APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-2143
JENN-CHING LUO, Appellant
v.
OWEN J. ROBERTS SCHOOL DISTRICT;
RICHARD MARCHINI; GEOFFREY BALL
Appellees

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 2-22-cv-02546)
District Judge: Eduardo C. Robreno

Filed: May 30, 2024

SUR PETITION FOR REHEARING

Present: CHAGARES, *Chief Judge*, JORDAN, HARDIMAN, SHWARTZ, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES, CHUNG, and NYGAARD*, *Circuit Judges.*

The petition for rehearing filed by **appellant** in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who

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* Judge Nygaard's vote is limited to panel rehearing.

concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ *Peter J. Phipps*
Circuit Judge

Dated: May 30, 2024
kr/cc: Jenn-Ching Luo
Karl A. Romberger, Jr., Esq.

APPENDIX B

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-2143

JENN-CHING LUO,
Appellant
v.
OWEN J. ROBERTS SCHOOL DISTRICT;
RICHARD MARCHINI;
GEOFFREY BALL

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 2-22-cv-02546)
District Judge: Honorable Eduardo C. Robreno

Submitted Pursuant to Third Circuit LAR 34.1(a)
March 12, 2024
Before: JORDAN, PHIPPS, and NYGAARD, Circuit Judges
(Opinion filed: March 21, 2024)

OPINION*

PER CURIAM

Pro se appellant Jenn-Ching Luo appeals from

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

orders of the District Court dismissing his complaint with prejudice and denying his motion for reconsideration. For the following reasons, we will affirm.

The Individuals with Disabilities in Education Act (IDEA), 20 U.S.C. § 1400, et seq., requires states receiving federal education funding, like Pennsylvania, to provide a Free Appropriate Public Education (FAPE) to disabled children until they reach 21 years of age. See Blunt v. Lower Merion Sch. Dist., 767 F.3d 247, 267 (3d Cir. 2014). To address education gaps wrought by COVID-19, Pennsylvania enacted Act 66 of 2021 which, in part, extended education enrollment for the 2021-2022 school year. See Act of June 30, 2021, P.L. 353, No. 66, § 1 (amending Public School Code of 1949, P.L. 30, No.14). As relevant here, § 1383 of the Act allowed students with a disability who were enrolled for the 2020-2021 school year, and turned 21 years old during that time, to attend a school entity for the 2021-2022 school year; and § 1501.10 of the Act allowed any student over 18 years of age "in a school entity . . . to repeat a grade level to make up for any lost educational opportunities." Id.

Luo is the father of B.L., a special needs student who enrolled in the 2021-2022 school year in the Owen J. Roberts School District pursuant to § 1501.10 of Act 66. B.L. turned 21 during that school year; thus, over Luo's objections, the School District determined that B.L. would not be entitled to continued enrollment after the end of the 2021-2022 school year.

In January 2022, Luo filed an administrative due process complaint arguing that that the School

District was required to provide B.L. with a FAPE for the 2022-2023 school year pursuant to § 1501.10 of Act 66. Luo also claimed that the School District was required under the "stay put" provision of the IDEA, 20 U.S.C. § 1415(j), to allow B.L. to remain in his educational placement beyond the 2021-2022 school year while proceedings challenging B.L.'s education programs remained pending.[1] Following a hearing in March 2022, the Hearing Officer issued a decision concluding that B.L. had "no right to continued enrollment or to a FAPE beyond the end of the 2021-22 school year." ECF No. 7-2 at 17.

In June 2022, Luo filed a complaint with the District Court challenging the Hearing Officer's decision pursuant to 20 U.S.C. § 1415(i)(2). The complaint also brought claims pursuant to 42 U.S.C. § 1983 against the School District, its director of Pupil Services Richard Marchini, and its Special Education Supervisor Geoffrey Ball for violations of his constitutional rights. In an order entered June 29, 2022, the District Court granted the defendants' motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), and dismissed the complaint with prejudice. It subsequently denied Luo's timely motion for reconsideration brought pursuant to Federal Rule of Civil Procedure 59(e). This appeal ensued.

