J.K. et al v. NEW BRIGHTON SCHOOL DISTRICT Doc. 38 Att. 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

J.K., by his next friend and parent D.K.,	)	
	)	
Plaintiffs	)	
	)	
v.	)	Civil No. 14-2
	)	
NEW BRIGHTON SCHOOL DISTRICT,	)	
	)	
Defendant	)	

MEMORANDUM OPINION

BLOCH, District J.

Presently before the Court is Defendant New Brighton School District's Motion for Summary Judgment (Doc. No. 27). For the reasons set forth herein, Defendant's motion will be granted in part and denied in part because Plaintiffs have failed to exhaust their administrative remedies, thereby divesting this Court of subject matter jurisdiction to consider their claims. Accordingly, the motion will be granted to the extent that it seeks dismissal of the case for lack of jurisdiction and denied to the extent that it seeks an entry of summary judgment.

I. BACKGROUND

This is an action brought by Plaintiffs under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 ("Section 504"), and Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12132 et seq. ("ADA"). Plaintiffs assert that this Court has jurisdiction over their claims pursuant to 28 U.S.C. § 1331. As set forth in the amended complaint, Plaintiffs allege that Plaintiff J.K., based on his disability and in violation of Section 504 and the ADA, was discriminated against by Defendant in that he was excluded from participation in and denied the

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benefits of an education because Defendant failed to reasonably accommodate him despite knowing of his need for such accommodation, rendering him unable to attend school. They assert that J.K. was denied an education and that they are entitled to judgment for compensatory damages, attorney fees, interest, costs, and such other relief as this Court deems reasonable and just.

II. FACTUAL BACKGROUND

Because of the limited basis for the Court's resolution of this matter, the Court sets forth only those facts relevant to the ultimate basis of its decision.[1] Plaintiff J.K. is a minor child residing with his mother, Plaintiff D.K., in New Brighton, Pennsylvania. Defendant New Brighton School District is the public school district that J.K. has attended since enrolling in kindergarten in 2004.

In April of 2012, in response to issues with J.K.'s school attendance,[2] a meeting was held involving employees of Defendant and J.K.'s parents to address the issues and to formulate a truancy elimination plan. That summer, in July, Defendant was informed that Dr. Suzanne Lucot was treating J.K. for Attention Deficit Hyperactivity Disorder ("ADHD").[3] Although a Section 504 Service Agreement Plan was not completed during this time period, Defendant contacted

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[1] As discussed below, although the present motion is for summary judgment, the issue that the Court is addressing is whether it has subject matter jurisdiction. Accordingly, the proper standard here is actually the standard applicable to motions to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1). Nonetheless, the Court has, in an abundance of caution, construed the record in the light most favorable to Plaintiff anyway. It ultimately makes little difference, since the parties do not disagree on the only truly relevant issues, which is that the alleged discrimination was in regard to educational issues and that Plaintiffs, in fact, did not pursue any administrative remedies. Indeed, most of the facts set forth herein merely help establish the background of the case and the nature of Plaintiffs' claims.

[2] While there is considerable disagreement between the parties regarding J.K.'s attendance issues, ultimately, these issues are not relevant to the Court's decision.

[3] Dr. Lucot later informed Defendant that she was also treating J.K. for anxiety.

D.K. regarding the formulation of one in August of 2012. In September, representatives of Defendant met with J.K.'s parents to address his educational needs, and on November 28, 2012, D.K. requested a special education evaluation of J.K. Although the issue was referred to Defendant's child study team, which met with J.K.'s parents on December 5, 2012, the evaluation was never completed.

On January 16, 2013, J.K. fell and hit his head in gym class, resulting in a severe concussion. After various treatments, J.K. was advised to undergo further evaluation, attend school on a part-time basis, and avoid team sports. On March 12, 2013, J.K. was treated by Dr. Vanessa Fazio at the UPMC Sports Medicine Concussion Program. Dr. Fazio recommended a number of accommodations relevant to J.K.'s concussion, including a modified school day; a 50-75 per cent reduction in workload; no participation in sports or physical education class; extra time for test taking, including testing across multiple class sessions; a quiet environment for test taking; permission to obtain class notes or outlines ahead of time; permission to rest during class or in the nurse's office if his headaches worsen; and permission to turn in assignments late. None of these requested accommodations were provided by Defendant. As a result, J.K. was unable to attend school consistently and missed a significant amount of school.

