IN THE CIRCUIT COURT OF SAINT LOUIS COUNTY
STATE OF MISSOURI

JAMIE GALATI, et al.,	)	
	)	
Plaintiffs,	)	
	)	Cause No. 23SL-CC01067
v.	)	
	)	
GREAT CIRCLE, et al.,	)	
	)	Division No. 2
Defendants.	)	
	)	

ORDER ON DEFENDANTS' MOTIONS TO DISMISS

This matter comes before the Court on the Motions to Dismiss Plaintiffs' Second Amended Petition filed by Defendants Special School District of St. Louis County, Missouri ("SSD") and Great Circle ("GC"). The Court rules as follows:

SSD's Motion to Dismiss

SSD argues that Count I of Plaintiffs' Second Amended Petition should be dismissed because Plaintiffs have failed to (1) exhaust their remedies under the Individuals with Disabilities Education ACT ("IDEA"), 20 U.S.C. § 1415, and (2) Plaintiff M.T., the minor child, is not disabled under the Missouri Human Rights Act ("MHRA").

With regard to SSD's first argument on Plaintiffs' Count I, the Court finds that Plaintiffs did not need to exhaust their remedies under the IDEA. SSD claims that because Plaintiffs are suing over the denial of free and adequate public education ("FAPE"), they cannot proceed until an IDEA claim has been adjudicated. Plaintiffs have pled that they dismissed their IDEA claim.[1]

[1] In their Response to MSD's Motion to Dismiss, Plaintiffs indicate they dismissed their IDEA action because the parties had reached a settlement, which constitutes exhaustion of their remedies. The disposition of that matter is outside the scope of the pleadings, and therefore the Court makes no ruling on this issue at this time. Courts have recognized that settlement of IDEA claims may constitute an "exhaustion of remedies". See *R.M. v. City of St. Charles Pub. Sch. Dist.*, No. 4:15-CV-706 CAS, 2016 WL 2910265 (E.D. Mo. May 19, 2016)

The United States Supreme Court's holding in *Perez v. Sturgis* changed the law on the issue of exhaustion of remedies. *Powell v. Sch. Bd. of Volusia Cnty., Fla.*, No. 22-14083, 2, 2023 WL 7481425 (11th Cir. Nov. 13, 2023). The *Sturgis* Court very clearly held that a plaintiff need not exhaust the IDEA's administrative processes if the remedy sought is not supplied by the IDEA. *Luna Perez v. Sturgis Pub. Sch.*, 598 U.S. 142, 150 (2023). In their Second Amended Petition, Plaintiffs seek only compensatory damages. The IDEA does not provide for compensatory damages. *Id.* at 148. Therefore, Plaintiffs were not required to exhaust their remedies under the IDEA.

With regard to SSD's second argument for dismissal of Count I, the Court, in assuming the allegations in Plaintiffs' Second Amended Petition are true, and liberally construing all inferences in their favor, finds Plaintiffs have adequately pled a cause of action against SSD under the MHRA. Plaintiffs have sufficiently alleged M.T. suffers from conditions affecting one or more major life activities. Further, Plaintiffs allege M.T. could access SSD's services with accommodation, because she had done so before the removal of accommodations. Plaintiffs also sufficiently plead that SSD discriminated against M.T. due to her disability. SSD presents alternate, nondiscriminatory reasons for changes to M.T.'s educational programming. Plaintiffs are not required to refute every possibility in their petition.

SSD also argues Count II of Plaintiffs' Second Amended Petition should be dismissed as Plaintiffs failed to state a claim against it for retaliation under the MHRA. Again, assuming all allegations in the Second Amended Petition are true, and liberally granting all reasonable inferences arising therefrom, the Court finds Plaintiffs have sufficiently pled a cause of action against SSD for retaliation. Plaintiffs allege they communicated their opposition to SSD's participation in the removal of, and refusal to reinstate, accommodations. Plaintiffs have pled that

they "opposed" SSD's alleged discriminatory actions, not that they only made a "mere request for an accommodation". *Li Lin v. Ellis*, 594 S.W.3d 238, 244 (Mo. 2020). The question of whether Plaintiffs "opposed" SSD's actions or "requested" accommodations is one of fact at this stage of the litigation.

