


at 226-27. A prisoner must bring a grievance to the attention of the appropriate prison official so that the facility has an opportunity to respond to the grievance. *Id.* at 227. “[T]o properly exhaust administrative remedies prisoners must complete the administrative review process in accordance with the applicable procedural rules, rules that are defined not by [federal law], but by the prison grievance process itself.” *Small v. Camden Cty.*, 728 F.3d 265, 272 (3d. Cir. 2013) (quoting *Jones v. Bock*, 549 U.S. 199, 218 (2007)).

Here, Plaintiff’s claim of harassment by prison officials is a prison conditions claim for the purposes of § 1997e(a). “[W]e hold that the . . . exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong.” *Porter v. Nussle*, 534 U.S. 516, 532 (2002). As such, Plaintiff is required to exhaust administrative remedies. In the Complaint, however, Plaintiff admits that he is still in the process of exhausting said remedies, but argues that he should not be required to exhaust because, essentially, the prison grievance process is futile. (*See* Compl. 2, ECF No. 1 (“While on this same date the Plaintiff had filed a grievance which is the next step in the exhaustion process, he contemporaneously files this complaint because he has witnessed what happens to inmates who make abuse complaints against officers and press the issue.”).) Futility is not a valid reason to excuse exhaustion. “[Federal law] requires exhaustion of all remedies that are available to an inmate, and that exhaustion is not subject to a ‘futility exception.’” *Gerholt v. Orr*, 624 F. App’x 799, 803 (3d Cir. 2015) (citing *Brown v. Croak*, 312 F.3d 109, 112-13 (3d Cir. 2002) and *Nyhuis v. Reno*, 204 F.3d 65, 71 (3d Cir. 2000)). As the Third Circuit explained, “[Plaintiff’s] belief that he would not obtain any redress by following the prison’s established grievance procedure does not provide us with a basis to excuse the exhaustion requirement.” *Id.* The Complaint, accordingly, fails to state a claim upon which relief may be granted because it

facially demonstrates that Plaintiff did not exhaust his administrative remedies as required by federal law, and is dismissed without prejudice. *See Rowann v. Coleman*, 481 F. App'x 44, 46 n.3 (3d Cir. 2012) (“[A]lthough a District Court should generally not raise sua sponte the affirmative defense of failure to exhaust, . . . it may do so if the defense is apparent from the face of the complaint.”).



MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

Dated: 3/13/18