

**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

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DAYTON PUBLIC SCHOOLS, et al.,

Defendants.

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**ORDER ADOPTING REPORT AND RECOMMENDATIONS**

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This case is before the Court on Defendants' Motion to Dismiss (Doc. No. 7). Plaintiff opposed the Motion and sought leave to file an amended complaint (Doc. No. 10). The Magistrate Judge recommended granting the Motion to Dismiss (Report and Recommendations, Doc. No. 15) and denied leave to amend on grounds of futility (Doc. No. 16). The parties then unanimously consented to plenary magistrate judge jurisdiction and the case was referred on that basis (Doc. Nos. 17, 18). Plaintiff then objected that the Motion to Dismiss was untimely (Doc. No. 20), but the Court rejected that argument (Doc. No. 21). No other objections have been filed to the Report and Recommendations and the time for objection expired on May 10, 2010.

Accordingly, the Report and Recommendations are adopted as the decision of the Court. Counts 1 and 2 of the Complaint are dismissed without prejudice for failure to state a claim upon which relief can be granted. Count 3 is dismissed with prejudice as barred by the statute of limitations for actions under 29 U.S.C. § 185. Count 4 is dismissed without prejudice for failure to state a claim upon which relief can be granted. The claims against individual Defendants Ed Sweetnich and Phillip Bass are dismissed without prejudice for failure to state a claim upon which

relief can be granted.

The Clerk will enter final judgment accordingly.

May 11, 2010.

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

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