NOT RECOMMENDED FOR PUBLICATION

No. 21-5700

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RYANNE PARKER, individually and on behalf of her minor daughter, N.P.,	)	
Plaintiff-Appellant,	)	
v.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE
WEST CARROLL SPECIAL SCHOOL DISTRICT,	)	
Defendant-Appellee.	)	

O R D E R

Before: WHITE, THAPAR, and READLER, Circuit Judges.

Ryanne Parker, a Tennessee litigant proceeding pro se, appeals the district court's judgment dismissing this civil rights action brought on behalf of herself and her daughter, N.P. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

Parker filed a pro se complaint in the Carroll County Chancery Court against West Carroll Special School District (District) and three individuals, asserting that the defendants denied her daughter, who is autistic, a free appropriate public education in violation of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*; Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12132 *et seq.*; Section 504 of the Rehabilitation Act, 29 U.S.C. § 794; 42 U.S.C. § 1983; and state law. Parker sought monetary damages.

The defendants removed Parker's action to the district court and filed a motion to dismiss. Parker moved to remand the case to the chancery court and to add her then-minor daughter, N.P.,

as a plaintiff. A magistrate judge recommended that the district court deny Parker's motion to remand, grant her motion to amend, and, with respect to the defendants' motion, dismiss her claims against the individual defendants and her claim for punitive damages against the District. Soon after, counsel entered an appearance and filed an amended complaint on behalf of Parker and N.P. against the District. When Parker failed to file any objections to the magistrate judge's report and recommendation, the district court ordered her to show cause why the report and recommendation should not be adopted. Parker failed to respond to the show-cause order, so the district court adopted the magistrate judge's report and recommendation.

Parker's counsel then withdrew from the case. After her counsel withdrew, Parker filed an amended pro se complaint on behalf of herself and N.P. against the District. The District answered the amended complaint and filed a motion to dismiss in part. The magistrate judge recommended that the district court grant the District's motion, concluding that Parker failed to state a personal claim under the ADA and Section 504, that she failed to state a § 1983 claim for municipal liability, and that she could not represent N.P. Over Parker's objections, the district court adopted the magistrate judge's report and recommendation.

The District moved for summary judgment on Parker's remaining claim under the IDEA. The magistrate judge recommended that the district court grant the District's motion on the basis that Parker failed to exhaust her administrative remedies as required under the IDEA and that the district court decline to exercise supplemental jurisdiction over her state-law claims. Over Parker's objections, the district court adopted the magistrate judge's report and recommendation and entered judgment in accordance with that decision.

This timely appeal followed. Parker challenges the district court's and the magistrate judge's rulings denying her motion to remand, denying her motions to compel the written transcript of a hearing and to submit a video recording of the hearing as an exhibit, granting the District's requests for deadline extensions, dismissing N.P. as a plaintiff, dismissing her personal claims under the ADA and Section 504 for failure to state a claim, denying her leave to file an

interlocutory appeal from the dismissal order, and granting summary judgment in favor of the District on her IDEA claim.

The magistrate judge recommended that Parker's motion to remand be denied because the district court had federal-question jurisdiction over her IDEA claim. *See* 28 U.S.C. §§ 1331, 1441(a). By failing to object to the magistrate judge's report and recommendation, even after the district court ordered her to show cause why the report and recommendation should not be adopted, Parker forfeited her challenge to the denial of her motion to remand. *See Thomas v. Arn*, 474 U.S. 140, 142 (1985); *Berkshire v. Dahl*, 928 F.3d 520, 530 (6th Cir. 2019). Regardless, the district court properly denied Parker's motion to remand because her complaint asserted claims arising under federal law. *See Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 6 (2003).

The magistrate judge denied Parker's motion to compel the District to submit a written transcript of the due process hearing held on November 19, 2019, and her motion to submit a video recording of that hearing as an exhibit. The magistrate judge later granted the District's motions to extend the deadlines for completing discovery and filing dispositive motions. Parker challenges these rulings on appeal, but we lack jurisdiction to review the magistrate judge's orders because Parker did not appeal them to the district court. *See* Fed. R. Civ. P. 72(a); *Hoven v. Walgreen Co.*, 751 F.3d 778, 782 (6th Cir. 2014).

