

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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DENNIS J. SHESKEY,

Plaintiff,

v.

MADISON METROPOLITAN SCHOOL  
DISTRICT (MMSD),

Defendant.  
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ORDER

06-C-0764-C

After filing his own motion for summary judgment, and obtaining an enlargement of time within which to oppose defendant's cross motion for summary judgment, plaintiff now has filed a letter dated August 22, 2007, in which he states that "because of the negative impact of these proceedings on [his] health," he wishes "to end the court proceedings" in this case. Plaintiff states that he is "not conceding the merits of the case," but rather, he plans to refile his complaint with the Department of Education's office of civil rights. I construe plaintiff's letter as a notice of voluntary dismissal pursuant to Fed. R. Civ. P. 41(a)(2).

When a motion for voluntary dismissal is filed after the defendant has filed an answer or a motion for summary judgment such as in this case, Rule 41(a)(2) provides that the

action may be dismissed by the plaintiff "only upon order of the court and upon such terms and conditions as the court deems proper." Because defendant has been required to defend this action, I will grant plaintiff's motion for voluntary dismissal only on the condition that the dismissal is with prejudice. This means that the order dismissing the case will serve as a judgment on the merits in favor of the defendant.

If plaintiff is opposed to a dismissal of his case with prejudice, he should request that his motion for voluntary dismissal be withdrawn no later than August 31, 2007. If he withdraws the motion, I will decide the merits of plaintiff's claim on the basis of the submissions in the record addressing the cross motions for summary judgment. If plaintiff does not withdraw the motion for voluntary dismissal by August 31, 2007, I will enter a judgment of dismissal in defendant's favor with prejudice, which means plaintiff will be precluded from refiling his claim against defendant in any future action in this or any other court. I express no opinion what effect a dismissal of this action with prejudice will have on any attempt plaintiff makes to refile a claim against defendant with the Department of Education's office of civil rights.

#### ORDER

IT IS ORDERED that plaintiff may have until August 31, 2007, in which to withdraw his motion for voluntary dismissal. If, by August 31, 2007, plaintiff fails to

request withdrawal of his notice of voluntary dismissal, the clerk of court is directed to enter judgment in defendant's favor dismissing this case with prejudice.

Entered this 27th day of August, 2007.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge