

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

KATHALINA MONACELLI,

Plaintiff,

vs.

Case No. 2:08-cv-820-FtM-29SPC

HEARTLAND EDUCATIONAL CONSORTIUM;
ADRIAN CLINE; WAYNE ALDRICH; DENNIS
JONES; WALLY COX; PAT COOPER; FRANK
GIBBS; HENDRY COUNTY EDUCATION
ASSOCIATION; TINA NOEL; MIKE KEMP;
HENDRY COUNTY SCHOOL BOARD; THOMAS
CONNER; PATRICK LANGFORD; RICHARD
MURPHY; SALLY BERG; DWAYNE BROWN;
MATTHEW BEATTY,

Defendants.

OPINION AND ORDER

This matter is before the Court on consideration of the Magistrate Judge's Report and Recommendation (Doc. #12), filed April 15, 2009, recommending that plaintiff's Motion to Proceed *In Forma Pauperis* (Doc. #2) be denied and the case be dismissed for failure to state a claim. Plaintiff filed Written Objections (Doc. #13) on April 27, 2009.

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject or modify the magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732 (11th Cir. 1982), cert. denied, 459 U.S. 1112 (1983). A district judge "shall make a *de novo* determination of those portions of the report or

specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). This requires that the district judge "give fresh consideration to those issues to which specific objection has been made by a party." Jeffrey S. v. State Bd. of Educ., 896 F.2d 507, 512 (11th Cir. 1990) (quoting H.R. 1609, 94th Cong. § 2 (1976)). Even in the absence of specific objections, there is no requirement that a district judge review factual findings *de novo*, Garvey v. Vaughn, 993 F.2d 776, 779 n.9 (11th Cir. 1993), and the court may accept, reject or modify, in whole or in part, the findings and recommendations. 28 U.S.C. § 636(b)(1)(C). The district judge reviews legal conclusions *de novo*, even in the absence of an objection. See Cooper-Houston v. Southern Ry., 37 F.3d 603, 604 (11th Cir. 1994); Castro Bobadilla v. Reno, 826 F. Supp. 1428, 1431-32 (S.D. Fla. 1993), aff'd, 28 F.3d 116 (11th Cir. 1994) (Table).

After conducting an independent examination of the file and upon due consideration of the leave granted to amend the complaint, the Amended Complaint (Doc. #11), the Report and Recommendation, and plaintiff's Objections, the Court accepts the Report and Recommendation of the magistrate judge and overrules the objections.

Accordingly, it is now


ORDERED:

1. The Report and Recommendation (Doc. #12) is hereby **adopted** and the findings incorporated herein. The objections thereto are overruled.

2. Plaintiff's Affidavit of Indigency (Doc. #2), construed as a motion to proceed *in forma pauperis*, is **DENIED** and the case is dismissed without prejudice for failure to state a claim.

3. The Clerk shall enter judgment accordingly, terminate all deadlines and motions as moot, and close the file.

DONE AND ORDERED at Fort Myers, Florida, this 7th day of May, 2009.



JOHN E. STEELE
United States District Judge

Copies:
Hon. Sheri Polster Chappell
United States Magistrate Judge

Plaintiff