The district court dismissed the claims brought on behalf of N.P. without prejudice, concluding that Parker, as a pro se litigant, could not bring any claims on another's behalf. Under 28 U.S.C. § 1654, "[i]n all courts of the United States the parties may plead and conduct their own cases personally or by counsel." But "that statute does not permit plaintiffs to appear *pro se* where interests other than their own are at stake." *Shepherd v. Wellman*, 313 F.3d 963, 970 (6th Cir. 2002). "Indeed, we have consistently interpreted § 1654 as prohibiting pro se litigants from trying to assert the rights of others." *Olagues v. Timken*, 908 F.3d 200, 203 (6th Cir. 2018). Accordingly, the district court properly dismissed the claims brought by Parker on behalf of N.P.

Parker argues that N.P. turned 18 years old while the case was pending before the district court and should have been allowed to represent herself. But N.P. made no attempt to assert any claims on her own behalf.

With the exception of her IDEA claim, the district court dismissed Parker's federal claims for failure to state a claim. We review de novo the district court's ruling on a motion to dismiss. *Lipman v. Budish*, 974 F.3d 726, 740 (6th Cir. 2020). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

The district court properly dismissed Parker's personal claims under the ADA and Section 504 because she failed to allege that the District discriminated against her personally. Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Under Section 504 of the Rehabilitation Act, "[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a). Non-disabled individuals have a cause of action to bring claims under the ADA and Section 504 when they suffer injuries because of their association with a disabled person. *See McCullum v. Orlando Reg'l Healthcare Sys., Inc.*, 768 F.3d 1135, 1142 (11th Cir. 2014); *MX Grp., Inc. v. City of Covington*, 293 F.3d 326, 335 (6th Cir. 2002). Parker alleged in her amended complaint that the District discriminated against N.P. but failed to allege that she was personally excluded, denied benefits, or otherwise discriminated against by the District because of her association with N.P. *See R.S. ex rel. R.D.S. v. Butler County*, 700 F. App'x 105, 109-10 (3d Cir. 2017); *McCullum*, 768 F.3d at 1143.

The ADA and Section 504 prohibit retaliation against an individual for opposing practices made unlawful by those statutes or otherwise seeking to exercise rights under them. *A.C. ex rel.*

J.C. v. Shelby Cnty. Bd. of Educ., 711 F.3d 687, 696-97 (6th Cir. 2013) (citing 42 U.S.C. § 12203 and 28 C.F.R. § 35.134 (ADA) as well as 29 U.S.C. § 794(a) and 29 C.F.R. § 33.13 (Section 504)). Although Parker argues on appeal that the District retaliated against her for opposing unlawful practices, she failed to allege any facts supporting a retaliation claim in her amended complaint.

The district court dismissed Parker's § 1983 claim because she failed to allege that a District policy or custom caused her an injury. Given that "*respondeat superior* is not available as a theory of recovery under section 1983," Parker must show that the District "*itself* is the wrongdoer." *Doe v. Claiborne County ex rel. Claiborne Cnty. Bd. of Educ.*, 103 F.3d 495, 507 (6th Cir. 1996). To hold the District liable under § 1983, Parker must "establish that an officially executed policy, or the toleration of a custom within the school district leads to, causes, or results in the deprivation of a constitutionally protected right." *Id.* Because Parker failed to allege any facts indicating that a policy or custom caused her an injury, the district court properly dismissed her § 1983 claim against the District.

Parker moved for leave to appeal the district court's order granting the District's motion for partial dismissal; the district court denied her motion. The district court will certify an order for interlocutory appeal if the court is "of the opinion" that the "order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b); *see In re Trump*, 874 F.3d 948, 951 (6th Cir. 2017). Upon Parker's motion, the district court was unable to find any of the criteria for certifying an interlocutory appeal. We need not consider Parker's contention that the district court erred by declining to certify the order granting the District's motion for partial dismissal for interlocutory appeal because she now has the opportunity to challenge that order on appeal.