We have jurisdiction under 28 U.S.C. § 1291. We exercise plenary review over the District Court's dismissal under Rule 12(b)(6), and will affirm if the

[1] At the time the administrative complaint was filed, there were multiple matters pending in the District Court which involved Luo and the School District, and regarded B.L.'s education rights. See ECF No. 7-2 at 5, ¶17 & n.5.

complaint fails to state a claim for relief that is plausible on its face See Burtch v. Milberg Factors, Inc., 662 F.3d 212, 220 (3d Cir. 2011); see also Jonathan H. v. The Souderton Area Sch. Dist., 562 F.3d 527, 529 (3d Cir. 2009) (observing that an IDEA action pursuant to § 1415(i)(2) "is an original civil action rather than an appeal," and thus is "governed by the Federal Rules of Civil Procedure").

We agree with the District Court that Luo's claim challenging the Hearing Officer's decision fails as a matter of law.[2] First, Luo argued that the Hearing Officer, like the School District, deprived B.L. of "a year to make up for lost educational opportunities due to COVID-19," as provided by Act 66. But this claim is based on his misunderstanding that § 1501.10 of Act 66 both allowed students to repeat a grade "to make up educational opportunities" lost during the 2020-2021 school year and provided students with "an additional year" of schooling thereafter. ECF No. 1 at 7, ¶45 & 8, ¶47; ECF No. 8 at 6; Reply Br. at 5-6. Rather, as the Hearing Officer determined, the plain language of § 1501.10 provided

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[2] Contrary to Luo's argument on appeal, see Br. at 44-45, the District Court properly considered the Hearing Officer's decision in evaluating the motion to dismiss. See S. Cross Overseas Agencies, Inc. v. Wah Kwong Shipping Grp. Ltd., 181 F.3d 410, 426 (3d Cir. 1999). Moreover, in evaluating the claim seeking to vacate the Hearing Officer's decision, the District Court was required to apply a "modified" de novo review, giving "due weight" to the ALJ's factual determinations and "special weight" to the ALJ's credibility determinations. L.E. v. Ramsey Bd. Of Educ., 435 F.3d 384, 389 & n.4 (3d Cir. 2006). Notably, in his complaint, Luo contested the Hearing Officer's conclusions of law but not his fact finding. See ECF No. 1 at 9-12.

only that students could repeat a grade level during the 2021-2022 school year. See ECF 7-2 at 8-9. Section 1383 of Act 66 provided an additional year of schooling for disabled students who turned 21 during the 2020-2021 school year and, thus, were no longer entitled to a FAPE under the IDEA. But that provision did not apply to B.L., nor did Luo contend that it did.[3] Luo elected to enroll B.L. for the 2021-2022 school year to repeat a grade level,[4] and Luo did not contend that B.L. was not permitted to do so. See ECF No. 1 at 4, 6-7; ECF No. 7-2 at 4-5, 10; Reply Br. at 5-6. That is all that B.L. was entitled to under Act 66.

Second, the Hearing Officer properly determined that the stay-put provision of the IDEA did not require the School District to maintain B.L.'s enrollment after the end of the 2021-2022 school

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[3] After the Hearing Officer's decision, Pennsylvania enacted Act 55 of 2022 ("Act 55"), which allowed disabled students, like B.L., who turned 21 during the 2021-2022 school year and were enrolled for that school year, to attend a school entity for the2022-2023school year. See Act of July 8, 2022,P.L. 620, No. 55, §16(amending Public School Code of1949,P.L. 30, No.14). However, it does not appear that Luo elected to enroll B.L. under Act 55, and Luo asserts the Act is"irrelevant" to his claims. Br. at 44.

