FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STUDENT A, by and through Parent A, her Guardian; STUDENT B, by and through Parent B, his Guardian; STUDENT C, by and through Parent C, his Guardian; STUDENT D, by and through Parent D, her Guardian; STUDENT E, by and through Parent E, her Guardian, On Behalf of Themselves and All Others Similarly Situated, *Plaintiffs-Appellants*, v. SAN FRANCISCO UNIFIED SCHOOL DISTRICT; VINCENT MATTHEWS, In his Official Capacity as the Superintendent for the San Francisco Unified School District, *Defendants-Appellees*.	No. 20-15386 D.C. No. 3:19-cv-03101-WHO OPINION

Appeal from the United States District Court
for the Northern District of California
William Horsley Orrick, District Judge, Presiding

Argued and Submitted June 15, 2021
San Francisco, California

Filed August 18, 2021

Before: Mary M. Schroeder, Milan D. Smith, Jr., and Lawrence VanDyke, Circuit Judges.

Opinion by Judge Schroeder

SUMMARY*

Individuals with Disabilities Education Act

The panel affirmed the district court's dismissal, for failure to exhaust administrative remedies, of an action under the Individuals with Disabilities Education Act.

Plaintiffs claimed that San Francisco Unified School District failed in its responsibilities to students under the IDEA by not timely identifying and evaluating students with disabilities, and, after identifying them, by providing them with insufficiently individualized, "cookie-cutter" accommodations and services.

The panel held that plaintiffs did not satisfy any of the limited exceptions to the exhaustion requirement contained in 20 U.S.C. § 1415(l). Plaintiffs argued that exhaustion was not required because they challenged district-wide policies that only a court could remedy, but they were unable to identify any such policies. The panel agreed with the district court that plaintiffs challenged what amounted to failures in

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

practice by SFUSD, rather than policies or practices of general applicability.

COUNSEL

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Don Willenburg (argued), Gordon Rees Scully Mansukhani LLP, Oakland, California; Mark S. Posard and Judith A. Cregan, Gordon Rees Scully Mansukhani LLP, Sacramento, California; for Defendants-Appellees.

Neeraj Kumar, Ramaah Sadasivam, Suge Lee, and Melinda Bird, Disability Rights California, Oakland, California, for Amici Curiae Disability Rights California, The ARC of the United States, Arizona Center for Disability Law, Council of Parent Attorneys and Advocates Inc., Disability Law Center of Alaska, Disability Rights Advocates, Disability Rights Education and Defense Fund, Disability Rights Oregon, and Learning Rights Law Center.

OPINION

SCHROEDER, Circuit Judge:

Most Americans, at least those who have had children in our public schools in the last 50 years, are familiar with the landmark legislation of the 1970s ensuring that our schools educate those of our children who have disabilities. Titled the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.*, and known simply as the IDEA, it has generated litigation in many areas, not the least of which concerns when plaintiffs must exhaust administrative remedies before seeking broader relief in federal court.

In this case, Plaintiffs claim the San Francisco Unified School District (SFUSD) is failing its responsibilities to students under the IDEA by not timely identifying and evaluating students with disabilities, and, after identifying them, by providing them with insufficiently individualized, "cookie-cutter" accommodations and services. The district court dismissed the complaint because none of the plaintiffs had exhausted administrative remedies.

Plaintiffs argue on appeal that exhaustion was not required because they are challenging district-wide policies that only a court can remedy. Yet Plaintiffs are unable to identify any such policies. We agree with the district court that Plaintiffs have not satisfied any of the limited exceptions recognized by our caselaw to the exhaustion requirement contained in 20 U.S.C. § 1415(l).

