

AUG 07 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SILVIA PETERS; et al.,

Plaintiffs - Appellants,

v.

GUAJOME PARK ACADEMY
CHARTER SCHOOL (GPA); et al.,

Defendants - Appellees.

No. 06-56587

D.C. No. CV-04-01259-RTB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Roger T. Benitez, District Judge, Presiding

Submitted July 22, 2008**

Before: B. FLETCHER, THOMAS, and WARDLAW, Circuit Judges.

Silvia Peters appeals pro se from the district court's judgment dismissing her

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). Accordingly, Peters' request for oral argument is denied.

claims under the Individuals with Disabilities Education Act (“IDEA”), section 504 of the Rehabilitation Act, and 42 U.S.C. § 1983. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Kutasi v. Las Virgenes Unified Sch. Dist.*, 494 F.3d 1162, 1166 (9th Cir. 2007); *Stoner v. Santa Clara County Office of Educ.*, 502 F.3d 1116, 1120 (9th Cir. 2007), *cert. denied*, 128 S. Ct. 1728 (2008), and we affirm.

The district court properly dismissed without prejudice Peters’ claims that arise from the alleged denial of a free appropriate public education because Peters failed to exhaust administrative procedures or allege that exhaustion was futile. *See* 20 U.S.C. § 1415(i)(2)(A), (l) (requiring exhaustion); *Kutasi*, 494 F.3d at 1167, 1169-70 (explaining that a plaintiff who alleges a violation of Title V of the Rehabilitation Act must exhaust the IDEA’s due process hearing procedures where the alleged “injuries could be redressed to some degree” by the administrative procedures and remedies).

The district court properly dismissed without prejudice Peters’ remaining claims because she failed to allege, after several opportunities to amend, facts to state a claim for relief on her own behalf. *See King v. California*, 784 F.2d 910, 916 (9th Cir. 1986) (holding that conclusory allegations unsupported by any facts failed to state a claim under § 1983). The district court properly dismissed without

prejudice the § 1983 claims that Peters attempted to bring on behalf of her son.

See Johns v. County of San Diego, 114 F.3d 874, 877 (9th Cir. 1997) (“[A] parent or guardian cannot bring an action on behalf of a minor child without retaining a lawyer.”).

Peters’ remaining contentions are unpersuasive.

AFFIRMED.