On April 24, 2013, J.K. visited Dr. Fazio again, who recommended that he be provided with homebound instruction. She also added to her recommended accommodations from March by recommending a reduction in the length of J.K.'s tests; that he participate in no standardized testing; and shortened tests and projects. Defendant granted J.K.'s homebound instruction request on May 8, 2013, and, pursuant to a 504 plan signed by D.K., J.K. continued on homebound instruction for the rest of the school year. J.K. earned a passing grade in all of his

subjects, despite his claim that his homebound instruction did not adequately take into account his disability.

On August 7, 2013, J.K. was again treated by Dr. Fazio, who determined that he was able to attend school full-time, subject to certain accommodations similar to those previously recommended: a 50-75 per cent reduction in workload; no participation in physical education class; extra time for test taking; reduction in the length of projects and tests including open note, open book, or take home tests; permission to obtain class notes or outlines ahead of time; permission to rest during class or in the nurse's office if his headaches worsen; and permission to turn in assignments late. A few weeks later, on August 23, 2013, J.K. reinjured himself, and was treated again by Dr. Fazio on August 29, 2013. Based on this re-injury, Dr. Fazio revised her August 7 recommendations to include (in addition to her earlier recommendations) reading assignments on audio books and a limitation on computer work; no participation in sports; and a quiet environment for test taking. D.K. informed Defendant that J.K. was continuing to suffer from concussion-related symptoms prior to the start of the next school year.

On August 27, 2013, J.K. attended the first day of classes, accompanied by D.K. D.K. proceeded to request the accommodations recommended by Dr. Fazio. A few days later, Plaintiffs met with Guidance Counselor Aimee Young, an employee of Defendant, to discuss the requested accommodations. According to Plaintiffs, they were told that the requested accommodations were ridiculous and that they would not be implemented. Nonetheless, Defendant did make contact with Dr. Fazio and did eventually allow J.K. to begin his school day at the start of third period. No other accommodations were offered. Dissatisfied with the offered accommodation, J.K. decided to elect homebound instruction rather than attend school, and Dr. Fazio sent an evaluation form requesting homebound instruction for J.K. on September 24, 2013.

J.K.'s homebound instruction began on October 1. Around that time, Ms. Young spoke with D.K. about the homebound instruction, including the fact that J.K. would need to drop two classes. Throughout this time period, although the development of a 504 plan was discussed, one was never finalized or implemented. D.K. subsequently complained to Ms. Young that J.K.'s homebound instruction was inadequate. At the end of the first semester, J.K. was informed that he had failed all of his classes, which Plaintiffs believe was due to the inadequate homebound instruction and/or Defendant's failure to implement the accommodations recommended by Dr. Fazio. J.K.'s homebound instruction continued through April 29, 2014, at which time J.K. was released to attend school partial days.

Plaintiffs do not allege that they at any time pursued any administrative remedies in regard to the issues set forth above, nor is there any evidence of them pursuing any such remedies.

III. APPLICABLE LEGAL STANDARD

As noted above, although Defendant has filed this motion as one for summary judgment under Federal Rule of Civil Procedure 56, as part of its argument it challenges Plaintiffs' failure to exhaust administrative remedies and, therefore, has drawn the Court's jurisdiction into question. The general standards for determining whether summary judgment is appropriate and whether a court has jurisdiction, which ordinarily is done pursuant to Federal Rule of Civil Procedure 12(b)(1), are not the same.[4]

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[4] The Court is, of course, aware that Defendant did, in fact, file a motion to dismiss the original complaint for lack of jurisdiction stemming from Plaintiffs' failure to exhaust administrative remedies pursuant to Rule 12(b)(1). (Doc. No. 5). In response, Plaintiffs amended their complaint in an attempt to alleviate the need to have pursued such remedies. (Doc. No. 19). Rather than seek the dismissal of the amended complaint on the same ground, Defendant instead filed an answer (Doc. No. 21), and has apparently chosen to challenge jurisdiction pursuant to a Rule 56 motion.

Under Rule 56, summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(a). See also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986). The parties must support their position by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials." Fed. R. Civ. P. 56(c)(1)(A). A disputed fact is material if it might affect the outcome under the substantive law. See Boyle v. County of Allegheny, 139 F.3d 386, 393 (3d Cir. 1998) (citing Anderson, 477 U.S. at 247-48). Summary judgment is unwarranted where there is a genuine dispute about a material fact, that is, one where a reasonable jury, based on the evidence presented, could return a verdict for the non-moving party with regard to that issue. See Anderson, 477 U.S. at 248.

When deciding a motion for summary judgment, a court must draw all inferences in a light most favorable to the non-moving party without weighing the evidence or questioning the witnesses' credibility. See Boyle, 139 F.3d at 393. The movant has the burden of demonstrating the absence of a genuine issue of material fact, while the non-movant must establish the existence of each element for which it bears the burden of proof at trial. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). If the movant has pointed to sufficient evidence of record to demonstrate that no genuine issues of fact remain, the burden is on the non-movant to search the record and detail the material controverting the movant's position. See Schulz v. Celotex Corp., 942 F.2d 204, 210 (3d Cir. 1991). Rule 56 requires the non-moving party to go beyond the pleadings and show, through the evidence of record, that there is a genuine issue for trial. See Celotex, 477 U.S. at 324.

Under Rule 12(b)(1), on the other hand, the standard depends on whether the challenge to the court's subject matter jurisdiction is facial or factual. See Mortensen v. First Fed. Sav. & Loan Ass'n, 549 F.2d 884, 891 (3d Cir. 1977). A challenge, as here, based on a failure to exhaust administrative remedies is a factual challenge. See Enright v. United States, Civ. No. 1:14-cv-103, 2015 WL 5093346, at *8 n.3 (M.D. Pa. Aug. 28, 2015); J.Q. v. Washington Twp. Sch. Dist., Civ. No. 14-7814(JBS/JS), 2015 WL 1137865, at *3 (D.N.J. Mar. 13, 2015). In considering such a challenge, a court may consider evidence outside of the pleadings, see Gould Elec. Inc. v. United States, 220 F.3d 169, 176 (3d Cir. 2000), and "no presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of the jurisdictional claim." Mortensen, 549 F.2d at 891. In fact, the plaintiff has the burden of proving jurisdiction, and the court can weigh the evidence in determining whether that burden has been met. See id.; Harris v. Kellogg Brown & Root Servs., Inc., 724 F.3d 458, 464 (3d Cir. 2013).

Ultimately, it does not really matter which standard applies, because, either way, the Court finds that it lacks jurisdiction over this matter. So as to ensure itself fully of this fact, it has drawn all inferences in a light most favorable to Plaintiffs. However, the parties do not actually dispute the only facts relevant to the issue of whether this Court has subject matter jurisdiction, which is the nature of Plaintiffs' claims and the fact that they did not exhaust their administrative remedies. The Court does emphasize though, that, lacking jurisdiction, it is not and cannot enter judgment on Plaintiffs' claims. Rather, it must dismiss them without prejudice to seek appropriate administrative relief.

IV. DISCUSSION

As noted, one of the arguments raised in Defendant's motion is that Plaintiffs failed to exhaust their administrative remedies under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq. ("IDEA") prior to bringing their claims. Plaintiffs do not contest the fact that they did not bring any administrative action, but argue that exhaustion of such remedies would be futile in light of the remedies they seek, specifically compensatory damages and attorney fees. The Court agrees with Defendant that Plaintiffs are not excused from seeking administrative relief and that the Court, therefore, is without jurisdiction to consider their claims. Accordingly, this case will be dismissed without prejudice.