[4] As the Hearing Officer observed, because B.L. is in a specialized program for students with disabilities, "repeating a grade level means reteaching skills that were previously presented"(or "more accurately," providing funds so that B.L.'s private school could reteach his 2020-2021curriculumduring the 2021-2022year). ECF No. 7-2 at 9. The Hearing Officer also observed that, under ACT 66, some disabled students, like B.L., who chose to repeat a grade under § 1501.10 would "age out of IDEA eligibility without a regular high school diploma." Id. Act 55 subsequently remedied that.

year. The "stay-put" provision provides that, "during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child . . . until all such proceedings have been completed." 20 U.S.C. § 1415(j). The purpose of the provision is "to maintain the educational status quo while the parties' dispute is being resolved." T.M. ex rel. A.M. v. Cornwall Cent. Sch. Dist., 752 F.3d 145, 152 (2d Cir. 2014). The Hearing Officer properly determined that the protections of the stay-put provision terminate, like the right to a FAPE, once a student turns 21, see ECF No. 7-2 at 10-14. See Bd. of Educ. of Oak Park & River Forest High Sch. Dist. 200 v. Illinois State Bd. of Educ., 79 F.3d 654, 659 (7th Cir. 1996) (so holding, reasoning that, otherwise, "parents [could] obtain adult benefits for their child to which they had no entitlement simply by filing a claim for compensatory education on the eve of their child's turning 21"); see also Honig v. Doe, 484 U.S. 305, 318 (1988) (holding (under the predecessor IDEA statute) that a student over age 21 "is no longer entitled to the protections and benefits of the [statute]"). Therefore, B.L. was not entitled to the protections of the stay-put provision after he finished the 2021-2022 school year.

Based on the foregoing, the District Court properly dismissed the claim seeking to vacate the Hearing Officer's decision. And because it is clear B.L. was not deprived of a right to an additional year of educational benefits under Act 66, Luo's remaining claims – for violations of his equal

protection and "liberty" rights – fail as a matter of law. Those claims were also based on Luo's misunderstanding of §1501.10. We agree with the District Court that dismissal with prejudice was appropriate because amendment of Luo's claims would be futile, see Phillips v. County of Allegheny, 515 F.3d 224, 236 (3d Cir. 2008), and that there was no basis for granting reconsideration, see Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999) (noting that the purpose of a Rule 59(e) motion "is to correct manifest errors of law or fact or to present newly discovered evidence" (citation omitted)).

Accordingly, we will affirm the District Court's judgment.[5]

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[5] Appellant's motion to certify a question to the Pennsylvania Supreme Court is denied.

APPENDIX C

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

CIVIL ACTION
NO. 22-2546

JENN-CHING LUO
v.
OWEN J. ROBERTS SCHOOL
DISTRICT et al.

Filed: April 18, 2023

ORDER

AND NOW, this **18th** day of **April, 2023**, upon consideration of Plaintiff's Complaint (ECF No. 1), Defendants' Motion to Dismiss (ECF No. 7), and Plaintiff's Response in Opposition (ECF No. 8), it is hereby **ORDERED** that Defendants' Motion is **GRANTED.**[1] Plaintiff's Complaint is **DISMISSED WITH PREJUDICE.** The Clerk of Court shall mark the matter **CLOSED**.

AND IT IS SO ORDERED.

/s Eduardo C. Robreno
EDUARDO C. ROBRENO, J.

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I. INTRODUCTION

Before the Court is Plaintiff Jenn-Ching Luo's Complaint(ECF No. 1), Defendants' Motion to Dismiss Plaintiff's Complaint (ECF No. 7), and Plaintiff's Response thereto (ECF No. 8). Luo sues Owen J. Roberts School District, Richard Marchini, and Geoffrey Ball, for alleged violations of state and federal law pertaining to Luo's child's enrollment during the COVID-19 pandemic. Defendants Marchini and Ball work within the Owen J. Roberts School District as Director of Pupil Services and supervisor for special education, respectively. First, Luo claims that recent Pennsylvania legislation meant to make up for lost educational time during the Covid-19 pandemic (Act 66) provides his child with the statutory right to receive an education for the 2022-2023 school year. Luo further asserts that Pennsylvania Department of Education guidance on Act 66 compliance clarifies that special education students are entitled to receive an additional year to make up for lost educational opportunities. Second, Luo claims his child is protected by 20 U.S.C. § 1415(j), the pendency provision of the Individuals with Disabilities Education Act (IDEA), and that pending resolution of this litigation the child should remain enrolled with a Free Appropriate Public Education (FAPE). Finally, Luo claims that Defendants have committed disability discrimination by denying his child the right to a FAPE. Although Luo's claims primarily stem from alleged violations of state law, the Court has jurisdiction to review a state's alleged violation of the IDEA under 20 U.S.C. § 1415(i)(2)(A).

Because the facts alleged show that (1) Luo did request--and his child was provided with--an additional year of education under Act 66; (2) Luo's child is not entitled to protection under the pendency provision as a matter of law; (3)Luo has no general liberty right to direct this aspect of the education of his child as a matter of law; and (4) the actions taken by Defendants complied with state and local laws and thus were not discriminatory, Defendants' Motion to Dismiss will be granted. Luo's claims fail on the basis of his child's age--an undisputable fact--so any amendment would be futile. Accordingly, his Complaint will be dismissed with prejudice.

II. BACKGROUND

A. Act 66

On June 30, 2021, Governor Tom Wolf of the Commonwealth of Pennsylvania signed into law Public Law 353 No. 66 ("Act 66"), designed to make up for educational opportunities lost to the pandemic. Defs.' Mot. Ex. A ¶ 7. Act 66 had two components. First, section 1501.10 allowed "[a] child at or over eighteen (18)years of age in a school entity [to] elect no later than July 15, 2021, to repeat a grade level to make up for any lost educational opportunities due to COVID-19." Second, section 1383allowed parents of disabled students who had reached the age of twenty-one (21) "during the 2020-2021 school year or between the end of the 2020-2021 school year and the beginning of the 2021-2022 school year . . . [to elect for their child] to attend a school entity for the 2021-2022 school year." 2021 Pa. Laws 66.Under Section 1383(c)(1), the LEA would make up the additional year by reimplementing "the student's most recent IEP."

Act 66 required parents to elect to re-enroll their children for an additional year of schooling under either section 1501.10 or 1383 by July 15, 2021. On July 14, 2021, Luo emailed Defendant Ball indicating "'he had made the decision for the student [] to repeat a year of education.'" Id. ¶ 8. Defendant Ball responded by reminding Luo to submit the requisite form by July 15, 2021, with the link to the form attached. Id. ¶ 9. Luo submitted the completed form to the Owen J. Roberts School District on July 15, 2021, without specifying the application of either section 1501.10 or 1383. Id. ¶ 10. On June 21, 2021, Owen J. Roberts School District confirmed receipt and subsequently granted Luo's request for his child to "'repeat grade as requested'" for the 2021-2022 school year. Compl. ¶¶ 16-18; Defs.' Mot. Ex. A ¶¶ 10-11. Luo's child spent the 2021-2022 school year repeating the instruction developed from his previous year's IEP.

Luo's child turned 21 during the 2021-2022 school year. Defs.' Mot. Ex. A ¶ 12. On December 3, 2021, Defendant Ball contacted Luo to determine the proper spelling for the student's diploma. Id. ¶ 13. In a series of emails between Luo and Defendant Ball, Luo asserted that his child had an additional

year of school left and would not be graduating until the end of the 2022-2023 school year. Id. ¶ 14. Luo and the School District did not come to an agreement as to the child's status. Compl. ¶¶ 25-29; Defs.' Mot. Ex. A ¶¶ 14-15.

On July 8, 2022, Governor Wolf signed into law Act 55. 2022 Pa. Laws 55. Like Act 66 from the preceding year, Act 55 provided for an additional year of schooling to make up for lost opportunities from the Covid-19 Pandemic. Act 55(b.1) provides "a student with a disability . . . who has reached twenty-one (21) years of age during the 2021-2022 school year or between the end of the 2021-2022 school year and the beginning of the 2022-2023 school year and is enrolled for the 2021-2022 school year is entitled to attend a school entity for the 2022-2023 school year[.]" Id. Although Luo's child would be eligible for an extra year of education under Act 55, as a student with a disability who turned 21 during the 2021-2022 school year, Luo is not currently seeking relief under Act 55, nor has he demonstrated that he applied by the August 1, 2022 deadline to receive an extra year of schooling for his child. Act 55 provides the exact relief Luo seeks under Act 66.

