

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

MICHAEL J. CONVILLE

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Plaintiff

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NO: 4:11CV00530 SWW

V.

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UNITED STATES DEPARTMENT OF
EDUCATION, Secretary Arne Duncan

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ORDER

Plaintiff Michael J. Conville brings this action *pro se* under the Administrative Procedure Act, 5 U.S.C. § 702, challenging a final decision by the Department of Education. Before the Court is Defendant’s motion (docket entries #7, #8) to dismiss for improper venue pursuant to Rule 12(b)(3) of the Federal Rules of Civil Procedure or, alternatively, for transfer to the Western District of Arkansas. Plaintiff has filed a response in opposition (docket entry #9) and the matter is ready for decision. After careful consideration, and for reasons that follow, Defendant’s motion will be granted and the case will be transferred to the United States District Court for the Western District of Arkansas, Fort Smith Division.

The general venue statute applies in this case and provides that an action against an agency or officer or employer of the United States may be brought in any judicial district in which (1) a defendant in the action resides; (2) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of the property that is subject of the action is situated; or (3) the plaintiff resides if no real property is involved in the action.

Defendant correctly asserts that no facts make venue appropriate in the Eastern District of Arkansas: the Department of Education has no office in the Eastern District of Arkansas, the

events giving rise to Plaintiffs' claim occurred outside of this judicial district, and Plaintiff resides in Polk County, which is located in the Western District of Arkansas.

Title 28 U.S.C. § 1404(a) provides: "For the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." Given Plaintiff's *pro se* status, the Court finds that transfer to the Western District of Arkansas, rather than dismissal, would best serve the interests of justice.

IT IS THEREFORE ORDERED that Defendant's motion to dismiss or, alternatively, to transfer (docket entry #7) is GRANTED.

IT IS FURTHER ORDERED that this action should be immediately transferred to the United States District Court for the Western District of Arkansas, Fort Smith Division.

IT IS SO ORDERED THIS 15th DAY OF DECEMBER, 2011.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE