IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

J.R., A MINOR, BY HIS PARENTS AND NEXT FRIENDS ANALISA AND JOE R.; D.J., A MINOR, BY HIS PARENTS AND NEXT FRIENDS LAURIE AND DAMON J; A.T., A MINOR, BY HER PARENTS AND NEXT FRIENDS ANDREA AND CLINT T.; G.S., A MINOR, BY HER PARENTS AND NEXT FRIENDS JARIN AND SEAN S.; A.S., A MINOR, BY HIS PARENT AND NEXT FRIEND MARIA N.; AND DISABILITY RIGHTS TEXAS, PLAINTIFFS,	§	CAUSE NO. 1:21-CV-279-LY
V.	§	
AUSTIN INDEPENDENT SCHOOL DISTRICT, DEFENDANT.	§	

ORDER ON MOTION TO DISMISS AND MOTION TO STAY

Before the court are the Defendants' Motion to Dismiss filed April 28, 2021 (Doc. #15); Plaintiffs' Response in Opposition to Defendant's Motion to Dismiss filed May 12, 2021 (Doc. #26); Defendants' Reply to Plaintiffs' Response to its Motion to Dismiss filed May 19, 2021 (Doc. #31); Defendants' Advisory to the Court filed July 8, 2021 (Doc. #33); and Plaintiff's Response to Defendant's Advisory to the Court filed July 12, 2021 (Doc. #34). Also before the court are Austin Independent School District's Motion to Stay All Proceedings filed April 28, 2021 (Doc. #16) and Plaintiffs' Response to Austin Independent School District's Motion to Stay All Proceedings filed May 12, 2021 (Doc. #27). Having considered the motions, responses, replies, advisory, and reply to advisory, along with the applicable law, the court will deny the motion to dismiss and dismiss the motion to stay for the reasons to follow.

BACKGROUND

This case involves whether Defendant Austin Independent School District ("AISD") satisfies the statutory requirements under the Individuals with Disabilities Education Act ("IEDA")[1] in performing its evaluations for students with disabilities. Under the IDEA, educational agencies—like a school district—are required to "conduct a full and individual evaluation" of children with disabilities "before the initial provision of special education and related services." 20 U.S.C § 1414(a)(1)(A). In addition, school districts must reevaluate each child with a disability if either the school district or the parents request a reevaluation. *Id.* at § 1414(a)(2).

Plaintiffs include five Texas schoolchildren, ages four to ten, who reside in Austin, Texas and attend or are zoned to attend elementary schools in AISD and who have disabilities under the meaning of the IDEA. *Id.* at § 1401(3). Plaintiffs also include Disability Rights Texas, a non-profit organization designated as "the federal protection and advocacy system" for Texas to pursue legal remedies on behalf of Texans with disabilities.

Plaintiffs allege serious delays in AISD's evaluation and reevaluation processes for students with disabilities. Plaintiffs sued AISD for violations of the IDEA and Section 504 of the Rehabilitation Act of 1973,[2] seeking (1) preliminary and permanent injunctions enjoining AISD from implementing IDEA-violative policies; (2) a declaration that AISD's student evaluation policies and practices violate Plaintiffs' rights under the IDEA; (3) an order for the school district to provide students affected with expedited evaluations and compensatory education; and (4) attorney's fees.

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[1] 20 U.S.C. §§ 1400–82 (2017).

[2] 29 U.S.C. § 794 (2016).

AISD moves to dismiss Plaintiffs' complaint for lack of subject-matter jurisdiction, lack of standing, and failure to state a claim. *See* Fed. R. Civ. P. 12(b)(1), (6). Specifically, AISD asserts that Plaintiffs have failed to exhaust their administrative remedies under IDEA, that Disability Rights Texas does not have associational standing, and that Plaintiffs' claims are moot because most evaluations have now been completed.

STANDARD OF REVIEW

A party may challenge the court's subject-matter jurisdiction based upon the allegations on the face of the complaint. *See* Fed. R. Civ. P. 12(b)(1); *Barrera–Montenegro v. United States*, 74 F.3d 657, 659 (5th Cir. 1996). In ruling on a motion to dismiss for lack of subject-matter jurisdiction, "a trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." *MD Physicians & Assoc., Inc. v. State Bd. of Ins.*, 957 F.2d 178, 181 (5th Cir. 1992). The court may rely on (1) the complaint alone, presuming the allegations to be true, (2) the complaint supplemented by undisputed facts, or (3) the complaint supplemented by undisputed facts and by the court's resolution of disputed jurisdictional facts. *Freeman v. United States,* 556 F.3d 326, 334 (5th Cir. 2009).