Even though Plaintiffs bring their claims under Section 504 and the ADA, this does not necessarily excuse them from seeking relief pursuant to the IDEA. The IDEA contains provisions setting forth a comprehensive procedure for seeking administrative relief prior to filing a civil action. See 20 U.S.C. § 1415. Exhaustion of these administrative remedies is necessary to grant subject matter jurisdiction to a federal district court. See Komninos v. Upper Saddle River Bd. of Educ., 13 F.3d 775, 778 (3d Cir. 1994); D.E. v. Cent. Dauphin Sch. Dist., 765 F.3d 260, 275 (3d Cir. 2014); 20 U.S.C. § 1415(i)(2). This requirement, though, goes beyond actions brought pursuant to the IDEA to actions that seek relief that ***could*** be obtained under that statute. See Jeremy H. by Hunter v. Mt. Lebanon Sch. Dist., 95 F.3d 272, 281 (3d Cir. 1996). Specifically, the IDEA provides:

> Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990 [42 U.S.C. § 12101 et seq.], title V of the Rehabilitation Act of 1973 [29 U.S.C. § 791 et seq.], or other Federal laws protecting the rights of children with disabilities, ***except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and***

(g) shall be exhausted to the same extent as would be required had the action been brought under this subchapter.

20 U.S.C. § 1415(l) (emphasis added). As the Third Circuit Court of Appeals explained in Jeremy H., this provision "bars plaintiffs from circumventing IDEA's exhaustion requirement by taking claims that could have been brought under IDEA and repackaging them as claims under some other statute – e.g., section 1983, ***section 504 of the Rehabilitation Act, or the ADA***." 95 F.3d at 281 (emphasis added). Thus, the mere fact that Plaintiffs seek relief pursuant to Section 504 and the ADA does not excuse them from seeking the administrative relief set forth in the IDEA for claims seeking relief available under that statute.

The Third Circuit recently explained how the exhaustion requirement of the IDEA applies to non-IDEA claims in great detail in Batchelor v. Rose Tree Media School District, 759 F.3d 266 (3d Cir. 2014).[5] As the Circuit Court explained, whether exhaustion was required depends on whether the claims could have been asserted under the IDEA, and, intertwined with this inquiry, whether the claims could have been remedied under the IDEA. See id. at 273. Therefore, claims that relate to "the identification, evaluation, or educational placement of [a] child, or the provision of a free appropriate public education to such child," must be administratively exhausted, even if brought under a different statute. See id. at 272. In other words, a school district's behavior allegedly resulting in educational harm suffered by a disabled child must be pursued administratively under the IDEA. See id. at 278. This "expressly includes health impairments that limit a student's ability to attend regular classes and which adversely affect his or her educational performance." A.D. v. Haddon Heights Bd. of Educ., Civ. No. 14-

[5] The Court notes that Batchelor, while a fairly recent decision, was issued several months before the filing of the present motion. Despite its rather obvious impact in this case, though, Defendant mentions it only in passing and Plaintiffs do not address it at all. Nonetheless, given that the decision was in place in time for the parties to consider its impact in their briefs, the Court finds that they had ample opportunity to do so and that no further briefing is needed.

1880(JBS/KMW), 2015 WL 892643, at *9 (D.N.J. Mar. 2, 2015). Such cases stand in contrast to a different class of claims brought under statutes such as Section 504 or the ADA that are "more akin to pure personal injury claims that just happen to occur to a student who is eligible under the IDEA" which do not need to be exhausted. Wellman v. Butler Area Sch. Dist., Civ. No. 13-cv-0616, 2015 WL 5156920, at *4 (W.D. Pa. Sept. 2, 2015) (comparing cases where exhaustion of IDEA administrative remedies was required before bringing Section 504 and ADA claims because they raised issues within the scope of the IDEA such as school performance, educational evaluations and accommodations, and the provision of an appropriate free education, see M.S. ex rel. Shihadeh v. Marple Newtown Sch. Dist., 82 F. Supp. 3d 625, 632 n.8 (E.D. Pa. 2015); E.K. v. River Dell Reg'l Sch. Dist. Bd. of Educ., No. 11-cv-00687(CCC), 2015 WL 1421616, at *4 (D.N.J. Mar. 26, 2015); C.L. ex rel. K.B. v. Mars Area Sch. Dist., No. 2:14-cv-1666, 2015 WL 3968343, at *8 (W.D. Pa. June 30, 2015), with cases not related to education, but merely involving an IDEA-eligible student, such as in the case of a sexual assault, see M.C. ex rel. R.C. v. Perkiomen Valley Sch. Dist., No. 14-5707, 2015 WL 2231915, at *6 (E.D. Pa. May 11, 2015)).

