

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 13 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

GREG WIATT; et al.,

Plaintiffs - Appellants,

v.

PRESCOTT UNIFIED SCHOOL
DISTRICT, an Arizona School District; et
al.,

Defendants - Appellees.

No. 08-16273

D.C. No. 3:07-cv-08082-JWS

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
John W. Sedwick, District Judge, Presiding

Submitted October 9, 2009**
San Francisco, California

Before: HUG and PAEZ, Circuit Judges, and CARNEY,*** District Judge.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Cormac J. Carney, United States District Judge for the Central District of California, sitting by designation.

Greg and Joyce Wiatt, on behalf of their two school-aged children, Weston and Emily Wiatt, appeal the dismissal of their action against Prescott Unified School District under the Individuals with Disabilities Education Act (“IDEA”), 42 U.S.C. § 1983, the Rehabilitation Act, the Americans with Disabilities Act and state laws. The Wiatts alleged that their two autistic children were denied a free appropriate public education, as required by the IDEA. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo a district court’s decision to dismiss a case for failure to exhaust administrative remedies under IDEA, *Hoefl v. Tucson Unified Sch. Dist.*, 967 F.2d 1298, 1302-3 (9th Cir. 1992), and we affirm.

The district court properly dismissed the Wiatts’ federal law claims without prejudice, for failure to exhaust their IDEA administrative remedies. “The dispositive question generally is whether the plaintiff has alleged injuries that could be redressed to any degree by the IDEA’s administrative procedures and remedies.” *Robb v. Bethel Sch. Dist.*, 308 F.3d 1047, 1050 (9th Cir. 2002). The Wiatts failed to show that their injuries could not be redressed to any degree by filing an IDEA administrative complaint, or that filing such a complaint would be futile. In addition, the Wiatts may not pursue their other federal claims without first exhausting their IDEA administrative remedies. 20 U.S.C. §1415(l); *see also Blanchard v. Morton Sch. Dist.*, 509 F.3d 934, 938 (9th Cir. 2007) (holding that

IDEA rights are not enforceable under 42 U.S.C. § 1983); *Kutasi v. Las Virgenes Unified Sch. Dist.*, 494 F.3d 1162, 1163-64 (9th Cir. 2007) (affirming dismissal without prejudice of complaints filed under 42 U.S.C. § 1983 and § 504 of the Rehabilitation Act for lack of exhaustion under IDEA).

AFFIRMED.