III. LEGAL STANDARD

To survive a motion to dismiss, a plaintiff must demonstrate more than a possibility of entitlement to relief. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). A claim must demonstrate facial plausibility through "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. A plaintiff may support their claims "by showing any set of facts consistent with the allegations in the complaint." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 563 (2007). Claims need not include a "heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face." Id. at 570. The Court will not "accept as true all allegations contained in a complaint." Iqbal, 556 U.S. at 678. Rather, the Court accepts "all of the complaint's well pleaded facts as true, but may disregard any legal conclusions." Fowler v. UPMC Shadyside, 578 F.3d 203, 211-12 (3d Cir. 2009).

Given that Plaintiff proceeds pro se, the Court construes

Plaintiff's claims liberally. Higgs v. Att'y Gen. of the United States, 655 F.3d 333, 339 (3d Cir. 2011); cf. United States v. Miller, 197 F.3d 644, 648 (3d Cir. 1999) ("[W]e note at the outset that 'federal courts have long recognized that they have an obligation to look behind the label of a motion filed by a pro se inmate and determine whether the motion is, in effect, cognizable under a different remedial statutory framework.'" (quoting United States v. Jordan, 915 F.2d 622, 624–25 (11th Cir. 1990))).

IV. DISCUSSION

A. Act 66

Luo claims that his child was entitled to receive an additional year of schooling under his theory of Section 1983 applying to "then students." Compl. ¶¶ 9-10. But Luo does not plead sufficient facts to demonstrate entitlement to the benefits of Act 66 beyond what he has already received. Luo's child received repeat instruction of his 2020-2021 IEP in the 2021-2022 school year under section 1501.10. Compl. ¶ 16. Luo acknowledges his child received the statutory benefit of Act 66; Luo made the request under section 1501.10 and his child received an additional year of education. Compl. ¶ 16.

Luo attempts to argue that Section 1383 applies to "then-students," meaning students who have, at some point, aged out of a special education program. Luo's understanding of Act 66 controverts the plain language of the statute. Section 1501.10 allows any student over the age of eighteen to repeat a grade level of instruction. Section 1383 enables students in special education programs who turned twenty-one during the 2020-2021 school year to obtain an additional year of education in the 2021-2022 school year only. Luo points to no set of facts that show his child qualified for the benefits of Section 1383: it is undisputed that his son turned 21 during the 2021-2022 school year, not the 2020-2021 year as provided under Section 1383. Instead, Act 55 provides the exact relief Luo seeks--an additional year of education during the 2022-2023 school year for his child who turned 21 during the 2021-2022 school year.

B. Pendency Provision

Luo next alleges that the pendency provision of the IDEA, also called the "stay-put" provision, should maintain the child's status quo as a student while the litigation process continues. Compl. ¶¶ 62, 67. Under 20 U.S.C. § 1415(j), "during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child."

This Circuit's precedent is clear on the application and limitation of the stay-put provision. Students who attend IDEA-funded programs are entitled to its statutory benefits and protections up to the age of 21. See, e.g., Batchelor v. Rose Tree Media Sch. Dist, 759 F.3d 266, 278 n.14 (3d Cir. 2014) ("Under the IDEA, a school district's obligation to provide a FAPE terminates when the child reaches the age of twenty-one." (citing 20 U.S.C. § 1412(a)(1)(A))). At age 21, individuals may no longer claim the benefits and protections of IDEA, including the pendency provision. Lester H. v. Gilhool, 916 F.2d 865, 872 (3d Cir. 1990) ("[A]s an adult (i.e., someone over age 21), Doe had no right to demand that the District comply with the Act either presently or in the future."); Lauren W. v. DeFlaminis, 480 F.3d 259, 272 (3d Cir. 2007) ("Under the IDEA a disabled student is entitled to a FAPE until age 21."); Ferren C. v. Sch. Dist. of Phila., 612 F.3d 712, 716 n.1 (3d Cir. 2010) (finding that the "stay-put" provision does not apply to a student over the age of 21, even where that student may be entitled to compensatory education beyond the age of 21).

