

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MICHAEL WEST,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 06-1012 (RMC)
)	
MARGARET SPELLINGS, Secretary,)	
U.S. Department of Education,)	
)	
Defendant.)	
_____)	

MEMORANDUM OPINION

Michael West, proceeding pro se, sued Margaret Spellings, Secretary of the U.S. Department of Education (“DOEd”), in her official capacity. Counts 1 and 2 of the Complaint allege violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. Counts 3 through 12 seek to compel DOEd under the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*, the All Writs Act, 28 U.S.C. § 1691, and Mandamus, 28 U.S.C. § 1361, to use its enforcement authority in a manner favorable to Mr. West under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (“Section 504”).¹ The factual basis for Mr. West’s Complaint is his dissatisfaction with DOEd’s investigation of his complaints of disability discrimination and retaliation allegedly committed by Webster University.

On March 29, 2007, the Court granted summary judgment in favor of DOEd on Counts 3 through 12 and denied summary judgment without prejudice on Counts 1 and 2 based on the inadequacy of the agency’s search for responsive records. *See* Mem. Op. and Order [Dkt. Nos. 24 & 25]. Mr. West then filed a motion to disqualify the Court [Dkt. Nos. 26 & 31] and a motion

¹ Section 504 is effectuated by various regulations set forth in 34 C.F.R. Part 104.

for reconsideration of the order granting summary judgment in part to DOEd [Dkt. No. 27]. DOEd then moved to dismiss or for summary judgment on Counts 1 and 2 [Dkt. No. 28]. In an Opinion and Order dated July 18, 2007, the Court denied Mr. West's motion for disqualification and his motion for reconsideration, and required that Mr. West file a response to DOEd's motion to dismiss or for summary judgment no later than August 20, 2007. *See* Mem. Op. and Order [Dkt. Nos. 32 & 33]. Mr. West failed to file such a response. Thus, the Court treats DOEd's motion to dismiss or for summary judgment as conceded. *See Neal v. Kelly*, 963 F.2d 453, 456 (D.C. Cir. 1992); *Fox v. Strickland*, 837 F.2d 507, 509 (D.C. Cir. 1988). Accordingly, the Complaint is dismissed. A memorializing order accompanies this Memorandum Opinion.

DATE: August 29, 2007

_____/s/_____
ROSEMARY M. COLLYER
United States District Judge