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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JESSIE HUNT, III,

Plaintiff,

v.

LINCOLN UNIFIED SCHOOL DISTRICT,  
SAN JOAQUIN COUNTY OFFICE OF  
EDUCATION, a special district,

Defendants.

No. 2:14-cv-02815 KJM-CKD

ORDER

This matter is before the court on plaintiff’s motion to amend the complaint, ECF No. 12. Plaintiff filed this motion in response to defendants’ pending motion to dismiss, ECF No. 7. Defendants have not filed an opposition or non-opposition, but address plaintiff’s motion’s deficiencies in their reply brief for their motion to dismiss. ECF No. 13. In the interest of judicial economy, the court considers both motions together and decides the matter without a hearing. For the following reasons, plaintiff’s motion to amend the complaint is GRANTED IN PART and defendants’ motion to dismiss is DENIED AS MOOT.

I. BACKGROUND

Plaintiff Jessie Hunt commenced this action against the Lincoln Unified School District (LUSD) and the San Joaquin County Office of Education (SJCOE) on December 2, 2014. Compl., ECF No. 1. After meeting and conferring, the parties stipulated to grant plaintiff

1 leave to file an amended complaint. ECF No. 4. In that complaint, plaintiff alleges he suffers  
2 from unspecified disabilities and pleads the following claims: 1) failure to provide free and  
3 appropriate public education (FAPE); 2) violations of 42 U.S.C. § 1983 and; 3) racial  
4 discrimination. Am. Compl., ECF No. 6. Defendants SJCOE and LUSD then filed a motion to  
5 dismiss the action in its entirety on April 20, 2015, or in the alternative to dismiss SJCOE as a  
6 defendant. ECF No. 7. As noted above, plaintiff did not oppose the motion, but instead filed the  
7 instant motion to further amend. Second Am. Compl., ECF No. 12 at 7-18. The proposed  
8 second amended complaint states identical claims, but with additional factual allegations in an  
9 attempt to cure the deficiencies argued in defendants’ motion to dismiss. *Id.* at 2. Defendants  
10 replied. ECF No. 13.

11 II. LEGAL STANDARD

12 Federal Rule of Civil Procedure 15(a)(2) provides, “[t]he court should freely give  
13 [leave to amend its pleading] when justice so requires,” and the Ninth Circuit has “stressed Rule  
14 15’s policy of favoring amendments.” *Ascon Properties, Inc. v. Mobil Oil Co.*, 866 F.2d 1149,  
15 1160 (9th Cir. 1989). “In exercising its discretion [regarding granting or denying leave to  
16 amend] ‘a court must be guided by the underlying purpose of Rule 15—to facilitate decision on  
17 the merits rather than on the pleadings or technicalities.’” *DCD Programs, Ltd. v. Leighton*, 833  
18 F.2d 183, 186 (9th Cir. 1987) (quoting *United States v. Webb*, 655 F.2d 977, 979 (9th Cir.  
19 1981)). However, “the liberality in granting leave to amend is subject to several limitations.  
20 Leave need not be granted where the amendment of the complaint would cause the opposing  
21 party undue prejudice, is sought in bad faith, constitutes an exercise in futility, or creates undue  
22 delay.” *Ascon Properties*, 866 F.2d at 1160 (internal citations omitted). Not all the factors merit  
23 equal weight, and prejudice to the opposing party carries the greatest weight. *Eminence Capital,*  
24 *LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). Generally, additional claims result in  
25 prejudice to a defendant when plaintiff has substantially delayed requesting leave to amend. *See,*  
26 *e.g., United States v. Pend Oreille Public Utility Dist. No. 1*, 28 F.3d 1544, 1522–53 (9th Cir.  
27 1994); *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990). In  
28 addition, a court should look to whether the plaintiff has previously amended the complaint, as

1 “the district court’s discretion is especially broad ‘where the court has already given plaintiff one  
2 or more opportunities to amend [its] complaint.’” *Id.* at 1161 (quoting *Leighton*, 833 F.2d at 186  
3 n.3).

### 4 III. ANALYSIS

#### 5 A. Rule 15 Factors

6 Here, granting leave to amend will not cause undue delay. A scheduling  
7 conference has not yet been held, and discovery has not yet commenced. Plaintiff has attached a  
8 proposed second amended complaint to his motion, so it may be promptly filed if approved.

9 Second, there is no evidence plaintiff’s motion to amend is sought in bad faith.  
10 Rather it is an attempt to address deficiencies raised by defendants’ motion to dismiss. For  
11 example, plaintiff’s proposed second amended complaint alleges specific disabilities and theories  
12 supporting his claims under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et*  
13 *seq.* (IDEA), ECF No. 12, ¶¶ 10, 20–31, correcting a deficiency alleged in defendants’ motion to  
14 dismiss. The proposed amendment puts defendants on notice of more defined claims and factual  
15 allegations, and thus provides defendants with a better opportunity to raise defenses.

