

May 30, 2003

Charles R. Fulbruge III  
Clerk

UNITED STATES COURT OF APPEALS

For the Fifth Circuit

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No. 02-61070  
Summary Calendar

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JACQUE WHITE, Individually and as next friend of Cassandra Kelly,  
a minor,

Plaintiff-Appellant,

VERSUS

MCCOMB SEPARATE SCHOOL DISTRICT; PATRICK COOPER, Individually and  
in His Official Capacity as Superintendent; LINDA YOUNG,  
Individually and in Her Official Capacity as Principal of Kennedy  
Elementary; NEDRA SIMPSON, Individually and in Her Official  
Capacity as Kennedy Elementary Special Education Teacher; MARGARET  
ROBINSON, in Her Official Capacity as a School Board Member;  
MAURICE CHESTER, in His Official Capacity as a School Board Member;  
KENT KERBERT, in His Official Capacity as a School Board Member;  
ODESSA HOLMES, in His Official Capacity as a School Board Member;  
CHARLES DUNAGIN, in His Official Capacity as a School Board Member

Defendants-Appellees.

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Appeal from the United States District Court  
For the Southern District of Mississippi, Jackson

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Before BARKSDALE, DeMOSS, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

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\*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this  
opinion should not be published and is not precedent except under  
the limited circumstances set forth in 5TH CIR. R. 47.5.4.

In May, 2001, Jacque White, (hereinafter "White") acting individually and as next friend of his minor daughter, Cassandra Kelly (hereinafter "Kelly"), filed suit in the Circuit Court of Pike County, Mississippi, against McComb Separate School District and several individual officials and employees of such district (hereinafter referred to collectively as "defendants") asserting claims of state law negligence and violation of the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1400 et seq arising out of an incident in which Kelly, who is severely and profoundly disabled, mentally and physically handicapped, fell out of a chair at a table in the special education classroom to which she was assigned by defendants. The defendants removed the case to the federal district court because of the federal question involved. Defendants moved for a summary judgment on the negligence issue because there was no genuine issue of material fact to support such claim and moved for dismissal of the IDEA claim on the grounds of failure to exhaust administrative remedies. The district judge granted defendants' motions and White appeals to this Court.

We have carefully reviewed the briefs, the reply brief, the record excerpts, and relevant portions of the record itself.

For the reasons stated by the district judge in his "Opinion and Order" filed on November 20, 2002, we affirm the final judgment entered on November 20, 2002, which dismissed the negligence claim with prejudice and the IDEA claim without prejudice. AFFIRMED.