

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

---

B.J.S., Individually and on behalf of N.S.,  
a child with a disability,

v.

ORDER  
07-CV-456

The State Education Department/The  
University of the State of New York,  
PAUL F. KELLY, State Review Officer,  
RICHARD P. MILLS, Commissioner of Education, and  
SPRINGVILLE-GRIFFITH INSTITUTE CENTRAL  
SCHOOL DISTRICT BOARD OF EDUCATION,

Defendants.

---

---

This case was referred to Magistrate Judge Leslie G. Foschio, pursuant to 28 U.S.C. § 636(b)(1)(A). On April 5, 2010, defendant Springville-Griffith Institute Central School District Board of Education filed a motion to dismiss [Dkt. No. 49] and on October 20, 2010, defendants Kelly and Mills filed a motion to dismiss [Dkt. No. 61]. On August 18, 2011, Magistrate Judge Foschio filed an Amended Decision and Order and Report and Recommendation recommending that defendant Springville-Griffith Institute Central School District Board of Education's motion to dismiss be denied insofar as it seeks dismissal of the amended complaint as time-barred and that defendants Paul F. Kelly and Richard P. Mills' motion to dismiss be granted.

Defendant Springville-Griffith filed objections to the Report and Recommendation. Oral argument on the objections was held on September 26, 2011.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions and hearing argument from the parties, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Foschio's Report and Recommendation, defendant Springville-Griffith Institute Central School District Board of Education's motion to dismiss is denied insofar as it seeks dismissal of the amended complaint as time-barred and defendants Paul F. Kelly and Richard P. Mills' motion to dismiss is granted.

The case is referred back to Magistrate Judge Foschio for further proceedings.

SO ORDERED.

*s/ Richard J. Arcara*

---

HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT JUDGE

DATED: September 29, 2011