16 Most importantly, defendants would not be prejudiced should the court grant  
17 leave to amend because the case is at an early stage, plaintiff has not substantially delayed the  
18 action by requesting leave, and plaintiff has agreed to dismiss defendant SJCOE. ECF No. 12 at  
19 1. *See Rose*, 893 F.2d at 1079; *see also Leighton*, 833 F.2d at 187–88. Courts regularly grant  
20 leave to amend where, as here, amendment would cure deficiencies in the original complaint.  
21 *See, e.g., Estate of Makarowsky ex rel. Gast. v. Lobdell*, 2012 WL 3877714, at \*2 (W.D. Wash.  
22 2012).

23 The court still must consider whether plaintiff’s proposed amendments would be  
24 an “exercise in futility.” Accordingly, the court will address each of plaintiff’s claims as pled in  
25 the First Amended Complaint and attacked by defendants’ motion, and whether leave to amend  
26 the claims as proposed in the Second Amended Complaint would be futile.

1           B.       Free Appropriate Public Education (FAPE) (Claim One)

2           Leave to amend plaintiff’s FAPE claim would be futile if plaintiff did not exhaust  
3 his administrative remedies. “[W]hen determining whether the IDEA requires a plaintiff to  
4 exhaust, courts should start by looking at a complaint’s prayer for relief and determine whether  
5 the relief sought is also available under the IDEA. If it is not, then it is likely that § 1415(l) does  
6 not require exhaustion in that case.” *Payne v. Peninsula School Dist.*, 653 F.3d 863, 875 (9th  
7 Cir. 2011), *overruled in part by Albino v. Baca*, 747 F.3d 1162, 1165 (9th Cir. 2014). However,  
8 if the relief sought is predicated on the IDEA, meaning plaintiff actually seeks relief available  
9 under the IDEA, then exhaustion is clearly required. *Id.* “The IDEA’s exhaustion provision  
10 applies only to “the filing of a civil action . . . seeking relief that is also available under [the  
11 IDEA]”; otherwise, the IDEA does not “restrict or limit the rights, procedures, and remedies”  
12 available under § 1983, the ADA, the Rehabilitation Act, or other federal laws. 20 U.S.C.  
13 § 1415(l). *Id.* at 878.

14           Here, because plaintiff’s first claim rests on the IDEA, First Am. Compl. at 8;  
15 Second Am. Compl. at 6, administrative exhaustion is required. *See Cayla R. v. Morgan Hill*  
16 *Unified School Dist.*, 2012 WL 1038664, at \*5 (N.D. Cal 2012) (holding that a claim based on  
17 failure to deny appropriate education requires administrative exhaustion under the IDEA).  
18 However in *Albino*, the Ninth Circuit held that “a plaintiff is not required to say anything about  
19 exhaustion in his complaint . . . [because it is an affirmative defense . . . [and only] in those rare  
20 cases where a failure to exhaust is clear from the face of the complaint, a defendant may  
21 successfully move to dismiss under Rule 12(b)(6) for failure to state a claim.” *Albino*, 747 F.3d  
22 at 1171. Thus, although plaintiff does not plead administrative exhaustion in either complaint,  
23 his claim does not fail as a matter of law because there is no such pleading requirement under  
24 *Albino*. Further, this is not one of the rare instances where it is clear from the face of the  
25 complaint that plaintiff has not met the exhaustion requirement. It is not an exercise in futility to  
26 grant leave to amend the FAPE claim. Defendants may plead plaintiff’s failure to exhaust under  
27 the IDEA as an affirmative defense.

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1 C. 42 U.S.C. § 1983 (Claim Two)

2 Plaintiff's § 1983 claim is barred by the Eleventh Amendment and amendment is  
3 therefore futile. The Eleventh Amendment of the United States Constitution bars suits brought  
4 against states in federal court when the state has not waived its sovereign immunity. *See*  
5 *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996); *Carmen v. San Francisco Unified Sch.*  
6 *Dist.*, 982 F. Supp. 1396, 1402 (N.D. Cal. 1997), *aff'd*, 237 F.3d 1026 (9th Cir. 2001). Because  
7 states are immune from suit under the Eleventh Amendment, suits against state agencies in  
8 which a judgment would be satisfied out of public funds are also prohibited. *See, e.g., Quern v.*  
9 *Jordan*, 440 U.S. 332, 337 (1979). School districts in California are considered to be state  
10 agencies for Eleventh Amendment purposes. *See Belanger v. Madera Unified Sch. Dist.*, 963  
11 F.2d 248, 251 (9th Cir. 1992).