Plaintiffs must establish the elements of standing before a court exercises jurisdiction. The United States Supreme Court requires strict compliance with this jurisdictional-standing requirement. *See Chicago & Grand Trunk R. Co. v. Wellman,* 143 U.S. 339, 345 (1892) (federal courts may exercise power "only in the last resort, and as a necessity"); *Muskrat v. United States,* 219 U.S. 346, 356 (1911) ("[F]rom its earliest history this [C]ourt has consistently declined to exercise any powers other than those which are strictly judicial in their nature"). This requirement assures that "there is a real need to exercise the power of judicial review in order to protect the

interests of the complaining party." *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 221 (1974).

Rule 12(b)(6) of the Federal Rules of Civil Procedure allows for dismissal of an action "for failure to state a claim upon which relief can be granted." Factual allegations "must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *see also Cavalier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007). A plaintiff's obligation "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* A complaint must contain sufficient factual matter to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "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." *Id.* In evaluating a motion to dismiss, the court must construe the complaint liberally and accept all of the plaintiff's factual allegations in the complaint as true. *See In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2009).

ANALYSIS

Exhaustion of Administrative Remedies

AISD asserts that this court is deprived of subject-matter jurisdiction because the individual students have not exhausted their administrative remedies under the IDEA. *See Fry v. Napoleon Cmty. Schs.*, ___ U.S. ___, 137 S. Ct. 743, 746 (2017). However, there are exceptions, including if "exhaustion would be futile or inadequate." *Honig v. Doe*, 484 U.S. 305, 327 (1988). The burden is on the plaintiff to prove futility. *Gardner v. School Bd. Caddo Parish*, 958 F.2d 108, 111–12 (5th Cir. 1992).

Situations where exhaustion would be futile or inadequate include circumstances where "an agency has adopted a policy or pursued a practice of general applicability that is contrary to the law." *Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ.*, 297 F.3d 195, 199 (2d Cir. 2002) (quoting H.R. Rep. No. 296, 99th Cong. 1st Sess. 7 (1985)). The Second Circuit excused exhaustion of administrative remedies in several cases where "systemic violations" made exhaustion futile. *Heldman v. Sobol*, 962 F.2d 148 (2d Cir.1992); *Mrs. W. v. Tirozzi*, 832 F.2d 748 (2d Cir.1987); *J.G. v. Board of Educ. of the Rochester City Sch. Dist.*, 830 F.2d 444 (2d Cir.1987); *Jose P. v. Ambach*, 669 F.2d 865 (2d Cir.1982). The "common element" in these cases was that the plaintiff's problems could not be solved by administrative hearings because either "the nature and volume of complaints" or the "framework and procedures for assessing and placing students in appropriate educations programs" made hearings impracticable. *J.S. ex rel. N.S. v. Attica Cent. Sch.*, 386 F.3d 107, 114 (2d Cir. 2004).

The Fifth Circuit found the "analysis of the Second Circuit [instructive]" on this issue in *Papania-Jones v. Dupree*, 275 F. App'x 301, 304 (5th Cir. 2008). In *Dupree*, the plaintiffs had requested therapy for their son under the IDEA. *Id.* at 302. After the State of Louisiana ceased to provide therapy on a consistent basis, the plaintiffs sued under the IDEA. The circuit held that the plaintiffs did not show in their allegations that they experienced a "systemic violation," thus the plaintiffs did "not fall within the futility exception." *Id.* at 304.

Plaintiffs in this case have alleged a systemic violation of the IDEA. Although the pandemic has made working conditions difficult for AISD, Plaintiffs' complaint alleges conduct that reveals systemic issues in the implementation and fulfillment of AISD's IDEA obligations: providing disabled students evaluations and reevaluations in a timely manner. Plaintiffs allege that delays in

evaluations and the subsequent backlog derive from systemic problems, including staffing decisions and AISD's failure to follow state guidance. These allegations challenge AISD's policies and practices. Administrative hearings would be futile, for both the volume of cases and larger systematic failures could not be practically solved within the IDEA administrative operative structure of individual hearings. Therefore, the court finds that Plaintiffs have met their burden to show that administrative exhaustion would be futile and concludes Plaintiffs are excused from the administrative-exhaustion requirement.

