

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

<b>DAVID W. GREGORY, Inmate #B-63881,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>CIVIL NO. 07-669-JPG</b>
	)	
<b>VERENIO SANTOS, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**MEMORANDUM AND ORDER**

This matter comes before the Court on Defendants's Motion to Dismiss Plaintiff's Complaint Pursuant to Federal Rules of Civil Procedure 12(b)(6)(d). (Doc. 39). In that Motion, Defendants argue that Plaintiff failed to exhaust his administrative remedies prior to filing suit as required by 32 U.S.C. § 1997E(a). Limited discovery was conducted concerning the issue. Defendants then filed a Motion to Dismiss and Request a Pavey Hearing (Doc. 77) in which they reiterated their position that Plaintiff's suit should be dismissed because he failed to exhaust his administrative remedies. Magistrate Judge Clifford Proud set the second motion for a hearing to be held on August 28, 2009. The Court finds that Defendants's original Motion to Dismiss (Doc. 39) is superseded by their second Motion to Dismiss (Doc. 77). Accordingly, the Court **DENIES as moot** Defendants's Motion to Dismiss Plaintiff's Complaint Pursuant to Federal Rules of Civil Procedure 12(b)(6)(d). (Doc. 39).

**IT IS SO ORDERED.**  
**Dated: August 10, 2009.**

s/ J. Phil Gilbert  
**J. PHIL GILBERT**  
**U.S. DISTRICT JUDGE**