IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-40040
Summary Calendar

EDDIE L. SMITH,

Plaintiff-Appellant,

VERSUS

TARKINGTON INDEPENDENT SCHOOL DISTRICT,

Defendant
Third-Party-Plaintiff-
Appellee,

THE CENTRAL EDUCATION AGENCY
and
THE COMMISSIONER OF EDUCATION, LIONEL R. MENO,
In His Official Capacity,

Third Party
Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
(1 92-CV 20)

(July 11, 1994)

Before GARWOOD, SMITH, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Eddie Smith brought suit against the local school district

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* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

and state education agency and its commissioner, alleging various constitutional and statutory theories based upon his contention that, as a learning-disabled student, he was not afforded the rights to which he was entitled. The district court denied relief. Perceiving no reversible error, we affirm essentially for the reasons set forth in the district court's comprehensive Memorandum and Order entered October 28, 1993.

Smith argues that the district court erred in holding that the school district is not a "person" under 42 U.S.C. § 1983. We agree. Familias Unidas v. Briscoe, 619 F.2d 391, 403 (5th Cir. 1980). This error is not dispositive of the appeal, however. As the district court noted, § 1983 cannot be used as a vehicle to enforce a violation of statutes such as those at issue here. See Marvin H. v. Austin Indep. Sch. Dist., 714 F.2d 1348 (5th Cir. 1983). Accord Barnett v. Fairfax County Sch. Bd., 721 F. Supp. 755 (E.D. Va. 1989), aff'd, 927 F.2d 146 (4th Cir.), cert. denied, 112 S. Ct. 175 (1991).

Smith contends that the district court erred in determining that the district properly evaluated him as required by the IDEA, 20 U.S.C. § 1412. The record reflects, however, that Smith received extensive preliminary testing in 1987, followed by a comprehensive assessment that included the Slossen Intelligence Test, the Test of Nonverbal Intelligence, the Woodcock Johnson Tests of Achievement, and the Brigance Comprehensive Inventory of Basic Skills. The testing team then made recommendations that were reviewed by the Admission, Review and Dismissal Committee,

which agreed to a psychological assessment and additional testing, including the Wechsler Intelligence Scale for Children Revised, the Peabody Individual Achievement Test, the Bender Visual Motor Gestalt Test, the Peabody Picture Vocabulary Test. The district also conducted a speech and language assessment and an occupational therapy assessment. Smith has not shown that this extensive assessment was inadequate.

Finally, Smith argues that the district court erred in denying him the right to pursue money damages once he had left the district's school and enrolled in a private school. Under this court's precedent in Marvin H. and Carter v. Orleans Parish Pub. Sch., 725 F.2d 261 (5th Cir. 1984), no damages are recoverable unless the plaintiff can show that he was completely excluded from programs or refused reasonable accommodation of his handicap, and that he was intentionally discriminated against, in order to recover damages. Smith has made no such showing.

In summary, the district court properly concluded that Smith was properly accorded his constitutional and statutory rights. In fact, the record reflects extraordinary efforts to deal with Smith's learning deficiencies. The judgment is AFFIRMED.