Disability Rights Texas Standing

An entity has associational standing to bring suit on behalf of its constituents if: (1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *Hunt v. Washington State Apple Advert. Comm'n* 432 U.S. 333, 343 (1977).

AISD claims that Disability Rights Texas cannot meet the first element in *Hunt* because "none of the claims [it] seeks to litigate have been exhausted" for the individuals associated with Disability Rights Texas. Having determined the exhaustion is not required, this bar does not hold, and Disability Rights Texas meets the first prong for associational standing. Disability Rights Texas also meets the second prong: its purpose is to support Texans with disabilities, and this is a disability-rights case.

The third prong is disposed of in two ways. First, Congress can abrogate the third prong, which the Supreme Court has labeled a "prudential limitation," in situations where organizations

can sue on behalf of its members. *United Food & Com. Workers Union Loc. 751 v. Brown Grp., Inc.*, 517 U.S. 544, (1996). Congress did so when it authorized Disability Rights Texas, as a protection-and-advocacy system, to pursue legal remedies for the rights of disabled Texans. 42 U.S.C. § 15043(a)(2)(A)(i) (2004). Therefore, Disability Rights Texas has standing. Additionally, in cases where an organization is suing for "declaration, injunction, or some other form of prospective relief," the third prong is not required. *Warth v. Seldin*, 422 U.S. 490, 515 (1975). Because Plaintiffs are seeking declaratory and injunctive relief, the third prong is not required.

Mootness

On July 8, 2021, AISD filed an advisory to this court stating that "as of June 30, 2021, of the 624 initial special education evaluations that need to be completed in accordance with the Texas Education Agency's corrective action, only 77 remain pending" (Doc. #33). Because AISD expected to complete its remaining evaluations by July 15, 2021, AISD argues that Plaintiffs' claims will "soon become moot." In response, Plaintiffs argue that AISD only completed most initial evaluations rather than the full IDEA-compliant meetings required to develop Individualized Education Programs ("IEPs"). In addition, Plaintiffs identify other IDEA violations that preclude mootness, including unfinished evaluations, outstanding re-evaluations, and unprescribed compensatory education. Plaintiffs argue that AISD has failed to remedy these alleged IDEA violations. First, Plaintiffs contend that AISD has fallen short of full IDEA compliance by not creating IEPs for some AISD disabled children. In addition, Plaintiffs assert that several required meetings have yet to be scheduled, and revaluations have been delayed with no indication of any progress.

A claim is moot when a case or controversy no longer exists between the parties. *Board of Sch. Comm'rs v. Jacobs*, 420 U.S. 128, 129 (1975). Mootness can arise when the issues presented are no longer "live" or when the parties lack a "legally cognizable interest in the outcome." *Chevron U.S.A. v. Trailour Oil Co.*, 987 F.2d 1138, 1153 (5th Cir. 1993). A live controversy can remain where some but not all issues in a case have become moot. *See Powell v. McCormick*, 395 U.S. 486, 497 (1969).

Injunctive Relief

The court finds that Plaintiffs' claim for injunctive relief keeps their claims live. IDEA requires the development of IEPs through an Admission, Review, and Dismissal ("ARD") meeting for each disabled child covered under the IDEA. *See Klein ISD v. Hovem*, 690 F.3d 390, 395 (5th Cir. 2012). The IEP includes a statement of the special education, related services, and accommodations the school will provide. 20 U.S.C. § 1414(d)(1)(A). IDEA initial evaluations must be conducted within 60 days of receiving parental consent for the evaluation. *Id.* at § 1414(a)(1)(C)(I). Reevaluations are required every three years unless a parent and the school district deem it unnecessary. *Id.* at § 1414(a)(2).

Based on these obligations and Plaintiffs' assertions, the court finds that Plaintiffs' claims are not moot even if some of the initial evaluations have been completed. More information on reevaluations and finalization of IEPs must be presented to the court before AISD's claim for mootness can be properly evaluated. Until the state of the AISD's IDEA compliance is known, the controversy remains live. Moreover, because of Disability Rights Texas has authority to pursue remedies on behalf of Texans with disabilities, this case would not be moot even if the minor

Plaintiffs' alleged violations were remedied. Other disabled students may not have received their relief yet, and AISD's alleged systematic violations of the IDEA act have not been cured.

