

UNITED STATES DISTRICT COURT
NORTHER DISTRICT OF INDIANA
SOUTH BEND DIVISION

THERESA RHOADES and MICHAEL)
ALLEN RHOADES, individually and)
as parents and next friends of)
CHELSEA RHOADES, a minor)

Plaintiffs,)

v.)

3:05-cv-0586

PENN HARRIS MADISON SCHOOL)
CORPORATION, an Indiana political subdivision;)
DAVID R. TYDGAT, individually and in his)
official capacity as Principal of Penn High School,)
a division of Penn-Harris-Madison School)
Corporation; DAVE RISNER, individually)
and in his official capacity as Associate Principal)
of Penn High School; STEVEN HOPE, individually)
and in his official capacity as)
Assistant Principal of Penn High School;)
VICKIE MARSHALL, individually and in her)
official capacity as Guidance Counselor at)
Penn High School; MARNI CRONK)
Individually and in her official capacity as)
Guidance Counselor at Penn High School; and)
MADISON CENTER, INC. an Indiana)
non-profit corporation.)

Defendants.)

MOTION TO DISMISS AMENDED COMPLAINT

Comes now defendant, Madison Center, Inc., by counsel, and renews its Motion to Dismiss previously filed on October 27, 2005. Plaintiffs' Amended Complaint should be dismissed for the reasons set forth in Madison Center, Inc.'s Motion to Dismiss, Memorandum in Support of Motion to Dismiss and Madison Center, Inc.'s Reply filed on November 18, 2005. In support of this renewed Motion to Dismiss, defendant states:

1. Plaintiffs' original complaint was filed on September 16, 2005.

2. Defendant, Madison Center, Inc.'s Motion to Dismiss and Memorandum in support thereof were filed on October 27, 2005.
3. Plaintiffs filed a Response in Opposition to the Motion to Dismiss on November 8, 2005.
4. Madison Center, Inc. filed its Reply to the Response on November 18, 2005.
5. On November 30, 2005, this Court entered an order granting plaintiffs leave to file an amended complaint.
6. The amended complaint was filed on November 30, 2005.
7. The amendment to Plaintiffs' Complaint is irrelevant to the legal arguments made in Madison Center, Inc.'s Motion to Dismiss.
8. The original Motion to Dismiss, and Memorandum filed in support thereof, are equally applicable to plaintiffs' amended complaint.

WHEREFORE, defendant, Madison Center, Inc. renews its prior Motion to Dismiss and respectfully requests the Court to dismiss plaintiffs' complaint as to Madison Center, Inc.

/s/D. Andrew Spalding

D. Andrew Spalding (11329-71)

Attorney for Defendant Madison Center, Inc.

MAY OBERFELL LORBER

4100 Edison Lakes Parkway, Suite 100

Mishawaka, IN 46545

Phone: (574) 243-4100

Fax: (574) 232-9789

CERTIFICATE OF SERVICE

I certify that service of the above document was made on the 17th day of January, 2006

by depositing a copy or copies in the United States mail, postage prepaid
by hand-delivering a copy or copies

via electronic mail

other:

upon the following:

John R. Price, Esq.
John R. Price & Associates
9000 Keystone Crossing, Suite 150
Indianapolis, IN 46240

Thomas E. Wheeler II
Locke Reynolds LLP
201 N. Illinois St., Ste. 1000
Indianapolis, IN 46244

/s/D. Andrew Spalding

D. Andrew Spalding