

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

TERRY L. DUNN-FISCHER, individually,  
and the parent and next friend of  
A.D.F., a minor,

Plaintiff,

vs.

Case No. 2:10-cv-512-FtM-29SPC

DISTRICT SCHOOL BOARD OF COLLIER  
COUNTY, DR. VICTORIA SARTORIO,  
individually, DR. ELIZABETH MCBRIDE,  
individually, FLORIDA DEPARTMENT OF  
EDUCATION, LAURENCE RUBLE,  
individually, BRIAN CASTELLANI,  
individually, FLORIDA DEPARTMENT OF  
ADMINISTRATIVE HEARINGS,

Defendants.

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**OPINION AND ORDER**

On August 20, 2011, United States Magistrate Judge Sheri Polster Chappell submitted a Report and Recommendation (Doc. #76) to the Court recommending that two motions to dismiss be granted or granted in part. Despite notice of the time limitation to file objections, none have been filed, and the time to file such objections has expired.

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject or modify the magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); United States v. Powell, 628 F.3d 1254, 1256 (11th Cir.

2010). A district judge "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). See also United States v. Farias-Gonzalez, 556 F.3d 1181, 1184 n.1 (11th Cir. 2009). This requires that the district judge "give fresh consideration to those issues to which specific objection has been made by a party." Jeffrey S. v. State Bd. of Educ. of Ga., 896 F.2d 507, 512 (11th Cir. 1990) (quoting H.R. 1609, 94th Cong., § 2 (1976)). The district judge reviews legal conclusions *de novo*, even in the absence of an objection. See Cooper-Houston v. Southern Ry. Co., 37 F.3d 603, 604 (11th Cir. 1994). A district court may not reject the credibility determinations of a magistrate judge without personally rehearing disputed testimony from the witness. Powell, 628 F.3d at 1256-58.

After reviewing the Report and Recommendation and the court file, with the one minor exception noted below, the Court fully agrees with the findings of fact<sup>1</sup> and conclusions of law made by the magistrate judge. Accordingly, the Court will adopt the Report and Recommendation.

Accordingly, it is now

**ORDERED:**

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<sup>1</sup>The Report and Recommendation refers to "the time period that Plaintiff was a student" (Doc. #76, p. 14), when it was plaintiff's child who was the student.

1. The Magistrate Judge's Report and Recommendation (Doc. # 76) is **accepted and adopted**, and it is specifically incorporated into this Opinion and Order.

2. Defendants' District School Board of Collier County, Laurence Ruble, Brian Castellani, Dr. Victoria Sartortio, and Dr. Elizabeth McBride Motion to Dismiss Plaintiff's Second Amended Complaint (Doc. #66) is **GRANTED IN PART AND DENIED IN PART** as follows:

(A) The motion is granted as to defendants Laurence Ruble, Brian Castellani, Dr. Victoria Sartortio, and Dr. Elizabeth McBride, and all claims against these defendants are dismissed without prejudice.

(B) The motion is granted as to all claims against the Collier County School Board except plaintiff's claim for reimbursement under the IDEA, and those claims are dismissed. The motion is denied as to plaintiff's claim for reimbursement under the IDEA against the Collier County School Board.

3. Defendants Florida Department of Education and Florida Division of Administrative Hearings' Motion to Dismiss Second Amended Complaint (Doc. #69) is **GRANTED**, and all claims against these defendants are dismissed with prejudice.


4. The Clerk shall enter judgment dismissing defendants Florida Department of Education and Florida Division of Administrative Hearings with prejudice. The Clerk shall withhold

the entry of judgment as to the remaining defendants dismissed without prejudice (defendants Laurence Ruble, Brian Castellani, Dr. Victoria Sartortio, and Dr. Elizabeth McBride) but terminate them on the docket.

5. Defendant Collier County School Board shall file a complete certified copy of the administrative record with the Clerk of the Court within **THIRTY (30) DAYS** of the date of this Opinion and Order.

6. The stay on discovery is lifted, and the Magistrate Judge shall enter a second amended Case Management and Scheduling Order in light of the current posture of the case.

**DONE AND ORDERED** at Fort Myers, Florida, this 5th day of October, 2011.

  
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**JOHN E. STEELE**  
United States District Judge

Copies:  
U.S. Magistrate Judge  
Parties of Record  
Counsel of record