BACKGROUND

The primary purpose of the IDEA is to ensure a free appropriate public education (FAPE) to every child with a disability. *Id.* § 1400(d)(1)(A). As part of its statutory design for achieving this purpose, the IDEA requires states to provide an opportunity for an impartial due process hearing to any parent who disputes what services must be provided to a child. *See id.* § 1415(f)–(i). A parent must generally exhaust this due process hearing procedure before filing a lawsuit seeking relief available under the IDEA. 20 U.S.C. § 1415(i)(2)(A) ("Any party aggrieved by the findings and decision made under [the IDEA's due process hearing procedures] . . . shall have the right to bring a civil action . . . ."); 20 U.S.C. § 1415(l) ("[B]efore the filing of a civil action under such laws seeking relief that is also available under this subchapter, [the IDEA's due process hearing] procedures . . . shall be exhausted . . . ."). Because other federal statutes also bear on students' access to education, the Supreme Court has clarified that exhaustion is required when the gravamen of the complaint is seeking relief for the denial of a FAPE, even if the complaint does not invoke the IDEA. *Fry v. Napoleon Cmty. Sch.*, 137 S. Ct. 743, 755 (2017).

In California, the Office of Administrative Hearings (OAH) oversees the formal hearing process mandated by the IDEA. *See* Cal. Educ. Code. § 56000 *et seq.* The OAH provides administrative resolution of an individual student's identification, evaluation, placement, and FAPE provision. *See* Cal. Educ. Code. § 56501.

California also provides another, less formal process, known as a complaint resolution proceeding (CRP), through which a parent may bring a complaint directly to the

California Department of Education. *See* Cal. Educ. Code § 56500.2. The CRP process is more flexible than the OAH process: a CRP complaint may contain any allegation that a school district has violated the IDEA or its implementing regulations, and it need not involve allegations limited to a specific student. *See* Cal. Educ. Code § 56500.2(a)(1), (c)(4). This court has stated that the CRP process may, on a case-by-case basis, serve as a substitute for the OAH process for purposes of the IDEA's exhaustion requirement. *Porter v. Bd. of Trs. of Manhattan Beach Unified Sch. Dist.*, 307 F.3d 1064, 1073–74 (9th Cir. 2002).

Plaintiffs are five current or former SFUSD students who have been diagnosed with dyslexia, autism, or speech and language impairments. In their class-action complaint, Plaintiffs alleged that SFUSD has systematically failed and refused to fulfill its obligations to (1) timely identify and evaluate students who qualify for special education services, (2) offer appropriately tailored special education services to students with disabilities, and (3) provide sufficient resources for its special education program. None of the Plaintiffs have initiated either the OAH or the CRP process.

On motion by the school district, the district court dismissed Plaintiffs' complaint for failure to exhaust administrative remedies. The district court concluded that Plaintiffs had not alleged facts sufficient to support their contention that an exception to the exhaustion requirement applied to their claims. The district court granted Plaintiffs leave to amend.

Plaintiffs did so, asserting in their amended complaint that, since they sought systemic, district-wide reforms that the OAH process could not achieve, exhausting the OAH process

would be useless. Plaintiffs also cited data to show unacceptably poor performance from SFUSD students with disabilities. Defendants moved to dismiss.

The district court again granted dismissal for failure to exhaust, this time with prejudice. Plaintiffs' amended complaint did not challenge policies or practices of general applicability as contrary to law, the district court wrote, but rather challenged what amounted to "failures in practice" by SFUSD. The district court observed that Plaintiffs "repeatedly characterize[d] their claims as challenging 'systemic' problems and seeking 'structural' relief." But such characterizations could not excuse failure to exhaust, the district court concluded, in the absence of "facts showing that exhaustion should be excused . . . or that the reform they seek is anything other than increased funding and greater adherence to existing policies at SFUSD." The district court also noted that the CRP process was an option, and one that "appear[ed] to be a much better fit for satisfying the exhaustion requirement," given Plaintiffs' claims and requested relief. The district court concluded by summarizing the purposes that exhaustion would serve in this case:

> Simply put, in light of IDEA's exhaustion requirement[,] plaintiffs need to do something to make their case and their broad allegations more concrete, and in the process develop a record containing administrative expertise as well as responses from the District or State to allow a court to effectively move forward on exhausted claims.

Plaintiffs appealed. We affirm.