The IDEA gives only minors the right to education. Policy considerations warrant a strict application of the stay-put provision. E.g., Bd. of Educ. of Oak Park & River Forest High Sch. Dist. 200 v. Ill. State Bd. of Educ., 79 F.3d 654, 660 (7th Cir. 1996) ("[T]to allow the stay-put provision, which operates automatically, to operate beyond the age of 21 would enable parents to obtain adult benefits for their child to which they had no entitlement by the simple expedient of filing a claim for compensatory education on the eve of their child's turning 21.").

The facts alleged by Luo, taken as true, demonstrate that his child is not entitled to the statutory benefits of the stay-put

provision as a matter of law because his child has already turned 21.

C. Discrimination Claim

Luo alleges that his child was subject to disability discrimination by employees of the Owen J. Roberts School District. Compl. ¶¶ 30, 47, 59, 71-84. Two sources of law govern disability discrimination: Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) (42 U.S.C. § 12101, et seq.).

The Court may claim subject matter jurisdiction over Luo's appeal under 20 U.S.C. § 1415(l), as Luo has exhausted all available administrative remedies. 20 U.S.C. § 1415(l). Under 20 U.S.C. § 1415(i)(2)(A), the Court can review Section 504 and ADA claims. Section 504 provides a right of action for individuals denied educational opportunities because of their disability. Luo claims that individuals employed by the school district committed disability discrimination. However, Luo has no right to bring a Section 504 claim against individuals. A.W. v. Jersey City Pub. Schs., 486 F.3d 791, 804 (3d Cir. 2007) ("Suits may be brought pursuant to Section 504 against recipients of federal financial assistance, but not against individuals."). For the purposes of this analysis, it is assumed Luo has brought a Section 504 claim against Owen J. Roberts School District, a recipient of federal financial assistance.

The ADA also provides recourse for victims of disability discrimination. Both Section 504 and ADA claims may originate from denials of a FAPE to a qualified student. C.G. v. Pa. Dep't of Educ., 734 F.3d 229, 235 (3d Cir. 2013).

To establish a Section 504 claim, a plaintiff must show that "1) she is a 'handicapped individual,' 2) she is 'otherwise qualified' for participation in the program, 3) the program receives 'federal financial assistance,' and 4) she was 'denied the benefits of' or 'subject to discrimination' under the program." Nathonson v. Med. College of Pa., 926 F.2d 1368, 1380 (3d Cir. 1991) (quoting Strathie v. Dep't of Transp., 716 F.2d 227, 230 (3d Cir. 1983)). With few exceptions, the ADA has identical requirements to determining whether disability discrimination occurred. Chambers ex rel. Chambers v. Sch.

Dist. of Phila., 587 F.3d 176, 189 (3d Cir. 2009) ("To prevail on a violation of either of those statutes, the Chambers had to demonstrate that Ferren (1) has a disability; (2) was otherwise qualified to participate in a school program; and (3) was denied the benefits of the program or was otherwise subject to discrimination because of her disability." (footnote omitted)).

Plaintiff has not alleged sufficient facts to state a claim for discrimination based on disability. The Court need only discuss two requirements plainly not met by Plaintiff; it is not disputed that the child is a "handicapped individual," nor that the Owen J. Roberts School District receives federal financial assistance. Thus, the Court focuses on the second and fourth Strathie factors: whether Luo's child was "otherwise qualified" for participation in a special education program and whether his child was denied the benefits of or subject to discrimination under the program.

First, Luo's child is undoubtedly not qualified for participation in the program under Act 66. His child aged out of the special education program and was not eligible for an additional year under section 1383. Had Luo applied for an additional year under Act 55 and was subsequently denied, the analysis of this requirement may have changed. But Luo provides no facts that he applied or was denied benefits under Act 55. Luo asserts that his child was denied benefits under Act 66--benefits his child was not qualified to receive.

