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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

CARLOS RIOS,  
  
Plaintiff,  
  
vs.  
  
MATTHEW CATE, et al.,  
  
Defendants.

CASE NO. 10 CV 1064 MMA (PCL)  
  
**ORDER ADOPTING REPORT  
AND RECOMMENDATION OF  
UNITED STATES MAGISTRATE  
JUDGE**  
  
[Doc. No. 34]  
  
**GRANTING IN PART AND  
DENYING IN PART  
DEFENDANTS' MOTION TO  
DISMISS**  
  
[Doc. No. 18]

Plaintiff Carlos Rios, a state prisoner proceeding *pro se* and *in forma pauperis*, filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to United States Magistrate Judge Peter C. Lewis pursuant to 28 U.S.C. § 636(b)(1)(B) and Civil Local Rule 72.3. On July 27, 2010, Defendants filed a Motion to Dismiss Plaintiff's First Amended Complaint. [Doc. No. 18.] On December 30, 2010, Judge Lewis filed a well-reasoned and thorough Report containing findings and conclusions, upon which he bases his recommendation that the Court grant in part and deny in part Defendants' motion to dismiss. [Doc. No. 34.] On January 21, 2011, Plaintiff filed Objections to the Report. [Doc. No. 36.] The same day, Defendants filed a reply to Plaintiff's objections. [Doc. No. 37.]

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1 **PLAINTIFF’S OBJECTIONS**

2 Under 28 U.S.C. § 636(b)(1)(C), in reviewing the magistrate judge’s report and  
3 recommendation, the district court “shall make a *de novo* determination of those portions of the  
4 report . . . to which objection is made,” and “may accept, reject, or modify, in whole or in part, the  
5 findings or recommendations made by the magistrate judge.” Here, Plaintiff objects to the Report  
6 on several grounds. First, Plaintiff asserts Judge Lewis incorrectly concluded that Plaintiff cannot  
7 seek damages in connection with his Americans with Disabilities Act (“ADA”) claim, because the  
8 alleged violations caused him personal injury and mental suffering. [Doc. No. 36, p.5.] After  
9 reviewing the pertinent portion of the record and the Report *de novo*, the Court overrules  
10 Plaintiff’s objection and finds that Judge Lewis correctly recommended that Plaintiff’s ADA claim  
11 be limited to declaratory and injunctive relief against Defendants in their official capacities.

12 Plaintiff does not challenge the Magistrate Judge’s conclusion that his purported ADA  
13 claim arises under Title II of the Act, which limits civil rights actions against state officials. The  
14 Ninth Circuit has expressly held, “a plaintiff cannot bring an action under 42 U.S.C. § 1983  
15 against a State official in [his or] her individual capacity to vindicate rights created by Title II of  
16 the ADA or section 504 of the Rehabilitation Act.” *Vinson v. Thomas*, 288 F.3d 1145, 1156 (9th  
17 Cir. 2002). Plaintiff’s ADA claim is therefore viable only to the extent his allegations are against  
18 Defendants in their *official* capacities. However, state officers “acting in their official capacity are  
19 immune from suits for damages in federal court.” *Buckhannon Bd. & Care Home v. W. Va. Dep’t*  
20 *of Health & Human Res.*, 532 U.S. 598, 609 n.10 (2001) (superseded in part on unrelated ground)  
21 (citation omitted); *Regents of the University of California v. Doe*, 519 U.S. 425, 429 (1997); *Henry*  
22 *v. County of Shasta*, 132 F.3d 512, 517 (9th Cir. 1997). The cases Plaintiff relies on in his  
23 objections are not on point and otherwise distinguishable, and they do not support Plaintiff’s  
24 position that he is entitled to recover damages from Defendants. Because Plaintiff’s ADA claim  
25 seeks relief from state actors in their official capacities, Judge Lewis properly found Plaintiff’s  
26 potential remedies are limited to declaratory and injunctive relief.

27 Second, Plaintiff objects to the Magistrate Judge’s finding that he failed to state an Equal  
28 Protection Claim. [Doc. No. 36, p.7-9.] After reviewing the pertinent portion of the record and

1 the Report *de novo*, the Court overrules this objection and finds Judge Lewis correctly  
2 recommended that Plaintiff's Equal Protection claim be dismissed. Plaintiff's Equal Protection  
3 claim is premised on Defendants' alleged failure to process Plaintiff's repeated grievances  
4 challenging the requirement that inmates possess a high school diploma or General Educational  
5 Development ("GED") to obtain certain promotions and pay increases. [Doc. No. 5, p.4-6.]

