

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

KATHALINA MONACELLI,

Plaintiff,

vs.

Case No. 2:08-cv-921-FtM-29SPC

LEE COUNTY EDUCATION ASSOCIATION;  
LEE COUNTY SCHOOL BOARD; ROBERT  
CHILMONIK, District 1 School Board  
Member; GULF MIDDLE SCHOOL; BILL  
LANE,

Defendants.

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**OPINION AND ORDER**

This matter is before the Court on consideration of the Magistrate Judge's Report and Recommendation (Doc. #10), filed January 19, 2010, recommending that the Affidavit of Indigency (Doc. #2), construed as a Motion to Proceed *In Forma Pauperis*, be denied and the case be dismissed. Plaintiff filed Written Objections (Doc. #11) on January 27, 2010.

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 Report and Recommendation and plaintiff's Objection, the Court accepts the Report and Recommendation of the magistrate judge. The Amended Complaint is due to be dismissed *without* prejudice. The Objection is overruled.

Accordingly, it is now


**ORDERED:**

1. The Report and Recommendation (Doc. #10) is hereby **adopted** and the findings incorporated herein. The objections are otherwise 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.

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 3rd day of February, 2010.

  
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**JOHN E. STEELE**  
United States District Judge

Copies:  
Hon. Sheri Polster Chappell  
United States Magistrate Judge

Counsel of Record  
Unrepresented parties