UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

J.A., et al.)
Plaintiffs,))
v.) Civil Case No. 09-0239 (RJL)
DISTRICT OF COLUMBIA, et al.))
Defendants.)
MEMORAN (February	DUM ORDER , 2010) [# 8, 10]

This case concerns plaintiffs' claims for declaratory and injunctive relief under the Individuals with Disabilities Education Act of 2004, 20 U.S.C. §§ 1400, et seq. ("IDEA"). Plaintiffs have moved to amend their Complaint to add a count alleging that the District failed to provide an adequate transcript of the due process hearing from which plaintiffs appeal. Defendants oppose the motion. Based on the parties' pleadings, applicable law, and the entire record herein, plaintiffs' Motion to Amend is DENIED.

Plaintiffs seek to amend their Complaint under Rule 15(a)(2) of the Federal Rules of Civil Procedure. While the Court is encouraged to grant leave freely "when justice so requires," Fed. R. Civ. P. 15(a)(2), it is within the Court's discretion to deny leave for "sufficient reason, such as . . . 'futility of amendment.'" *Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. Cir. 1996) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)). Indeed, amendment is futile if the proposed amended claim would

not survive a motion to dismiss. *James Madison Ltd. v. Ludwig*, 82 F.3d 1085, 1099 (D.C. Cir. 1996). Such is the situation here.

Plaintiffs' proposed amendment would be futile because the count they seek to add to their Complaint would not survive a motion to dismiss. Simply put, plaintiffs' claim regarding the inadequacy of the transcript they received from the District is not cognizable in this jurisdiction. At best, the District's failure to provide an adequate transcript amounted to procedural error under the IDEA. *See* 20 U.S.C.§ 1415(h)(3) (providing parents "the right to a written . . . verbatim record"); *O.O. v. District of Columbia*, 573 F. Supp. 2d 41. 48 (D.D.C. 2008). Procedural errors, however, do not amount to viable claims under the IDEA unless they affect a student's substantive rights. *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006). Indeed, the proposed Amended Complaint does not even allege that J.A.'s substantive rights suffered in any way as a result of the incomplete transcript. Accordingly, it is hereby

ORDERED that defendant's Motion to Remand [# 10] is GRANTED. The matter is REMANDED to the Hearing Officer to determine the appropriateness of DCPS' proposed placement of the student at Janney Elementary School for school year 2008-2009.

ORDERED that plaintiff's Motion to Amend [#8] is DENIED, and it is further

SO ORDERED.

United States District Judge