6 "To state a § 1983 claim for violation of the Equal Protection Clause a plaintiff must show  
7 that the defendants acted with an intent or purpose to discriminate against the plaintiff based upon  
8 membership in a protected class." *Thornton v. City of St. Helens*, 425 F.3d 1158, 1166 (9th Cir.  
9 2005) (citation and internal marks omitted). Although mentally disabled individuals are not a  
10 protected class, the Magistrate Judge correctly found that "the Equal Protection Clause prohibits  
11 irrational and invidious discrimination against them." [Doc. No. 34, p.6 (citing *Dare v. California*,  
12 191 F.3d 1167, 1174 (9th Cir. 1999).] Plaintiff's First Amended Complaint, however, does not  
13 allege facts that indicate Defendants acted irrationally or invidiously in implementing the  
14 educational requirements Plaintiff challenges. "Mere indifference to the effects of a decision on a  
15 particular class does not give rise to an equal protection claim . . . ." *Thornton*, 425 F.3d at 1167  
16 (citation omitted). Accordingly, the Court finds Judge Lewis's recommendation that Plaintiff's  
17 Equal Protection Claim be dismissed reflects a proper application of the law.

18 Third, Plaintiff objects to the Magistrate Judge's finding that Plaintiff failed to state a  
19 viable Due Process claim. [Doc. No. 36, p.9-10.] Plaintiff's Due Process claim is also based on  
20 Defendants' alleged failure to process his duplicative grievances regarding the GED policy. [Doc.  
21 No. 5, p.7.] The Court has reviewed the relevant portion of the record and the Report *de novo*, and  
22 overrules Plaintiff's objection. Judge Lewis appropriately recommended Plaintiff's Due Process  
23 claim be dismissed on the ground that Plaintiff does not possess a protected liberty interest in the  
24 grievance procedures. *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003).

25 Fourth, Plaintiff objects to the Magistrate Judge's recommendation that Plaintiff's Eighth  
26 Amendment claim be dismissed because the alleged injuries Plaintiff suffered as a result of the  
27 educational policy constitute cruel and unusual punishment. [Doc. No. 36, p.11.] The Court has  
28 conducted a *de novo* review of the applicable portion of the record and the Report, and concludes


1 Judge Lewis correctly found Plaintiff failed to state an Eighth Amendment claim. “[A]n inmate  
2 seeking to prove an Eighth Amendment violation must objectively show that he was deprived of  
3 something sufficiently serious, and make a subjective showing that the deprivation occurred with  
4 deliberate indifference to the inmate’s health or safety.” *Thomas v. Ponder*, 611 F.3d 1144, 1150  
5 (9th Cir. 2010) (internal marks and citation omitted). The Court agrees with Judge Lewis’s  
6 finding that, Plaintiff’s allegations regarding his inability to obtain a pay raise or GED within the  
7 time permitted do not state an Eighth Amendment violation. Even if Plaintiff suffered mental  
8 distress as a result of his inability to obtain a pay increase, the harm is not sufficiently serious to  
9 create a constitutional violation. Nor does the record indicate Defendants were aware the policy  
10 would pose a serious risk to Plaintiff’s health or safety, and that they imposed the restriction with  
11 deliberate indifference toward the potential risk to Plaintiff. *See id.* at 1150-1151. The Court  
12 therefore agrees with the Magistrate Judge’s recommendation that Plaintiff’s Eighth Amendment  
13 claim be dismissed.

14 **CONCLUSION**

15 Pursuant to 28 U.S.C. § 636(b)(1)(C), the undersigned has conducted a *de novo* review of  
16 this case. Having carefully reviewed the entire file, the Court finds Judge Lewis’s Report and  
17 Recommendation to be supported by the record and based on a proper analysis. Accordingly, the  
18 Court **ADOPTS** the Report and Recommendation in its entirety and **GRANTS IN PART** and  
19 **DENIES IN PART** Defendants’ Motion to Dismiss. All claims in Plaintiff’s First Amended  
20 Complaint, except his ADA claim against Defendants in their official capacities, are **DISMISSED**  
21 **WITH PREJUDICE**. In addition, Plaintiff is only entitled to seek declaratory and injunctive  
22 relief in connection with his ADA claim; damages are not recoverable.

23 **IT IS SO ORDERED.**

24  
25 DATED: February 8, 2011



26 Hon. Michael M. Anello  
27 United States District Judge  
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