Compensatory Education

Plaintiffs' claims for compensatory education also keep the case in controversy live. Compensatory education imposes liability on a school district to pay for services it should have provided previously under the IDEA. *See Eltalawy v. Lubbock ISD*, 816 F. App'x 958, 965 (5th Cir. 2020). A compensatory award requires a "corresponding finding of an IDEA violation." *Spring Branch ISD v. O.W.*, 961 F.3d 781, 800 (5th Cir. 2020). Several courts have held that the presence of an actionable claim for compensatory education will insulate an IDEA case against a mootness challenge even after the child's eligibility for a relief in school ends. *See D.A. v. Houston ISD*, 716 F. Supp. 2d 603, 612 (S.D. Tex. 2009) (claim was live after child moved school districts); *Maine Sch. Admin. Dist. No. 35 v. Mr. R.*, 321 F.3d 9, 18 (1st Cir. 2003); *Indep. Sch. Dist. No. 284 v. A.C.*, 258 F.3d 769, 774–75 (8th Cir. 2001). Calling for a hearing is a necessary component of a claim for compensatory education so that the awards can be individualized. *See Reid ex rel. Reid v. D.C.*, 401 F.3d 516, 524 (D.C. Cir. 2005).

In this case, Plaintiffs seek an order directing AISD to "convene ARD committees for every student impacted by delayed assessment for the past year to determine need for compensatory educational services." Because the individualized compensatory awards require hearings under the IDEA, convening a committee to determine need for compensatory education represents a claim for compensatory education. Therefore, Plaintiffs have made a valid claim for compensatory education.

Declaratory Relief

Finally, Plaintiffs' request for declaratory relief precludes mootness. A request for declaratory relief can keep a case alive if "a continuing controversy exists or if the challenged problem is likely to recur or is otherwise capable of repetition." *Vieux Carre Prop. Owners, Residents & Assocs., Inc. v. Brown*, 948 F.2d 1436, 1447 (5th Cir. 1991). This "Capable of Repetition, yet Evading Review" exception applies in situations where (1) the challenged action is in duration too short to be fully litigated prior to cessation and (2) there is a reasonable expectation that the same party will be subject to the same alleged injury again. *Spencer v. Kemna,* 523 U.S. 1, 17 (1998).

The first requirement relates to cases where the issue at hand has ceased before litigation. For instance, in *Super Tire v. McCorkle,* the Supreme Court reviewed the mootness of an employer's attack on a New Jersey statute that allowed striking workers to obtain welfare benefits. 416 U.S. 115, (1974). Before the case was resolved, the strike ended. *Id.* at 116. The Court held that the claim was not moot because "the judiciary must not close the door to the resolution of the important questions these concrete disputes present." *Id.* at 126–27.

In this case, Plaintiffs' claims do not evade review. Although Plaintiffs may have a limited window to litigate violations before their injuries are remedied, the presence of other disabled students represented by Disability Rights Texas in this lawsuit extends that window too far out: Disability Rights Texas's could litigate for those children's IDEA deficiencies far into the future. Thus, this issue will not cease because it involves structural deficiencies that could harm students into the future.

The second prong concerns the likelihood of repetitive injury. Claims for declaratory relief can preclude mootness if it is shown that there is "demonstrated probability" that the harm the declaration addresses could occur again. *Meadows v. Odom*, 198 F. App'x 348, 351 (5th Cir. 2006). In this case, there is a strong probability that AISD's alleged systematic violations could impact Plaintiffs again because Plaintiffs rely on continued and consistent support through IEPs and reevaluations that they have not yet received. Furthermore, some disabled AISD students who Disability Rights of Texas represent may not have reached the initial-evaluation stage. For these students, the harm repeats until the process is complete. Considering these factors, this court rejects AISD's mootness claim.

CONCLUSION

IT IS THEREFORE ORDERED that Austin Independent School District's Motion to Dismiss filed April 28, 2021 (Doc. #15) is **DENIED**.

Having denied the motion to dismiss,

IT IS FURTHER ORDERED that Austin Independent School District's Motion to Stay All Proceedings filed April 28, 2021 (Doc. #16) is **DISMISSED**.

IT IS FINALLY ORDERED that the above entitled and numbered cause is **SET** for a Telephone Conference on **December 17, 2021, at 2:30 p.m.** The parties are to call the court's telephone conference line at (877) 873-8017; Access Code: 7996289. Please contact Chambers at (512) 916-5756 if you have any questions.

SIGNED this 2nd day of December, 2021.

LEE YEAKEL
UNITED STATES DISTRICT JUDGE