

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

KIMBERLY MYERS, et al.,)
)
 Plaintiffs,)
)
vs.)
)
BLUE SPRINGS SCHOOL DISTRICT,)
et al.,)
)
 Defendants.)

Case No. 10-0081-CV-W-ODS

ORDER AND OPINION GRANTING IN PART AND DENYING IN PART
DEFENDANTS' MOTION TO DISMISS

Plaintiffs assert various claims against the Blue Springs School District (“the District”) and various individuals in their individual and official capacities. At issue is a Motion to Dismiss filed by the individual defendants. Originally, the motion targeted Counts III, IV and VI, but Defendants have withdrawn their motion with respect to Counts III and IV, leaving only Count VI for consideration.

Count VI asserts a claim under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a), which provides “[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 subjected to discrimination under any program or activity receiving Federal financial assistance” The individual defendants contend they must be dismissed because there is no cause of action against individuals: the only defendant available is the institution or program that receives the federal funds.

The liberal pleading standard created by the Federal Rules of Civil Procedure requires “a short and plain statement of the claim showing that the pleader is entitled to relief.” Erickson v. Pardus, 551 U.S. 89, 93 (2007) (per curiam) (quoting Fed. R. Civ. P. 8(a)(2)). “Specific facts are not necessary; the statement need only ‘give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Id. (citing Bell

Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). In ruling on a motion to dismiss, the Court “must accept as true all of the complaint’s factual allegations and view them in the light most favorable to the Plaintiff[].” Stodghill v. Wellston School Dist., 512 F.3d 472, 476 (8th Cir. 2008). If the facts viewed in this light fail to support a cause of action, or if the cause of action is not legally viable, the claim must be dismissed.

While the Eighth Circuit has not addressed the issue, the weight of authority holds that only the recipient of federal funds may be sued under Section 504 of the Rehabilitation Act. E.g., Emerson v. Thiel College, 296 F.3d 184, 190 (3d Cir. 2002); Garcia v. SUNY Health Sciences Center of Brooklyn, 280 F.3d 98, 107 (2d Cir. 2001); Lollar v. Baker, 196 F.3d 603, 609 (5th Cir. 1999). Plaintiffs contend there is a split in authority, but their only citation does not support their argument. The Eleventh Circuit held that a private individual could be sued under the Americans with Disabilities Act. Shotz v. City of Plantation, Fla., 344 F.3d 1161 (11th Cir. 2003). In doing so, the court carefully distinguished between the remedies available under the ADA and those available under Title VI of the Civil Rights Act – which is critical, because Title VI provides the only remedies available for violations of the Rehabilitation Act and Title VI did not permit claims against a party other than the actual recipient of federal funds. Id. at 1169-71. The Eleventh Circuit ultimately held ADA enforcement were not solely found in Title VI, thereby permitting suits against individuals. Id. at 1171-74. The court did not hold that a Rehabilitation Act claim could be asserted against a party who did not receive federal funds.

The Court concludes Count VI does not assert a claim against the individual defendants, so they are dismissed from that count. Count VI will remain as to the District. Defendants’ motion is denied in all other respects.

IT IS SO ORDERED.

/s/ Ortrie D. Smith _____
ORTRIE D. SMITH, JUDGE
UNITED STATES DISTRICT COURT

DATE: March 9, 2010