SSD's final argument contends that Plaintiffs' case should be dismissed because the Missouri Commissions on Human Rights ("MCHR") did not issue a valid right-to-sue letter, a condition precedent to filing this action. Specifically, SSD argues that the MCHR lacked jurisdiction to issue a right-to-sue letter because the Plaintiffs' case is really an action for the denial of FAPE, and therefore is pre-empted by the IDEA.

As set out above, Plaintiffs' Second Amended Petition prays for compensatory damages, which, under *Sturgis*, exempts their claims from the IDEA. *Luna Perez v. Sturgis Pub. Sch.*, 598 U.S. at 150. Further, the administrative rulings cited by and produced by SSD in its brief lack factual context and pre-dated the *Sturgis* decision.

Accordingly, SSD's Motion to Dismiss Plaintiffs' Second Amended Petition is DENIED.

GC's Motion to Dismiss

GC first argues for dismissal of Count I because it is not a "place of public accommodation" as required under the MHRA, and because M.T. is not "disabled" under the MHRA.

Affording Plaintiffs all reasonable inferences from their pleading, GC is a private school serving a subset of the general public. Even though GC serves only disabled students, it does not maintain the type of "special relationship" with its patrons to exclude it as a "place of public accommodation" under the MHRA. *State ex. rel. Wash. Univ. v. Richardson*, 396 S.W.3d 387, 396 (Mo. Ct. App. W.D. 2013).

Further, as set out above, Plaintiffs have sufficiently pled that M.T. possesses a "disability" under the MHRA.

Like SSD, GC argues that Plaintiffs' Count II claim for retaliation under the MHRA Count II should be dismissed because Plaintiffs have failed to plead that they "opposed" the actions of GC. Again, as set above, Plaintiffs have sufficiently pled a claim for retaliation under the MHRA. This ruling applies to the retaliation claim against GC also.

GC also argues that Counts I and II of the Second Amended Petition are barred by the MHRA's statute of limitations, which requires Plaintiffs bring their action within 180 days of a discriminatory act, and file a civil action no later than two years after the alleged cause occurred. §§ 213.075.1 and 213.111.1 RSMo. Many, but not all, of Plaintiffs' allegations of specific discrimination fall outside of the statutory bar. Plaintiffs argue they are entitled to the "continuing violations theory" exception to the entirety of their claims. Upon review of their Second Amended Petition, the Court agrees. Plaintiffs have pled at least one act by GC occurring within the filing periods, and alleged the conduct is a series of "interrelated events". *Pollock v. Wetterau Food Distribution Grp.*, 11 S.W.3d 754, 763 (Mo. App. 1999).

With regard to Counts III through IX, GC contends that Plaintiffs' common law claims therein are preempted by the MHRA. *State ex rel. Church & Dwight Co. v. Collins*, 543 S.W.3d 22 (Mo. 2018).

Plaintiffs concede that Counts VIII (Negligent Supervision) and Counts IX (Negligent Training) provide damages fully comprehended and enveloped by the MHRA. The Court agrees. Plaintiffs further argue these should be maintained as alternative theories of recovery, in the event the MHRA claims are dismissed. This argument runs counter to the holding in *Loomis v. Bowers*, 645 S.W.3d 633, 636 (Mo. App. 2022). In *Loomis*, the Court did not allow a plaintiff to amend to

plead common law claims after her MHRA claims were dismissed. *Id.* at 635-636. The MHRA's preemption does not end after an unfavorable disposition.

With regard to Counts III-IV, the remedies sought by Plaintiffs are all provided for in the MHRA. Further, the factual allegations supporting these claims all appear to support Plaintiffs' MHRA claims. Plaintiffs' MHRA claims incorporate their allegations that GC's employees improperly held and secluded M.T.; therefore, the claims for Assault (Count III), False Imprisonment (Count IV), Intentional and Negligent Infliction of Emotional Distress (Counts V and VI) and Battery (Count VII), which rely on these alleged acts, are all preempted.

Accordingly, Defendant GC's Motion to Dismiss Counts I and II of Plaintiffs' Second Amended Petition is DENIED. Defendant GC's Motion to Dismiss Counts III-IX of the Second Amended Petition is GRANTED.

SO ORDERED:

Judge Division 2

December 08, 2023