

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

Berthena Nunn, et al.

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Plaintiffs

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V.

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NO: 4:10CV00545 SWW

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Arkansas Department of Human
Services, et al.

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Defendants

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ORDER

Before the Court is Defendants’ motion to transfer this case to the Western District of Arkansas, pursuant to Local Rule 40.1(c) of the Eastern and Western Districts of Arkansas (docket entry #4). Plaintiffs have informed the Court that they will not respond to the motion. After careful consideration, and for reasons that follow, the motion to transfer will be granted.

The complaint in this case was previously filed in the United States Court for the Western District of Arkansas as *Nunn v. Arkansas Department of Human Services*, No. 1:07CV01044 HFB (Complaint filed May 17, 2007).¹ The parties made substantial progress litigating the case filed in the neighboring judicial district: discovery proceeded, Defendants filed a motion for summary judgment, Plaintiffs responded in opposition, and Defendants filed a

¹With the exception of minor word changes, the complaint filed in this case is a carbon copy of the complaint filed in the Western District. The pleadings contain identical factual allegations, name the same parties, and seek identical relief for alleged violations of the Individuals with Disabilities in Education Act and the United States Constitution.

reply. Then, on June 8, 2009, approximately 20 days before the scheduled trial date, Plaintiffs filed a motion for voluntary dismissal, which was granted. On June 7, 2010, Plaintiffs refiled their complaint in this Court.

Now before the Court is Defendants' motion to transfer this case to the United States District Court for the Western District. Defendants cite Local Rule 40.1(c), which remains in force in this Court and the Western District of Arkansas and provides:

Voluntary Nonsuits. When the plaintiff takes a voluntary nonsuit in a case and subsequently refiles that same case, the Clerk will assign it to the judge who handled it at the time of the entry of the nonsuit order.

To assist the Court and the Clerk's office in carrying out the provision of this rule, the refiled complaint shall contain a brief paragraph identifying, by style and case number, the former proceeding in which the voluntary nonsuit was entered and the name of the judge handling the case at the time of the entry of said voluntary nonsuit order.

Pursuant to Local Rule 40.1(c) and Local Rule 7.2(f), which provides that the failure to respond to any non-dispositive motion is an adequate basis for granting the relief sought in the motion, the Court finds that Defendants' motion to transfer (docket entry #4) should be and it is hereby GRANTED. The Clerk of the Court is directed to immediately transfer this case to the United States District Court for the Western District of Arkansas, El Dorado Division.

IT IS SO ORDERED THIS 22ND DAY OF SEPTEMBER, 2010.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE