

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

| | | |
|---------------------------------------|---|---------------------------------|
| THERESA RHOADS and MICHAEL |) | |
| RHOADS as parents and next friends of |) | |
| CHELSEA RHOADS, a minor, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Cause No. 3:05-CV-00586-JTM-CAN |
| |) | |
| PENN HARRIS MADISON SCHOOL |) | |
| CORPORATION, DAVID R. TYDGAT, |) | |
| DAVE RISNER, STEVEN HOPE, |) | |
| VICKIE MARSHALL, MARNI |) | |
| CRONK, MADISON CENTER, INC., |) | |
| |) | |
| Defendants. |) | |

SCHOOL DEFENDANTS' ANSWER

Come now the Defendants, the Penn-Harris-Madison School Corporation, David R. Tydgate, Dave Risner, Steven Hope, Vickie Marshall, and Marni Cronk (hereinafter "School Defendants"), by counsel, and for their answer to the Plaintiffs' Complaint, would state as follows:

I. Jurisdiction and Venue.

1.1. The School Defendants admit the allegations contained in rhetorical paragraph 1.1 of the Plaintiffs' Complaint.

1.2. The School Defendants admit the allegations contained in rhetorical paragraph 1.2 of the Plaintiffs' Complaint except to the extent any such claims are barred by the Eleventh Amendment.

1.3. The School Defendants admit the allegations contained in rhetorical paragraph 1.3 of the Plaintiffs' Complaint.

II. Parties.

2.1. The School Defendants are without sufficient knowledge to either admit or deny the allegations contained in rhetorical paragraph 2.1 of the Plaintiffs' Complaint.

2.2. The School Defendants are without sufficient knowledge to either admit or deny the allegations contained in rhetorical paragraph 2.2 of the Plaintiffs' Complaint.

2.3. The School Defendants admit the allegations contained in rhetorical paragraph 2.3 of the Plaintiffs' Complaint.

2.4. The School Defendants admit the allegations contained in rhetorical paragraph 2.4 of the Plaintiffs' Complaint.

2.5. The School Defendants admit the allegations contained in rhetorical paragraph 2.5 of the Plaintiffs' Complaint.

2.6. The School Defendants admit the allegations contained in rhetorical paragraph 2.6 of the Plaintiffs' Complaint.

2.7. The School Defendants admit the allegations contained in rhetorical paragraph 2.7 of the Plaintiffs' Complaint.

2.8. The School Defendants are without sufficient knowledge to either admit or deny the allegations contained in rhetorical paragraph 2.8 of the Plaintiffs' Complaint.

III. Factual Allegations.

3.1. The School Defendants admit that this case involves a challenge to the admission of the "TeenScreen" mental health screening test developed by Columbia University. The School Defendants further admit that it "has been promoted as a tool for screening children for mental health problems, particularly depression, and as a suicide

prevention tool.” The School Defendants deny the remaining allegations contained in rhetorical paragraph 3.1 of the Plaintiffs’ Complaint.

3.2. The School Defendants are without sufficient knowledge to either admit or deny the allegations contained in rhetorical paragraph 3.2 of the Plaintiffs’ Complaint.

3.3. The School Defendants admit the allegations contained in rhetorical paragraph 3.3 of the Plaintiffs’ Complaint.

3.4. The School Defendants admit the allegations contained in rhetorical paragraph 3.4 of the Plaintiffs’ Complaint.

3.5. The School Defendants admit the allegations contained in rhetorical paragraph 3.5 of the Plaintiffs’ Complaint.

3.6. The School Defendants deny the allegations contained in rhetorical paragraph 3.6 of the Plaintiffs’ Complaint.

3.7. The School Defendants are without sufficient knowledge to either admit or deny the allegations contained in rhetorical paragraph 3.7 of the Plaintiffs’ Complaint.

3.8. The School Defendants deny the allegations contained in rhetorical paragraph 3.8 of the Plaintiffs’ Complaint.

3.9. The School Defendants deny the allegations contained in rhetorical paragraph 3.9 of the Plaintiffs’ Complaint.

3.10. The School Defendants admit the allegations contained in rhetorical paragraph 3.10 of the Plaintiffs’ Complaint.

3.11. The School Defendants are without sufficient knowledge to either admit or deny the allegations contained in rhetorical paragraph 3.11 of the Plaintiffs’ Complaint.

3.12. The School Defendants are without sufficient knowledge to either admit or deny the allegations contained in rhetorical paragraph 3.12 of the Plaintiffs' Complaint.

3.13. The School Defendants admit that the Plaintiff was given an "Assent Form" which she signed, and which is attached as Exhibit "B" to the Complaint. The School Defendants are without sufficient knowledge to either admit or deny the remaining allegations contained in rhetorical paragraph 3.13 of the Plaintiffs' Complaint.