ANALYSIS

The IDEA's exhaustion requirement applies in cases where the plaintiff seeks a remedy for failure to provide a FAPE. 20 U.S.C. § 1415(i)(2)(A), (l) ("[B]efore the filing of a civil action . . . seeking relief that is also available under this subchapter, [the IDEA's due process hearing] procedures . . . shall be exhausted . . . ."). In cases where plaintiffs bring education-related suits under additional federal laws, such as the Americans with Disabilities Act or the Rehabilitation Act, a court must inquire as to whether the complaint's gravamen seeks redress for failure to provide a FAPE. *Fry*, 137 S. Ct. at 755. If so, the exhaustion requirement applies. Here, Plaintiffs acknowledge that they seek redress for failure to provide a FAPE. Plaintiffs' central allegation, in fact, is that SFUSD engaged in "unlawful policies and practices [that] have led to the widespread denial of FAPE to students with disabilities." The declaratory and injunctive relief Plaintiffs seek aims to ensure that class members receive a FAPE. Plaintiffs further acknowledge that none have exhausted any administrative process.

Even when there has been no exhaustion, however, a claim may qualify for one of the exceptions that we have recognized to the IDEA's exhaustion requirement. Our seminal case is *Hoeft v. Tucson Unified Sch. District*, 967 F.2d 1298 (9th Cir. 1992). We have summarized *Hoeft*'s exceptions to mean

> that exhaustion is not required when
>
> (1) use of the administrative process would be futile,

> (2) the claim arises from a policy or practice of general applicability that is contrary to law, or
>
> (3) it is improbable that adequate relief can be obtained by pursuing administrative remedies (e.g. the hearing officer lacks the authority to grant the relief sought).

Paul G. v. Monterey Peninsula Unified Sch. Dist., 933 F.3d 1096, 1100 (9th Cir. 2019) (citing and quoting *Hoeft*, 967 F.2d at 1303–04) (line breaks added and internal quotation marks omitted).

The exceptions describe limited situations where pursuit of administrative remedies under the facts of a given case would serve no purpose. In such cases, exhaustion would not "further the general purposes of exhaustion and the congressional intent behind the administrative scheme." *Hoeft*, 967 F.2d at 1303. An exhaustion requirement reflects Congress's judgment that "agencies, not the courts, ought to have primary responsibility for the programs that Congress has charged them to administer." *Id.* (quoting *McCarthy v. Madigan*, 503 U.S. 140, 145 (1992)). Exhaustion is particularly important with respect to the IDEA because it deals with public education, which is provided on a local level. We have recognized "the traditionally strong state and local interest in education" as well as the relevant expertise possessed by educational agencies as opposed to generalist judges. *Id.* These considerations are reflected in the structure of the IDEA, where primary responsibility for ensuring compliance is given to the state agencies, not to the courts. *Id.* (citing 20 U.S.C. §§ 1412, 1414). Exhaustion assists courts when they are called upon to enforce the IDEA's

provisions. Exhaustion "promotes judicial efficiency by giving [state educational] agencies the first opportunity to correct shortcomings" and aids reviewing courts by "further[ing] development of a complete factual record." *Id.*

Plaintiffs seek to avoid the exhaustion requirement altogether. Primarily invoking the exception for unlawful policies or practices of general applicability, *see Paul G.*, 933 F.3d at 1100, they claim to challenge district-wide policies that apply generally to all SFUSD students with disabilities and that result in their failing to receive FAPEs. Plaintiffs thus contend exhaustion would serve no purpose. Yet Plaintiffs have not identified any policy, much less one of general applicability that the administrative process could not address.

The district court concluded that the unlawful-policy-or-practice exception did not apply because Plaintiffs were "*not* challenging policies or practices" but rather "failures in practice" by SFUSD. Yet Plaintiffs had made no attempt to seek redress for such failings through the OAH or CRP processes. There was thus no administrative record to help the district court understand how the school district may have failed their students and how only a court, not the administrative agency, could remedy such failings.

