 484 U.S. 305, 317 (1988) (citing *Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 546 (1976); *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975)). The doctrine of mootness is designed to ensure that a plaintiff's interest in the outcome of an action continues "through the life of the lawsuit." *Comer v. Cisneros*, 37 F.3d 775, 798 (2d Cir. 1994).

Plaintiffs LB1, HG, KSG, AJ, SM, and JW (the "exhausted plaintiffs") all sought administrative redress and obtained some relief through the administrative process.[1/] As a consequence, defendants contend, their interest in the outcome of this action has been extinguished and their claims are moot.

Plaintiffs contend that the claims asserted by the exhausted plaintiffs are not moot merely by virtue of the fact that plaintiffs received "limited relief" through the administrative process. Indeed, to the extent that plaintiffs may be entitled to more extensive relief as a result of a federal

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1/ However, as plaintiffs point out, LB1 received an unfavorable decision regarding some of his claims and is still in the midst of his administrative process, since he plans to appeal the decision. (Wong Decl. ¶ 3.)

action than what they attained through administrative hearings, defendants' argument leaves no room for federal recourse to plaintiffs.

Even if defendants could establish that plaintiffs had received adequate relief as a result of their impartial hearings, plaintiffs' claims are subject to a recognized exception to the mootness doctrine. In *Honig v. Doe*, 484 U.S. 305 (1988), the Supreme Court considered an action by a disabled student who was within the age range entitling him to free public education and who had faced suspensions and expulsions as a result of his disability. Although he was not under any procedures threatening his imminent suspension or expulsion at the time he filed his case, the Court found that, given that he had suffered such consequences in the past, the plaintiff had a "reasonable expectation" that he could suffer similar consequences in the future. Therefore, the Court explained, the plaintiff's claims fit within the "capable of repetition yet evading review" exception to the mootness doctrine. *See Honig*, 484 U.S. at 318-19.

Plaintiffs have stated in the pleadings that the harm they have allegedly suffer is likely to occur again. (Compl. ¶¶ 97-157, 176-77.) Defendants attempt to distinguish this action from *Honig* on the grounds that in *Honig* the local school district retained the authority by regulation to exclude disabled children from school for the type of behavior leading to the plaintiff's previous exclusions. In contrast, here, defendants

contend, "the Chancellor's regulations regarding exclusions are not only in accordance with, but may actually be more rigorous than what is required under the statutes." (Defs.' Reply Mem. at 11.)

Defendants' argument is essentially circular; this case is only distinguishable from *Honig* if one accepts defendants' premise that the state regulations and procedures governing the adjudication of plaintiffs' claims in fact conform to the IDEA. The basis of plaintiffs' claims, however, is that the regulations and procedures at issue here fall short of offering the guarantees provided by the IDEA. Indeed, the purpose of this suit is not merely to provide relief for the named plaintiffs but to challenge the Department and the Board's procedures which, plaintiffs contend, have led to widespread and systemic violations of the right to free appropriate public education for the disabled.

I agree that, accepting plaintiffs' allegations as true, the pleadings are sufficient to suggest that there is a reasonable expectation that such harm could reoccur. Plaintiffs' claims therefore fall within the doctrine of "capable of repetition yet evading review" and plaintiffs have standing to bring this action.[8/]

[8/] Plaintiffs make other arguments concerning exhaustion that need not be considered at this stage of the litigation. Specifically, plaintiffs contend that the administrative exhaustion requirement should be excused here because (1) the hearing system at issue in this litigation is insufficient to satisfy the impartial due process hearing requirement under Section 1415(f)(1) of the IDEA, and (2) New York Education Law Section 4404 fails to comport with Section 1415(b) (continued...)

CONCLUSION

For the reasons set forth above, defendants' motion to dismiss this action for lack of personal jurisdiction is denied.

The Clerk is directed to furnish a filed copy of the within to all parties and to the magistrate judge.

SO ORDERED.

Dated : Brooklyn, New York
January 29, 2004

United States District Judge

8/ (...continued)
of the IDEA.