

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION

NANCY ELLEN HEARD,

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Plaintiff,

*

vs.

*

No. 2:10cv00180 SWW

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HELENA-WEST HELENA SCHOOL

*

DISTRICT and ARKANSAS DEPARTMENT

*

OF EDUCATION,

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Defendants.

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ORDER

Plaintiff’s motion [doc.#1] for leave to proceed in forma pauperis (having been provisionally granted by the Clerk of Court) is hereby granted. The applicant may proceed without prepayment of costs or fees or the necessity of giving security therefor. For the reasons that follow, however, plaintiff may only proceed against separate defendant Helena-West Helena School District.

Although plaintiff filed her complaint using a form “Complaint under Title VII of the Civil Rights Act of 1964,” plaintiff’s complaint and Charge of Discrimination filed with the Equal Employment Opportunity Commission (EEOC) make clear that she is not proceeding under Title VII but rather is alleging violations of Title I of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101 *et seq.* Plaintiff, however, may not proceed against the Arkansas Department of Education under Title I of the ADA as states and their agencies, of which the Arkansas Department of Education is one, *see, e.g., Porter v. Dawson Educational Service Co-op.*, 150 F.3d 887, 889 (8th Cir. 1998); *Doe v. Baum*, 348 Ark. 259, 272, 72 S.W.3d 476, 483 (2002), enjoy sovereign immunity from lawsuits seeking money damages that are filed

pursuant to Title I of the ADA (which prohibits employment discrimination on the basis of disability). *Board of Trustees of University of Alabama v. Garrett*, 531 U.S. 356, 360 (2001). Accordingly, the Court *sua sponte* dismisses the Arkansas Department of Education as a defendant.¹ However, under Arkansas law, school districts are not considered part of state government for purposes of sovereign immunity under the Eleventh Amendment, *see, e.g., Crenshaw v. Eudora School District*, 362 Ark. 288, 208 S.W.3d 206 (2005), and so plaintiff's ADA action against separate defendant Helena-West Helena School District may proceed at this time.

IT IS THEREFORE ORDERED that, pursuant to Rule 4(c)(iii) of the Federal Rules of Civil Procedure, the United States Marshal for the Eastern District of Arkansas is directed to serve the summons and complaint on the sole remaining defendant in this action, Helena-West Helena School District.

The Marshall shall serve the summons pursuant to the provisions of Rule 4 of the Federal Rules of Civil Procedure.

IT IS SO ORDERED this 19th day of November 2010.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE

¹ Plaintiff's EEOC charge only lists Helena-West Helena School District as a defendant. The Court notes as well that plaintiff fails to set forth any allegations whatsoever against the Arkansas Department of Education and, thus, has failed to plead enough facts against this defendant "to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).