IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA MACON DIVISION

PREMESSA JENKINS,
Plaintiff,
v.
BUTTS COUNTY SCHOOL DISTRICT and GEORGIA DEPARTMENT OF EDUCATION,
Defendants.

CIVIL ACTION NO. 5:13-CV-47 (MTT)

<u>ORDER</u>

The Plaintiff is the mother of a disabled child, T.J. The Plaintiff alleges that Defendants Butts County School District and Georgia Department of Education failed to provide T.J. with free appropriate public education (FAPE) pursuant to the Individuals with Disabilities Education Act (IDEA). (Doc. 1). The Plaintiff contends, among other things, that the Defendants are in charge of developing an individualized education program for T.J. that meet the IDEA's requirements, and that they have failed to do so.

The Plaintiff previously filed a similar suit in this Court. *Premessa Jenkins v. Butts County*, Civil Action No. 5:11-cv-350 (MTT). The Court dismissed the Plaintiff's previous complaint without prejudice because she failed to request a due process hearing pursuant to the administrative requirements of IDEA. 20 U.S.C. §§ 1415(i)(2)(A), 1415(I) (Only after an impartial due process hearing is held and an ALJ has rendered a decision may a parent bring a civil action in state or federal court challenging the ALJ's decision.). The Plaintiff's present Complaint contends that she "filed a pro se due process complaint with the Georgia Office of State Administrative Hearings on August 10, 2012." (Doc. 1 at 6). Further, she was "given a form due process complaint developed by the Georgia Department of Education for FAPE cases, but it was inadequate since it failed to list possible remedies that a parent could seek in an administrative hearing." (Doc. 1 at 6). The Plaintiff states that "[a] decision dismissing the due process complaint was issued on November 7, 2012 for among other reasons that the pro se complaint failed to specify a remedy that the administrative body could grant." (Doc. 1 at 6). She contends that her motion for reconsideration was denied on December 12, 2012, and that she is now "appealing the administrative ruling." (Doc. 1 at 6-7).

On February 12, 2013, the Court granted the Plaintiff's Motion to Proceed In Forma Pauperis and ordered the Plaintiff to submit documents supporting her administrative exhaustion allegations. (Doc. 4). The Plaintiff has provided the Court with the appropriate administrative records, and thus, the Court can complete its frivolity review. (Doc. 5). Pursuant to 28 U.S.C. § 1915A, because the Plaintiff is proceeding in forma pauperis, the Court is required to dismiss the case if it (1) is frivolous or malicious, (2) fails to state a claim upon which relief may be granted, or (3) seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(b). Here, the Court finds that the Plaintiff's Complaint passes § 1915A frivolity review. Accordingly, the Plaintiff can proceed with her claims against Defendants Butts County School District and Georgia Department of Education.

SO ORDERED, this 12th day of March, 2013.

<u>S/ Marc T. Treadwell</u> MARC T. TREADWELL, JUDGE UNITED STATES DISTRICT COURT

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