

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

MR. AND MRS. C, as parents and)	
next friends of KC, a minor,)	
)	
Plaintiffs)	
)	
v.)	Civil No. 06-198-P-H
)	
MAINE SCHOOL ADMINISTRATIVE)	
DISTRICT NO. 6,)	
)	
Defendant)	

ORDER ON MOTION TO WITHDRAW

In this lawsuit brought pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 *et seq.*, and its state-law analog, 20-A M.R.S.A §§ 7001 *et seq.*, the plaintiffs’ counsel of record, Staci K. Converse, Esq., and Diane C. Smith, Esq., of the Disability Rights Center in Augusta, have moved for leave to withdraw. Docket No. 68. The defendant school district does not object to the motion, but the plaintiff-parents do. I held an *ex parte* hearing on October 1, 2008, at which both lawyers appeared, together with their supervisor, Peter Rice, Esq., along with both parents. For the reasons that follow, I **GRANT** the plaintiffs’ counsel leave to withdraw.

Local Rule 83.2 provides that “[n]o attorney may withdraw an appearance in any action except by leave of Court.” Loc. R. 83.2(c). In their motion, the lawyers invoke the permissive withdrawal provisions of the Maine Bar Rules, which state that “a lawyer may not request permission to withdraw in matters pending before a tribunal, and the lawyer may not withdraw in

other matters, unless ... [t]he client insists that the lawyer engage in conduct that is contrary to the judgment and advice of the lawyer even though not prohibited by these rules” Me. Bar 3.5(c)(5).

The disagreement between the parents and their counsel stems from whether or not to take an appeal from the August 15, 2008, decision on remand of the hearing officer in this case. The parents’ lawyers assess only a limited chance of success for such an appeal, characterizing it euphemistically as “challenging.” Additionally, the lawyers argue that the Disability Rights Center has limited resources, Attorney Smith is its only lawyer expert in special education matters, and thus an appeal in this case would inevitably foreclose representing another meritorious case since, they report, “the vast majority of cases” are already being turned away by the Disability Rights Center.

The parents, understandably, believe that the Center should take the appeal, since its lawyers are familiar with this case. They report that they have had difficulty finding replacement counsel, either because of the need for a substantial retainer in one case or because of outright unavailability in other cases. They argue, and their counsel do not disagree, that because of the specialized nature of this case, the universe of competent counsel able to take an appeal is circumscribed, adding to the difficulty of successfully engaging replacement counsel.

While I am sympathetic to the parents’ dilemma, and have no doubt that their motivation is for their son’s welfare as they have argued, the balance of the equities tips in favor of the plaintiffs’ lawyers seeking leave to withdraw. Counsel gave the parents prompt and adequate notice of their intention to seek leave to withdraw beginning with emails on August 25 and 26, shortly after the hearing officer’s August 15 decision on remand. In addition, with the filing yesterday of a reply memorandum on the plaintiffs’ motion to reserve ruling on their motion for attorney fees (Docket No. 74), the plaintiffs’ lawyers have now fully briefed all of the motions that were outstanding at the

time of the October 1 hearing. Today, Judge Hornby issued his order resolving the attorney fees issue (Docket No. 75). As a result, other than the appeal from the hearing officer's August 15 decision, the lawyering on pending motions in this case is complete, at least for the moment. Should they wish, the plaintiff-parents still have almost a month to arrange for successor counsel or to proceed *pro se*, since they have 90 days to appeal the hearing officer's August 15 decision pursuant to 20 U.S.C. § 1415(i)(2)(B). On the other hand, at this plateau in the litigation, it does not seem fair to compel the plaintiffs' counsel to file and prosecute an appeal that they see as difficult, particularly when doing so would be at the cost of representing other meritorious clients with the scarce resources available to counsel. Accordingly, I **GRANT** the motion to withdraw of the plaintiffs' counsel, Diane Smith, Esq., and Staci Converse, Esq.

SO ORDERED.

Dated this 15th day of October, 2008.

/s/ John H. Rich III
John H. Rich III
United States Magistrate Judge