

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA OF
NORTHERN DIVISION

DAVID McDONALD, #252206,)	
)	
Plaintiff,)	
v.)	CASE NO. 2:08-cv-626-MEF
)	(WO)
KENNETH DAVIS, et al.,)	
)	
Defendants.)	

OPINION AND ORDER

The plaintiff in this case is a state inmate who complains that prison guards assaulted him causing physical injury. In accordance with the orders of the court, the defendants filed a special report. The court then ordered the plaintiff to respond. The court on several occasions granted the plaintiff additional time to respond as ordered but he did not.

After the plaintiff failed to respond after being granted numerous extensions of time to do so, the undersigned recommended that the plaintiff’s complaint be dismissed for failure to prosecute. (doc. # 43) However, the court referred the case back to the undersigned for further consideration of whether Plaintiff’s alleged inability to read or write impaired his ability to prosecute this action. Following that referral, the court held an evidentiary hearing.

That hearing lasted seven minutes. The defendants offered no evidence. They did, however, proffer that the plaintiff has completed a 10th grade education and argued that the court should find the plaintiff’s learning deficiencies did not impair his ability to respond given the number of documents he filed in the case. The plaintiff admitted he “went” to the 10th grade but stated he cannot read or write. His education was in special education. He