Second, for Luo to show that his child was "denied the benefits of" or "subject to discrimination" under the special education program, he must present facts demonstrating the state "failed to provide the service for the sole reason that the child is disabled." Andrew M. v. Del. Cnty. Off. of Mental Health and Mental Retardation, 490 F.3d 337, 350 (3d Cir. 2007). Luo has not pleaded sufficient facts to state a plausible claim for relief under Section 504. Luo claims that his child was denied a year of education by Defendants Marchini and Ball based on his disabilities. Compl. ¶ 30. As proof, Luo claims his child was treated differently than other students with disabilities who were granted an additional year of education. Compl. ¶¶ 49, 77-78. But Luo does not describe the circumstances of these other students and does not state which statutory provisions allowed these other students to receive an

additional year. Further, Luo does not allege facts indicating that the other students were also ineligible for further relief under Act 66 but regardless were given an additional year of education beyond the 2021-2022 school year.

Luo also claims the hearing officer's decision was baseless, thereby committing disability discrimination. Compl. ¶ 59. But the hearing officer's decision appears well-reasoned, based in fact, and analyzed according to authoritative Pennsylvania and Third Circuit precedent. Luo's allegation that the hearing officer's decision was discriminatory is thus presented without any factual bases in support. Conclusory allegations do not meet the standards for pleadings.

D. Other Claims

Plaintiff also alleges that Defendants' actions constituted a violation Plaintiff's "liberty right" to direct the education of his child, under both the Pennsylvania law and the IDEA. The Court has considered these general allegations and finds them wholly without merit.

E. Leave to Amend

Plaintiff has not requested leave to amend his Complaint. On the contrary, Defendants have argued that Plaintiff should not be granted leave to amend, "given that the relief he seeks in this IDEA-based appeal is moot, and because Act 66 of 2021 does not confer the legal right Plaintiff asserts." Defs.' Mot. at 16, ECF No. 7-1.

A civil rights plaintiff generally is given leave to amend, even where they do not request leave to amend, unless such amendment would be inequitable or futile. Phillips v. County of Allegheny, 515 F.3d 224, 236 (3d Cir. 2008) (citing Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002)).

Here, however, amendment would be futile, given that (1) Luo's child is not entitled to further relief in the form of education for the 2022-2023 school year under Act 66; (2) Act 55 would have provided the relief Luo seeks, although he may have missed his opportunity to apply for such relief; and (3) Luo has failed to demonstrate that the School District did not

comply with duly enacted laws and regulations regarding his child's enrollment status in a special education program during the COVID-19 pandemic. Moreover, Defendants would likely be prejudiced as they continue to engage in protracted litigation with Plaintiff on a number of matters relating to his child's education.

APPENDIX D

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

CIVIL ACTION
NO. 22-2546

JENN-CHING LUO
v.
OWEN J. ROBERTS SCHOOL
DISTRICT et al.

Filed: May 24, 2023

ORDER

AND NOW, this **24th** day of **May, 2023**, upon consideration of Plaintiff's Motion for Reconsideration (ECF No. 12), Defendants' Response in Opposition (ECF No. 13), and Plaintiff's Reply (ECF No. 14), it is hereby **ORDERED** that Plaintiff's Motion is **DENIED**.[1]

AND IT IS SO ORDERED.

/s Eduardo C. Robreno
EDUARDO C. ROBRENO, J.

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[1] Under Federal Rule of Civil Procedure 60(b),

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable

diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). "The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985) (citing Keene Corp. v. Int'l Fidelity Ins. Co., 561 F. Supp. 656, 665 (N.D. Ill. 1983)); accord Howard Hess Dental Lab'ys, Inc. v. Dentsply Int'l, Inc., 602 F.3d 237, 251 (3d Cir. 2010).

Plaintiff does not assert any newly discovered evidence nor intervening change of law; rather, Plaintiff challenges the Court's interpretation of law as to the claims in the complaint.