Here, Plaintiffs do not really challenge the fact that their claims relate to issues covered by the IDEA. Indeed, the amended complaint alleges that J.K. was discriminated against by Defendant in that he was excluded from participation in and denied the benefits of an education because Defendant failed to reasonably accommodate him despite knowing of his need for such accommodation, rendering him unable to attend school, and, ultimately, that J.K. was denied an education. The factual record, read even in the light most favorable to Plaintiffs, demonstrates that the crux of the issue here is Defendant's alleged failure to provide recommended accommodations for J.K.'s ADHD, anxiety, and concussion-related symptoms, which caused

him to require homebound instruction deemed by Plaintiffs to be inadequate. This, in turn, is alleged to have adversely affected J.K.'s academic performance. Such claims obviously relate to the identification, evaluation, or educational placement of a child, and/or the provision of a free appropriate public education to such child, and, as stated, Plaintiffs do not really dispute this point.[6] Further, Plaintiffs do not allege, nor is there any evidence in the record, that they did, in fact, exhaust their IDEA administrative remedies. Instead, Plaintiffs' argument is that they were excused from seeking such relief because of the nature of the relief sought, specifically compensatory damages and attorney fees.

The Third Circuit has explained that there are situations where exhaustion of administrative remedies under the IDEA may be excused:

(1) the exhaustion would be futile or inadequate;

(2) the issue presented is purely a legal question;

(3) the administrative agency cannot grant relief; or

(4) exhaustion would cause severe or irreparable harm.

D.E., 765 F.3d at 275.[7] However, the first three exceptions are often conflated. See C.L., 2015 WL 3968343, at *11 n.11. Plaintiffs do not allege that the issues they raise are purely legal (and they clearly are not), nor that they would be severely or irreparably harmed from pursuing the proper administrative remedies. By relying on the form of relief they are seeking, they seem to invoke some combination of the first and third exceptions. In essence, they argue that since the

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[6] Indeed, in her November 28, 2012 letter requesting a special education evaluation be done for J.K., D.K. specifically referenced the IDEA.

[7] There is another exception known as the "implementation exception" which may constitute an additional ground for foregoing administrative relief. See Batchelor, 759 F.3d at 278-80. However, this exception is not raised or relevant here in any event.

monetary relief they seek is not entirely available under the IDEA, seeking and exhausting administrative remedies under that statute would be futile. Such an argument, however, is refuted by the Third Circuit's decision in Batchelor.

In that case, the Third Circuit discussed the impact on seeking monetary damages on the need to exhaust administrative remedies at great length. It first pointed out that the IDEA's administrative process must be exhausted even if just some of the relief sought is available under that statute. See 759 F.3d at 276. While Plaintiffs are correct that compensatory damages are not available under the IDEA, they also seek damages that are potentially available under the IDEA, such as attorney fees[8] and "such other relief as this Court deems reasonable and just." The Circuit Court in Batchelor found that nearly identical demands demonstrated that at least some of the relief sought could be obtained under the IDEA and that adherence to the IDEA's administrative process was therefore necessary. See id. See also C.L., 2015 WL 3968343, at *12.

Regardless, the Court in Batchelor further explained that it is the theory of the plaintiff's claim that "'may activate the IDEA's process, even if the plaintiff wants a form of relief that the IDEA does not supply.'" 759 F.3d at 276 (quoting Charlie F. ex rel. Neil F. v. Bd. of Educ. of

[8] Plaintiffs' argument that the fact that they seek attorney fees actually excuses the pursuit of administrative remedies misses the mark. They themselves acknowledge that attorney fees are available under the IDEA, and they are. See 20 U.S.C. § 1415(i)(3)(B). Plaintiffs seem to claim that since they can only pursue such fees in a court proceeding, and not administratively, they need not seek such remedies before seeking such fees. However, this mischaracterizes the nature of an award of attorney fees under the relevant statutes. Such fees under the IDEA (and under Section 504 and the ADA) are awarded to prevailing parties, and therefore are available only if a plaintiff prevails in obtaining some other form of relief. See 29 U.S.C. § 794a(b); 42 U.S.C. § 12205. The fees themselves are not pursuant to a cause of action but, rather, awarded for success on some other cause of action. Accordingly, a demand for fees (which, again, is available under the IDEA) is inextricably intertwined with the substantive claims which do, in fact, require exhaustion of administrative remedies. The Court further notes that the decision in Batchelor clearly identifies attorney fees as a remedy available under the IDEA that would require exhaustion.

Skokie Sch. Dist. 68, 98 F.3d 989, 992 (7th Cir. 1996)). In other words, "the remedies that [Plaintiffs] seek do not dictate the applicability of the IDEA to their claims." Id. at 277. Relief under the IDEA is determined on a case-by-case basis and has been broadly defined. See id. Such relief includes attorney fees, reimbursement for private educational placement, and compensatory education. See Chambers ex rel. Chambers v. Sch. Dist. of Phila. Bd. of Educ., 587 F.3d 176, 185 (3d Cir. 2009) (citing A.W. v. Jersey City Public Schools, 486 F.3d 791, 802 (3d Cir. 2007)). Accordingly, Plaintiffs "cannot ignore remedies available under the IDEA and insist on those of their own devising." Batchelor, 759 F.3d at 276 (quoting Charlie F., 98 F.3d at 992). An appropriate remedy to the alleged denial of J.K.'s requested accommodations and of an education generally certainly could have been devised under the IDEA, and, at the very least, Plaintiffs were required to determine whether this was the case through the administrative process. Indeed, as the Court in Batchelor explained, although compensatory damages are not permitted under the IDEA per se, a plaintiff may be able to obtain monetary relief on his or her claims for expenses related to additional education such as tuition, tutoring, or summer school. See id. at 277. In short, since "the genesis and the manifestations of [Plaintiffs' issues] are educational," they are not excused from first seeking to have the issues remedied under the IDEA administrative process merely by claiming entitlement to a different type of remedy. Id. at 278 (quoting Charlie F., 98 F.3d at 993). See also J.Q., 2015 WL 1137865, at *9 (finding that the plaintiff needed to pursue the IDEA's administrative remedies where the plaintiff's claim for monetary damages was "explicitly premised on damage due to [the defendant's] failure to provide [the plaintiff] with the educational accommodations sought").

As noted, Plaintiffs do not address the impact of Batchelor on their claims, and, instead, rely on older case law, particularly McCrachen v. Blacklick Valley School District, 217 F. Supp.

2d 594 (W.D. Pa. 2002). In that case, the court, relying on W.B. v. Matula, 67 F.3d 484 (3d Cir. 1995), held that exhaustion of the IDEA's administrative remedies was not required where monetary damages not available under that statute were sought. However, as Judge McVerry explained in C.L., the analysis in McCrachen no longer holds up under Batchelor's comprehensive treatment of the exhaustion requirement. See 2015 WL 3968343, at *13. See also A.D., 2015 WL 892643, at *14. Further, Matula itself addressed the issue of the futility of administrative remedies in light of an already comprehensive administrative record absent here. These pre-Batchelor cases do not help Plaintiffs. Under Batchelor, it is clear that Plaintiffs were required to seek administrative relief under the IDEA's procedures before bringing this suit. They did not, and, accordingly, this Court has no jurisdiction to consider their claims.

V. **Conclusion**

Therefore, for the reasons set forth herein, the Court finds that it is without subject matter jurisdiction to adjudicate the claims raised by Plaintiffs or to grant judgment on these claims to either party. Accordingly, the Court will dismiss this case without prejudice to Plaintiffs' right to seek the appropriate administrative relief.

s/Alan N. Bloch
Alan N. Bloch
United States District Judge

Date: September 24, 2015

ecf: Counsel of Record