3.14. The School Defendants deny the allegations contained in rhetorical paragraph 3.14 of the Plaintiffs' Complaint.

3.15. The School Defendants deny the allegations contained in rhetorical paragraph 3.15 of the Plaintiffs' Complaint.

3.16. The School Defendants admit that the Madison Center administered the "TeenScreen" test. The School Defendants deny the remaining allegations contained in rhetorical paragraph 3.16 of the Plaintiffs' Complaint.

3.17. The School Defendants are without sufficient knowledge to either admit or deny the allegations contained in rhetorical paragraph 3.17 of the Plaintiffs' Complaint.

3.18. The School Defendants are without sufficient knowledge to either admit or deny the allegations contained in rhetorical paragraph 3.18 of the Plaintiffs' Complaint.

3.19. The School Defendants are without sufficient knowledge to either admit or deny the allegations contained in rhetorical paragraph 3.19 of the Plaintiffs' Complaint.

3.20. The School Defendants are without sufficient knowledge to either admit or deny the allegations contained in rhetorical paragraph 3.20 of the Plaintiffs' Complaint.

3.21. The School Defendants are without sufficient knowledge to either admit or deny the allegations contained in rhetorical paragraph 3.21 of the Plaintiffs' Complaint.

3.22. The School Defendants are without sufficient knowledge to either admit or deny the allegations contained in rhetorical paragraph 3.22 of the Plaintiffs' Complaint.

3.23. The School Defendants are without sufficient knowledge to either admit or deny the allegations contained in rhetorical paragraph 3.23 of the Plaintiffs' Complaint.

3.24. The School Defendants deny the allegations contained in rhetorical paragraph 3.24 of the Plaintiffs' Complaint.

3.25. The School Defendants are without sufficient knowledge to either admit or deny the allegations contained in rhetorical paragraph 3.25 of the Plaintiffs' Complaint.

IV. Count I: 14th Amendment: Interference with Parental Rights.

4.1. The School Defendants incorporate herein by reference their responses to rhetorical paragraphs 1.1 through 3.25 of the Plaintiffs' Complaint as if set forth fully herein.

4.2. The School Defendants deny the allegations contained in rhetorical paragraph 4.2 of the Plaintiffs' Complaint.

4.3. The School Defendants deny the allegations contained in rhetorical paragraph 4.3 of the Plaintiffs' Complaint.

4.4. The School Defendants deny the allegations contained in rhetorical paragraph 4.4 of the Plaintiffs' Complaint.

4.5. The School Defendants deny the allegations contained in rhetorical paragraph 4.5 of the Plaintiffs' Complaint.

V. Count II: 14th Amendment: Invasion of Privacy.

5.1. The School Defendants incorporate herein by reference their responses to rhetorical paragraphs 1.1 through 3.25 of the Plaintiffs' Complaint as if set forth fully herein.

5.2. The School Defendants deny the allegations contained in rhetorical paragraph 5.2 of the Plaintiffs' Complaint.

5.3. The School Defendants deny the allegations contained in rhetorical paragraph 5.3 of the Plaintiffs' Complaint.

5.4. The School Defendants deny the allegations contained in rhetorical paragraph 5.4 of the Plaintiffs' Complaint.

5.5. The School Defendants deny the allegations contained in rhetorical paragraph 5.5 of the Plaintiffs' Complaint.

5.6. The School Defendants deny the allegations contained in rhetorical paragraph 5.6 of the Plaintiffs' Complaint.

VI. Count III: State Law: Violation of I.C. § 20-10.1-4-15 and /or § 20-30-5-17.

6.1. The School Defendants incorporate herein by reference their responses to rhetorical paragraphs 1.1 through 3.25 of the Plaintiffs' Complaint as if set forth fully herein.

6.2. The School Defendants deny the allegations contained in rhetorical paragraph 6.2 of the Plaintiffs' Complaint.

6.3. The School Defendants deny the allegations contained in rhetorical paragraph 6.3 of the Plaintiffs' Complaint.

6.4. The School Defendants deny the allegations contained in rhetorical paragraph 6.4 of the Plaintiffs' Complaint.

VII. Count IV: Negligent Breach of Duty.

7.1. The School Defendants incorporate herein by reference their responses to rhetorical paragraphs 1.1 through 3.25 of the Plaintiffs' Complaint as if set forth fully herein.