First, Plaintiff disagrees with the Court's determination that Plaintiff's child received a repeat year of education for the 2021-2022 school year, pursuant to Act 66. However, the hearing officer's decision, attached to Defendants' motion to dismiss, reflects that Plaintiff's child received the benefits of Act 66. See Pension Ben. Guar. Corp. v. White Consol. Indus., Inc., 998 F.2d 1192, 1196 (3d Cir. 1993) ("[A] court may consider an undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff's claims are based on the document."). To the extent Plaintiff sought to use Act 66 for an additional year of schooling (i.e., schooling beyond the age of 21), such relief is not available under Act 66. Act 55 provides

for such an additional year (the 2022-2023 school year). Act 55 thus provides the exact same relief that Plaintiff seeks as the pendency provision would, if it was applicable to his son.

Second, Plaintiff disagrees with the Court's interpretation of the pendency provision of the Individuals with Disabilities Education Act (IDEA). But again, Plaintiff does not present any new fact or law, or show that the Court made a manifest error, or that some other reason justifying relief exists in this case. See Fed. R. Civ. P. 60(b)(2), (6). The IDEA provides for a FAPE for children between the ages of 3 and 21, inclusive. E.g., Montgomery Cnty. Intermediate Unit No. 23 v. K.S., 546 F. Supp. 3d 385, 398, 401 (E.D. Pa. 2021) (citing 20 U.S.C. § 1411 and 34 C.F.R. § 300.101); 20 U.S.C. § 1412(a)(1)(A); Honig v. Doe, 484 U.S. 305, 318 (1988) (noting that a case regarding the stay-put provision was moot as to a student who was twenty-four years old at the time the Supreme Court reviewed the case). This mootness in connection with the stay-put provision exists precisely because the IDEA does not guarantee education beyond the age of 21.

Third, Plaintiff argues that the Court incorrectly determined that Plaintiff has no absolute liberty right to direct the education of his child. Although Plaintiff is correct that parents possess broad rights to raise their children, see Troxel v. Granville, 530 U.S. 57, 65-66 (2000), Plaintiff has not cited any new fact or law to demonstrate that Defendants unconstitutionally interfered with this right.

Fourth, Plaintiff claims that the Court incorrectly determined that Defendants complied with state laws. Plaintiff merely reasserts a paragraph of the complaint and does not present any new facts or law to demonstrate that the Court made a manifest error.

Fifth, Plaintiff argues that the Court improperly

dismissed the appeal from the hearing officer's decision. This argument essentially rehashes all of Plaintiff's prior asserted bases for reconsideration and thus is without merit.

Sixth and finally, Plaintiff asserts that Plaintiff "was never given an effective or meaningful opportunity to defend Defendants' motion to dismiss" as to the constitutional claims in the complaint. See Pl.'s Mot. at 20-25, ECF No. 12. However, the record reflects that Plaintiff filed a response to Defendants' motion to dismiss and asserted that Defendants cited no law that could allow dismissal of the constitutional claims. Pl.'s Resp. at 16-22, ECF No. 8. This is not true; the Defendants' motion to dismiss cited a number of cases to support its argument that Plaintiff did not state a claim upon which relief could be granted. See Mot. to Dismiss at 9-14, ECF No. 7-1. Thus, Plaintiff had the opportunity to substantively contest the motion to dismiss as to the constitutional claims. Plaintiff's failure to contest a motion to their satisfaction is not grounds for granting a motion for reconsideration. Johnson v. Diamond State Port Corp., 50 F. App'x 554, 560 (3d Cir. 2002) ("Motions for reargument or reconsideration may not be used 'as a means to argue new facts or issues that inexcusably were not presented to the court in the matter previously decided.'" (quoting Brambles USA, Inc. v. Blocker, 735 F. Supp. 1239, 1240 (D. Del. 1990)).

Furthermore, Plaintiff has not argued that Defendants engaged in fraud, misrepresentation, or misconduct, to justify relief under Rule 60(b)(3). Fed. R. Civ. P. 60(b)(3); see also Herring v. United States, 424 F.3d 384, 390 (3d Cir. 2005) (requiring a showing of "(1) an intentional fraud; (2) by an officer of the court; (3) which is directed at the court itself; and (4) that in fact deceives the court" to state a claim under Rule 60(b)(3)).

Accordingly, Plaintiff's motion is denied.