

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
LEWIS T. BABCOCK, JUDGE

Civil Action No. 15-cv-00426-LTB-MJW

L.S., by and through his parents and next friends, E.S. & J.S.,

Plaintiff,

v.

CALHAN SCHOOL DISTRICT RJ-1 and
PIKES PEAK BOARD OF COOPERATIVE EDUCATIONAL SERVICES (BOCES),

Defendants.

ORDER

As more fully set forth on the record during the March 3, 2016 Scheduling and Pre-Evidentiary Hearing Conference, it is HEREBY ORDERED THAT Plaintiff's Motion for Certification [**Doc #55**] is DENIED.

In that motion, Plaintiff sought certification of my order in which I ruled that his Motion for Summary Judgment was denied without prejudice. [Doc #54] Plaintiff sought certification of that order as final in order to seek immediate appeal under Fed. R. Civ. P. 54(b). I now deny the Motion for Certification on basis that my ruling denying Plaintiff's Motion for Summary Judgment without prejudice does not constitute a final judgment on Plaintiff's claim for the attorney fees and costs incurred by him at the due process hearing, as the prevailing party, under the IDEA. My denial without prejudice is not a ruling on the merits, but instead holds in abeyance my ruling on Plaintiff's claim until such time as I rule on all the claims pending in this matter. In addition, certifying that order as final would raise the potential of conflicting rulings. As a result, I find just reason for the delay pursuant to Rule 54(b)(allowing the court to direct

entry of a final judgment as to one claim “only if the court expressly determines that there is no just reason for delay”).

In addition, I FURTHER ORDER THAT:

- 1) The trial preparation conference set for Friday, April 8, 2016, is VACATED;
- 2) The 3-day trial to the court set to commence on Monday, May 9, 2016, is VACATED;
- 3) A two-day evidentiary hearing is set to commence on Tuesday, May 10, 2016, at 9:00 AM.; and
- 4) In preparation of the evidentiary hearing, on or before Thursday, April 28, 2016, the parties shall each file Proposed Findings of Fact and Conclusions of Law, as well as Trial Briefs related to the evidentiary issues raised in the Pretrial Evidentiary Order [Doc #57].

Dated: March 4, 2016 in Denver, Colorado.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, JUDGE