

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

KELLIE GRIFFITH,)	
Plaintiff,)	
)	
v.)	
)	
BOARD OF EDUCATION OF BENTON)	Civil Case No: 05-CV-4158-JPG
COMMUNITY CONSOLIDATED SCHOOL)	
DISTRICT NO. 47, NORMAN CARLILE,)	
DAVID AUTEN, JOHN METZGER,)	
DAVE SEVERIN, GARY MESSERSMITH,)	
KATHLEEN KERLEY, JAMES TALLEY,)	
RICK COOK,)	
Defendants.)	

MEMORANDUM AND ORDER

This matter comes before the Court on the motion to vacate judgment filed by defendant Board of Education of Benton Community Consolidated School District No. 47 (“Board of Education”) (Doc. 42). The Court construes the motion as pursuant to Federal Rule of Civil Procedure 60(b)(1) based on the Court’s premature ruling on the plaintiff’s motion to voluntarily dismiss her remaining claims without prejudice.

The plaintiff filed her motion to voluntarily dismiss Count 1 against the Board of Education on June 5, 2006. Pursuant to Local Rule 7.1(c), the Board of Education had 30 days to respond to the motion, which would have established a deadline of July 5, 2006, under the counting rules in Federal Rule of Civil Procedure 6(a). Believing that this was the appropriate response period and not heeding the correct response deadline included in the plaintiff’s docket entry for its motion, the Court ruled on the plaintiff’s motion on July 6. The Court had forgotten, however, about Rule 6(e), which adds an additional three days to a response period when that period is triggered by the service of a paper. Thus, the Board of Education actually had three more days, up to and including July 10, to respond to the plaintiff’s motion. The Court’s ruling

was premature, and the Board of Education's response filed July 7 was timely.

For this reason, the Court **VACATES** its order of July 6, 2006 (Doc. 40) and the judgment (Doc. 41) and **REINSTATES** this case. The Court will consider the Board of Education's timely filed response, to which the plaintiff may reply in accordance with Local Rule 7.1(c).

Entered this 11th day of July, 2006.

s/ J. Phil Gilbert
JUDGE J. PHIL GILBERT