The district court granted the District's motion for summary judgment on Parker's IDEA claim—her remaining federal claim—concluding that she failed to exhaust her administrative remedies under the IDEA. We review de novo the district court's decision granting summary judgment in favor of the District. *See M.J. ex rel. S.J. v. Akron City Sch. Dist. Bd. of Educ.*, 1 F.4th

436, 445 (6th Cir. 2021). Summary judgment is appropriate "if the movant shows that 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).

If a plaintiff seeks relief for the denial of a free appropriate public education, as Parker did, the plaintiff must exhaust her administrative remedies under the IDEA prior to filing a civil action. 20 U.S.C. § 1415; *see Fry v. Napoleon Cmty. Schs.*, 137 S. Ct. 743, 754 (2017); *Perez v. Sturgis Pub. Schs.*, 3 F.4th 236, 239-40 (6th Cir. 2021), *petition for cert. filed*, (U.S. Dec. 15, 2021) (No. 21-887); *F.C. v. Tenn. Dep't of Educ.*, 745 F. App'x 605, 608 (6th Cir. 2018). In October 2019, Parker submitted a due process hearing request form to the Tennessee Department of Education, alleging that the "response to intervention" placement for N.P. had resulted in the denial of a free appropriate public education, and she provided the District with a due process complaint under the IDEA. The district court determined that Parker failed to exhaust her administrative remedies because, prior to the scheduled due process hearing, the administrative judge dismissed the matter based on Parker's withdrawal of her request for a due process hearing.

Parker argues on appeal that the district court erred in granting the District's motion for summary judgment for failure to exhaust because it had previously denied the District's motion to dismiss on that same basis. But the district court was not precluded from revisiting the exhaustion issue on a more developed record at the summary-judgment stage. In recommending that the district court grant the District's motion for summary judgment, the magistrate judge explained that "a closer review of the caselaw" resulted in a different conclusion as to whether exhaustion was futile.

Parker also complains that the District's motion for summary judgment remained sealed after the magistrate judge denied the District's request to file the motion under seal. Parker acknowledges that, after she notified the district court that the District's summary-judgment motion was still sealed, the motion was unsealed. Parker does not assert that she did not have access to the District's motion for summary judgment or that she suffered any prejudice from the delay in unsealing the motion.

Parker raises other arguments in her reply brief. Generally, "an appellant abandons all issues not raised and argued in its initial brief on appeal." *Bard v. Brown County*, 970 F.3d 738, 751 (6th Cir. 2020) (quoting *United States v. Johnson*, 440 F.3d 832, 845-46 (6th Cir. 2006)). Regardless, Parker has failed to show that the district court erred in granting summary judgment in favor of the District on the basis that she failed to exhaust her administrative remedies under the IDEA by withdrawing her request for a due process hearing. Parker argues that she was not required to exhaust her administrative remedies under the IDEA because she sought individual relief as a parent, relying on *Weber v. Cranston School Committee*, 212 F.3d 41 (1st Cir. 2000). Contrary to Parker's argument, that case held that the parent was required to invoke the IDEA's administrative remedies before filing a retaliation claim in the district court. *Id.* at 51-52. Parker also argues that exhaustion was not required because the monetary relief that she sought was not available in an administrative proceeding. A damages claim does not excuse a plaintiff from exhausting her administrative remedies under the IDEA given that a plaintiff "could otherwise circumvent the IDEA's elaborate scheme simply by appending a claim for damages" and that "the administrative process might ultimately afford sufficient relief to the injured party, even if it is not the specific relief that the plaintiff requested." *Covington v. Knox Cnty. Sch. Sys.*, 205 F.3d 912, 917 (6th Cir. 2000), *abrogation on other grounds recognized by Perez*, 3 F.4th at 243 n.1; *see Perez*, 3 F.4th at 243-44. Finally, to the extent that Parker argues that her ADA/Section 504 due process hearing exhausted her administrative remedies under the IDEA, exhaustion of administrative procedures under other federal laws does not satisfy the exhaustion requirements that are specific to the IDEA. *See Weber*, 212 F.3d at 53-54.

For these reasons, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk