

OCT 05 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN P. WARDEN,

Plaintiff - Appellant,

v.

COOLIDGE UNIFIED SCHOOL
DISTRICT, et al.,

Defendants - Appellees.

Nos. 09-16594,
09-17610

D.C. No. 2:07-cv-02273-MHB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Michelle H. Burns, Magistrate Judge, Presiding**

Submitted September 22, 2010***

Before: WALLACE, HAWKINS, and THOMAS, Circuit Judges.

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

** The parties consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c).

*** The panel unanimously concludes these appeals are suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We affirm the district court's dismissal and summary judgment in favor of defendants on John P. Warden's ("Warden") equal protection, Title VII, and Americans with Disabilities Act claims for the reasons stated in the district court's orders entered on December 16, 2008 and July 1, 2009.

We do not consider Warden's arguments that were not specifically and distinctly argued the opening brief. *See Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024, 1033 (9th Cir. 2008).

Warden's remaining contentions concerning the district court's dismissal and summary judgment are unpersuasive.

We vacate the district court's award of attorney's fees to Coolidge Unified School District because there is no indication in the record that the district court considered Warden's pro se status or found his action to be frivolous, unreasonable, or without foundation. *See Miller v. L.A. County Bd. of Educ.*, 827 F.2d 617, 619-20 (9th Cir. 1987); *see also McGrath v. County of Nevada*, 67 F.3d 248, 253 (9th Cir. 1995) (the district court must explain how it exercised its discretion in calculating an attorney's fee award).

Each party shall bear its own costs on appeal.

AFFIRMED in part, VACATED in part, and REMANDED.