7.2. The School Defendants deny the allegations contained in rhetorical paragraph 7.2 of the Plaintiffs' Complaint.

7.3. The School Defendants deny the allegations contained in rhetorical paragraph 7.3 of the Plaintiffs' Complaint.

7.4. The School Defendants deny the allegations contained in rhetorical paragraph 7.4 of the Plaintiffs' Complaint.

7.5. The School Defendants deny the allegations contained in rhetorical paragraph 7.5 of the Plaintiffs' Complaint.

7.6. The School Defendants deny the allegations contained in rhetorical paragraph 7.6 of the Plaintiffs' Complaint.

VIII. Count V: State Law: Invasion of Privacy.

8.1. The School Defendants incorporate herein by reference their responses to rhetorical paragraphs 1.1 through 3.25 of the Plaintiffs' Complaint as if set forth fully herein.

8.2. The School Defendants deny the allegations contained in rhetorical paragraph 8.2 of the Plaintiffs' Complaint.

8.3. The School Defendants deny the allegations contained in rhetorical paragraph 8.3 of the Plaintiffs' Complaint.

8.4. The School Defendants deny the allegations contained in rhetorical paragraph 8.4 of the Plaintiffs' Complaint.

IX. Count VI: State Law: Intentional Infliction of Emotional Distress.

9.1. The School Defendants incorporate herein by reference their responses to rhetorical paragraphs 1.1 through 3.25 of the Plaintiffs' Complaint as if set forth fully herein.

9.2. The School Defendants deny the allegations contained in rhetorical paragraph 9.2 of the Plaintiffs' Complaint.

9.3. The School Defendants deny the allegations contained in rhetorical paragraph 9.3 of the Plaintiffs' Complaint.

9.4. The School Defendants deny the allegations contained in rhetorical paragraph 9.4 of the Plaintiffs' Complaint.

X. Count VII: State Law: Art. 1, §1, Indiana Constitution.

10.1. The School Defendants incorporate herein by reference their responses to rhetorical paragraphs 1.1 through 3.25 of the Plaintiffs' Complaint as if set forth fully herein.

10.2. The School Defendants deny the allegations contained in rhetorical paragraph 10.2 of the Plaintiffs' Complaint.

10.3. The School Defendants deny the allegations contained in rhetorical paragraph 10.3 of the Plaintiffs' Complaint.

10.4. The School Defendants deny the allegations contained in rhetorical paragraph 10.4 of the Plaintiffs' Complaint.

10.5. The School Defendants deny the allegations contained in rhetorical paragraph 10.5 of the Plaintiffs' Complaint.

10.6. The School Defendants deny the allegations contained in rhetorical paragraph 10.6 of the Plaintiffs' Complaint.

Affirmative Defenses

1. The Plaintiffs' claims, in whole or in part, are barred by the Eleventh Amendment of the United States Constitution.

2. The Plaintiffs' claims are barred, in whole or in part, by the applicable statute of limitations.

3. To the extent the Complaint purports to state claims based on 42 U.S.C. §1983 against the School Defendants, they have not deprived the Plaintiff of any federal constitutional or statutory rights. Daniels v. Williams, 474 U.S. 327, 330-31 (1986).

4. The Plaintiffs' claims for punitive damages under 42 U.S.C. §1983 against the Defendant School and any Defendant sued in his or her official capacity are barred by federal law. Newport v. Fact Concerts, Inc., 453 U.S. 247, 271 (1981).

5. To the extent the Complaint purports to state a claim based on 42 U.S.C. §1983, the School Defendants who have been named in their individual capacities are entitled to a qualified immunity, because their actions, at all times, were taken in good faith and did not violate any constitutional rights of which a reasonable person would have known.

6. The Plaintiffs' state law claims are barred, in whole or in part, by the immunities set forth in Indiana Code § 34-13-3-3, including, but not limited to, Indiana Code §§ 34-13-3-3(5), (6), (7), (8), (9), (10), and (13).

7. The Plaintiffs' state law claims are barred, in whole or in part, by their failure to properly comply with the notice requirements contained in the Indiana Tort Claims Act. I.C. § 34-13-3, *et seq.* and, specifically, I.C. § 34-13-3-8.

8. Exemplary or punitive damages are barred under Federal law and Indiana state law I.C. § 34-13-3-4 to the extent that those claims are made against the School or its employees acting in their official capacities.

WHEREFORE, the Defendants, the Penn-Harris-Madison School Corporation, David R. Tydgat, Dave Risner, Steven Hope, Vickie Marshall, and Marni Cronk, pray that the Court find in favor of the School Defendants and that the Plaintiffs take nothing by way of their Complaint and for all other just and appropriate relief in the premises.

Respectfully submitted,

Locke Reynolds LLP

By: /s/Thomas E. Wheeler
Thomas E. Wheeler, II, #13800-49

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of December, 2005, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system

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