Plaintiffs contend that there would be no point in going to the state administrative agencies, because Plaintiffs seek to change the SFUSD special educational system. We have at times used the words "systemic" and "structural" to describe challenges where exhaustion is not required. See *Paul G.*, 933 F.3d at 1101–02 (describing "systemic" claims as "entitled to the general applicability exception"); *Hoeft*,

967 F.2d at 1309 ("Administrative remedies are generally inadequate where structural, systemic reforms are sought.").

Our seminal decision on exhaustion is *Hoeft*. In that case, as in this one, the plaintiffs sought class-action relief to change local school district policy. 967 F.2d at 1299–1300. We nonetheless held that exhaustion was required. *Id.* We explained that describing problems as broad and far-reaching is not enough to meet the standard; a policy or practice is not necessarily "systemic" or "of general applicability" simply because it "applie[s] to all students" or because "the complaint is structured as a class action seeking injunctive relief." *Id.* at 1304, 1308. We concluded that in the absence of an administrative record, the district court was "ill-equipped" to determine whether students were receiving a FAPE. *Id.* at 1310.

To our knowledge, no published opinion in this circuit has ever found that a challenge was "systemic" and exhaustion not required. A comprehensive discussion of what such a claim might look like can be found in *Doe ex rel. Brockhuis v. Arizona Department of Education*, 111 F.3d 678 (9th Cir. 1997). There, we defined a systemic claim as one that either "implicates the integrity or reliability of the IDEA dispute resolution procedures themselves, or requires restructuring the education system itself in order to comply with the dictates of the Act." *Id.* at 682. We cited, as an example of such a claim, a case from the Second Circuit where the plaintiffs challenged the process for appointing IDEA hearing officers. *Id.* (citing and discussing *Heldman on Behalf of T.H. v. Sobol*, 962 F.2d 148, 159 (2d Cir. 1992)). In *Heldman*, because the legitimacy of the hearing officers' authority was challenged, the integrity of the dispute resolution procedure itself was the issue; requiring the

plaintiffs to utilize the procedure would have accomplished nothing. *See id.* at 682–83.

Plaintiffs here are not challenging the integrity of the state's administrative procedures; they simply seek to bypass them. Although Plaintiffs contend they are seeking a restructuring of the education system, their complaint neither identifies the policies or practices that need to be addressed nor explains why the pursuit of administrative remedies could not correct their deficiencies. We agree with the district court that merely characterizing a school district's problems as "systemic" and the relief sought as "structural" does not provide the facts necessary to show that the allegedly needed reform is, as the court trenchantly put it, "anything other than increased funding and greater adherence to existing policies." An administrative record could shed needed light on what is going right, what is going wrong, and remedies for the latter.

To be sure, Plaintiffs do contend that their claims identify three specific unlawful policies or practices. But what they amount to are assertions of delay in providing services, denial of sufficiently individualized services, and arbitrary limits on services. These are allegations of bad results, not descriptions of unlawful policies or practices. Plaintiffs' claims are accompanied by general statistics documenting poor performance by students with disabilities. While these results, if true, are all unfortunate, they are not policies or practices that a court could grasp, much less change, without the benefit of any factually developed administrative record. As we said in *Hoeft*, exhaustion "allows for the exercise of discretion and educational expertise by state and local agencies," "furthers development of a complete factual record, and promotes judicial efficiency." 967 F.2d at 1303.

All of these important interests could be furthered by exhaustion in this case.

There is another important interest that exhaustion would serve in this case, since this case represents a challenge to the practices of a local school district. Exhaustion would give the state of California a reasonable opportunity to investigate and correct the district's failures prior to judicial intervention. In *Hoeft*, we emphasized the importance of giving the state department of education an opportunity to investigate and correct local district failures in the first instance. We explained that this is because the state bears "ultimate responsibility for ensuring . . . compl[iance] with the IDEA." *Id.* at 1307. As we said there, allowing plaintiffs to "circumvent[] this scheme" when challenging local policies would "undermine[] the IDEA's enforcement structure." *Id.*

For all of these reasons, the judgment of the district court in favor of the defendants must be **AFFIRMED**. Plaintiffs' motion for judicial notice of past OAH orders is **GRANTED**.

CONCLUSION

The district court correctly entered judgment in favor of the defendants, because Plaintiffs' claims did not fall within any recognized exception to the IDEA's requirement that plaintiffs exhaust administrative remedies.

The judgment of the district court is **AFFIRMED**.