

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

## ENTRY

The defendant's motion for leave to amend their answer has been considered. The defendants allege that at the plaintiff's deposition, some allegations related to the wheelchair ramp were revealed "which had not been previously grieved, and which are not plead in the Amended Complaint." The defendants allege that this "new information has revealed the possibility that Plaintiff has not exhausted his administrative remedies." The defendants seek to amend their answer by adding the failure to exhaust affirmative defense.

If the amended complaint does not allege a claim, then it is not before the Court. The only claim that survived screening in this action is that the plaintiff was denied access to outdoor recreation for over 10 months, beginning in December of 2013, because Lt. C. Nicholson failed to timely and properly repair a wheelchair ramp, in violation of the ADA and RA and the Fourteenth and Eighth Amendments. Under these circumstances, it would not be appropriate to amend the answer for a claim that was “not plead in the Amended Complaint.” Moreover, any request to brief the issue of failure to exhaust at the same time as the merits would be denied because exhaustion must be resolved first. *Perez v. Wis. Dep’t of Corr.*, 182 F.3d 532, 536 (7th

Cir. 1999)(“The statute [requiring administrative exhaustion] can function properly only if the judge resolves disputes about its application before turning to any other issue in the suit.”).

For these reasons, the defendants’ motion for leave to amend answer [dkt. 46] is **denied**.

**IT IS SO ORDERED.**

Date: 10/11/2016

Distribution:

Raymond Strominger, 160814, Pendleton Correctional Facility, Inmate Mail/Parcels, 4490 West Reformatory Road, Pendleton, IN 46064

Electronically registered counsel



---

TANYA WALTON PRATT, JUDGE  
United States District Court  
Southern District of Indiana