

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-1031

J.D., a disabled minor, by and with his next friend; MARK
E. DAVIS,

Petitioners - Appellants,

v.

KANAWHA COUNTY BOARD OF EDUCATION,

Respondent - Appellee.

Appeal from the United States District Court for the Southern
District of West Virginia, at Charleston. Joseph R. Goodwin,
Chief District Judge. (2:09-cv-00139)

Submitted: April 22, 2010

Decided: April 27, 2010

Before TRAXLER, Chief Judge, and KING and AGEE, Circuit Judges.

Dismissed by unpublished per curiam opinion.

J.D., Mark E. Davis, Appellants Pro Se. Vaughn Sizemore, BAILEY
& WYANT, PLLC, Charleston, West Virginia, James W. Withrow,
KANAWHA COUNTY BOARD OF EDUCATION, Charleston, West Virginia,
for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Petitioners J.D. and Mark Davis appeal the district court's order adopting the magistrate judge's recommendation to grant Respondent's summary judgment motion on their civil action seeking to set aside a state hearing officer decision denying Davis's request for a continuance of a due process hearing under the Individuals with Disabilities Education Act, 20 U.S.C.A. §§ 1400-1482 (West 2010). The district court referred this case to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) (2006). The magistrate judge recommended that Respondent's summary judgment motion be granted and advised Petitioners that failure to file timely and specific objections to this recommendation would waive appellate review of a district court order based upon the recommendation. Despite this warning, Petitioners failed to file objections to the magistrate judge's recommendation and Respondent has moved to dismiss Petitioners' appeal.

The timely filing of specific objections to a magistrate judge's recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned of the consequences of noncompliance. Wright v. Collins, 766 F.2d 841, 845-46 (4th Cir. 1985); see also Thomas v. Arn, 474 U.S. 140 (1985). Petitioners have waived appellate review by failing to file

objections after receiving proper notice. Accordingly, we grant Respondent's motion and dismiss Petitioners' appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED