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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT TACOMA

7 ADRIAN LEWIS CHATEN,

8 Plaintiff,

9 v.

10 RON VAN BOENING, DANIEL  
11 FITZPATRICK, MIKE HINES,  
12 MICHAEL A. FLEMMING, RYAN T.  
13 DENZER, and GEORGE GILBERT,

14 Defendants.

No. C09-5615 RJB/KLS

**ORDER ADOPTING REPORT AND  
RECOMMENDATION**

15 The Court, having reviewed the Report and Recommendation of Magistrate Judge Karen  
16 L. Strombom (Dkt. 40), plaintiff's motion to deny defendants' motion to dismiss (Dkt. 42),  
17 defendants' objections to the Report and Recommendation (Dkt. 41), plaintiff's response to  
18 defendants' objections (Dkt. 44) and the remaining record, does hereby find and **ORDER:**

- 19 1) Defendants object to the Report and Recommendation, insofar as the magistrate  
20 judge recommends that plaintiff's due process claims be permitted to proceed.  
21 Dkt. 41). This Report and Recommendation relates to a motion to dismiss.  
22 Defendants maintain that plaintiff has no due process interest in his placement in  
23 administrative segregation or in a classification decision to place plaintiff on a  
24 "program." It is unclear whether the decision to place plaintiff on a "program" is  
25 the result of a disciplinary decision or is a classification decision. It is unclear  
26 from the complaint what a "program" is. It is unclear whether plaintiff's  
placement in administrative segregation constituted an atypical and significant  
hardship on the inmate in relation to the ordinary incidents of prison life. *Sandin  
v. Conner*, 515 U.S. 472, 483-487 (1995). There are too many questions to  
warrant dismissal at the complaint stage. The Court adopts the Report and  
Recommendation (Dkt. 40).
- 2) Defendants' Motion to Dismiss (Dkt. 37) is **GRANTED** in part as to Plaintiff's  
equal protection claim and the claims against Defendants Fitzpatrick and Van

ORDER ADOPTING REPORT AND RECOMMENDATION - 1

1 Boening, and these claims are **DISMISSED**. Defendants' Motion to Dismiss  
2 (Dkt. 37) is **DENIED** as to plaintiff's due process claims, and these claims may  
3 proceed.

- 3) The Clerk is directed to send copies of this Order to Plaintiff, counsel for  
4 Defendant and to the Hon. Karen L. Strombom.

5 **DATED** this 15th day of November, 2010.

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8 ROBERT J. BRYAN  
9 United States District Judge  
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