

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

WILLIS DAVIS,

Plaintiff,

v.

Case No. 08-13530
Honorable Denise Page Hood

CARLA WILBORN,

Defendant.

ORDER ACCEPTING REPORT AND RECOMMENDATION

This matter is before the Court on Magistrate Judge Mark A. Randon's Report and Recommendation [**Docket No. 12, filed on September 22, 2009**]. Neither party has filed an objection, and the time to do so has expired.

Plaintiff Willis Davis filed his claims *pro se* under 42 U.S.C. § 1983, alleging that Defendant Carla Wilborn refused to exempt him from prison work and school assignments in violation of the "disability act." Defendant filed a Motion to Dismiss Based on Failure to State a Claim and Qualified Immunity [**Docket No. 8, filed on May 26, 2009**]. Plaintiff did not file a response. Magistrate Judge Randon recommends that Defendant's Motion be granted, but also that Plaintiff be given a reasonable opportunity to file an amended complaint. For the reasons set forth below, the Court ACCEPTS Magistrate Judge Randon's Report and Recommendation.

This Court agrees with Magistrate Judge Randon's application of the analysis set forth in *United States v. Georgia*, 546 U.S. 151 (2006), to determine whether Defendant's assertion of qualified immunity should bar Plaintiff's claims. Specifically, this Court agrees that Plaintiff's *pro se* Complaint states a viable claim under Title II of the Americans with Disabilities Act

("ADA"), 42 U.S.C. § 12131, but does not allege a violation of the Fourteenth Amendment's Equal Protection Clause. Further, this Court agrees Plaintiff should be granted leave to amend his Complaint to afford him the opportunity to allege a violation of the Equal Protection Clause, to the extent one exists. To this end, this Court finds that Defendant's Motion is GRANTED. However, Plaintiff is granted thirty days from the entry of this order to amend his Complaint. If Plaintiff does not amend his Complaint within thirty days, his Complaint will be dismissed.

Accordingly, for the reasons set forth above and in the Report and Recommendation,

IT IS ORDERED that the Report and Recommendation of Magistrate Judge Mark A. Randon [**Docket No. 12, filed on September 22, 2009**] is **ACCEPTED** as this Court's findings and conclusions of law. Defendant's Motion to Dismiss Based on Failure to State a Claim and Qualified Immunity [**Docket No. 8, filed on May 26, 2009**] is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff has thirty days from the entry of this order to file an amended complaint.

S/Denise Page Hood
Denise Page Hood
United States District Judge

Dated: February 11, 2010

I hereby certify that a copy of the foregoing document was served upon Willis Davis, Reg. No. 237797, Mound Correctional Facility, 17601 Mound Rd., Detroit, MI 48212 and counsel of record on February 11, 2010, by electronic and/or ordinary mail.

S/William F. Lewis
Case Manager