

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

EARL RICHARDSON,

Plaintiff,

:

Case No. 3:10-cv-028

-vs-

Magistrate Judge Michael R. Merz

:

DAYTON PUBLIC SCHOOLS, et al.,

Defendants.

**DECISION AND ORDER DENYING PLAINTIFF’S OBJECTION TO DEFENDANTS’
MOTIONS TO DISMISS AS UNTIMELY**

This case is before the Court on Plaintiff’s Objection to Defendants’ Motions to Dismiss on the grounds that the motions are untimely (Doc. No. 20).

Plaintiff notes that he filed this case on January 25, 2010, and asserts that Defendants filed “answers” sixty-one days later on March 26, 2010, and eighty-nine days later on April 22, 2010.

Id. at PageID 98.

An examination of the docket reveals that the Complaint was indeed filed on January 25, 2010. However, the time within which a defendant must respond to a complaint runs from the date on which the defendant is served with process, not the date of filing. The Return of the United States Marshal, the officer who made service in this case under 28 U.S.C. § 1915, shows that Defendants were all served on March 5, 2010 (Doc. No. 6). Their response was thus due twenty-one days later, or on March 26, 2010, the day they filed their Motion to Dismiss.

The later filing to which Plaintiff refers was Defendants’ Reply Memorandum in support of the Motion to Dismiss. That filing was due seventeen days after Plaintiff’s Memorandum in

Opposition, or on May 3, 2010. It was actually filed early, on April 22, 2010.

Since neither one of Defendants' filings was untimely, Plaintiff's Objection is overruled.

May 3, 2010.

s/ **Michael R. Merz**
United States Magistrate Judge