12 It is true that in *Monroe v. Pape*, the Supreme Court held that § 1983 was not  
13 applicable to government entities. *See* 365 U.S. 167, 187 (1961). However, *Monroe* was  
14 overturned in part by *Monell v. Department of Social Services*, holding that a § 1983 claim may  
15 be brought against a municipality under certain exceptions. *See* 436 U.S. 658, 700 (1978).  
16 Under the *Monell* exception, municipalities are not liable based on a *respondeat superior* theory,  
17 but rather, based on official municipal policies or customs. *Id.* at 691, 694. As relevant to this  
18 case, school districts in California are not considered "municipalities" or "persons," but agencies  
19 of the state for § 1983 purposes. *Belanger*, 963 F.2d at 253 ("California law treats public  
20 schooling as a statewide or central governmental function. As discussed . . . the public schools  
21 of this state are a matter of statewide rather than local or municipal concern."); *see also Carmen*,  
22 982 F. Supp. at 1403; *Hall v. City of Taft*, 47 Cal.2d 177, 577 (1956). Thus, school districts in  
23 California enjoy sovereign immunity and cannot be found liable under § 1983. *Belanger*, 963  
24 F.2d at 253.

25 Here, plaintiff brings a § 1983 claim against LUSD, a California school district.  
26 Even if plaintiff were to demonstrate LUSD had an official policy or long-standing custom that  
27 violated a right protected under § 1983, the suit is barred because LUSD enjoys Eleventh  
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1 Amendment sovereign immunity as an agency of the state. Accordingly, giving plaintiff leave to  
2 amend to add a § 1983 claim would be futile.

3 D. Racial Discrimination (Claim Three)

4 Plaintiff's third claim for racial discrimination states, "the Defendant districts  
5 have engaged in racial discrimination by reason of the fact that African American students are  
6 discipline[d] more harshly than students of other races." First Am. Compl. ¶ 19, ECF No. 6; *see*  
7 *also* Second Am. Compl. at 15–16. In the proposed Second Amended Complaint, plaintiff  
8 alleges the "Office of Civil Rights," without indicating whether this is a federal or state agency,  
9 has determined that defendant district has engaged in racial and economic discrimination because  
10 African American students are disproportionately disciplined more harshly than students of other  
11 races and are "turned down for special education services more frequently than other students."  
12 ECF No. 12 at 15–16. As pled, plaintiff has not adequately identified the nature of this claim or  
13 the constitutional or statutory basis for the claim. Specifically, the court cannot determine if  
14 plaintiff is attempting to proceed with a separate § 1983 claim, or invoke a different civil rights  
15 statute. If the claim is predicated on § 1983, then it is barred as previously discussed.

16 "[A]lthough the Federal Rules adopt a flexible pleading policy, a complaint must  
17 give fair notice to the defendants and must allege facts that support the elements of the claim  
18 plainly and succinctly." *Jones v. Community Redev. Agency*, 733 F.2d 646, 649 (9th Cir. 1984);  
19 *see also Villalobos v. Bosenko*, 2014 WL 1612432, at \*2 (E.D. Cal. 2014). "Without . . . [some]  
20 constitutional or federal statutory basis . . . this court lacks subject matter jurisdiction altogether."  
21 *Bowles v. Russell*, 551 U.S. 205, 212 (2007) ("Within the constitutional bounds, Congress  
22 decides what cases the federal courts have jurisdiction to consider. Because Congress decides  
23 whether federal courts can hear cases at all, it can also determine when, and under what  
24 conditions, federal courts can hear them.") (citation omitted).

25 The court grants plaintiff leave to plead a viable discrimination claim if plaintiff  
26 can allege facts demonstrating how the conditions complained of resulted in deprivation to his  
27 federal constitutional or statutory rights. *Bosenko*, 2014 WL 1612432, at \*3 (citing *Ellis v.*  
28 *Cassidy*, 625 F.2d 227 (9th Cir. 1980).

1 IV. CONCLUSION

2 For the foregoing reasons, plaintiff's motion to amend the complaint is  
3 GRANTED in part, as to the FAPE and racial discrimination claims. Because the proposed  
4 Second Amended Complaint is deficient as noted above, plaintiff is directed to file a new Second  
5 Amended Complaint consistent with this order within 14 days. Defendants' motion to dismiss,  
6 ECF No. 7, is denied as moot.

7 IT IS SO ORDERED.

8 DATED: August 5, 2015.

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12 UNITED STATES DISTRICT JUDGE  
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