

TERESA RHOADES and MICHAEL)
RHOADES as parents and next friends of)
CHELSEA RHOADES, a minor,)

Plaintiffs,)

v.)

Cause No. 3:05-CV-00586

PENN-HARRIS-MADISON SCHOOL)
CORPORATION, DAVID R. TYDGATE,)
DAVID RISNER, STEVEN HOPE, VICKIE)
MARSHALL, MARNI CRONK, and)
MADISON CENTER, INC.,)

Defendants.)

**AFFIDAVIT IN SUPPORT OF
PLAINTIFFS' FED. R. CIV. P. 56(f) MOTION**

COMES NOW the affiant, John R. Price, and makes the following statement which is based upon his personal knowledge:

1. I am over 18 years of age and competent to testify concerning the facts set forth in this affidavit.

2. I am counsel for the Plaintiffs in the above-styled action and I am a member in good standing of the Bar of the State of Indiana. I am familiar with the facts and issues relating to the claims made by the Plaintiffs in this action and am familiar with the Motion for Summary Judgment and supporting materials filed by Defendants Penn-Harris-Madison School Corporation, David R. Tydgate, David Risner, Steven Hope, Vickie Marshall, and Marni Cronk (the "School Defendants") on February 21, 2006.

3. To date, the parties have not had the opportunity to conduct discovery in this action.

School Defendants' favor on the ground that these Defendants were not involved in the acts or omissions that resulted in the deprivations of constitutional rights and violations of statutory and common law duties set forth in the Plaintiffs' First Amended Complaint.

5. The School Defendants' Motion for Summary Judgment seeks judgment in the School Defendants' favor on the ground that the TeenScreen examination that is the basis for the claims made by the Plaintiffs was administered voluntarily to students at Penn High School.

6. Although I believe the materials available at this time and presented in connection with the School Defendants' Summary Judgment Motion and the Plaintiffs' response to that motion raise genuine issues of fact concerning the School Defendants' participation in the acts and omissions giving rise to the Plaintiffs' claims and the voluntariness of student participation in the TeenScreen examination, the Plaintiffs recognize that the Court may disagree and they cannot abandon arguments and issues that are dependent upon information in the possession and control of the Defendants.

7. Plaintiffs need to depose the School Defendants and conduct other discovery in order to determine how each Defendant participated in the decision to administer the TeenScreen examination at Penn High School, the decision on how to administer the TeenScreen examination, and what each Defendant knew respecting the administration of the TeenScreen examination at Penn High School.

8. Plaintiffs need to depose the Defendants and conduct other discovery in order to determine how the TeenScreen examination was administered and whether student participation in the examination was actually voluntary.

acts and omissions that gave rise to the Plaintiffs' claims and the voluntariness of student participation in the TeenScreen examination is not otherwise available to the Plaintiffs and is within the knowledge and control of the Defendants, and the Plaintiff must have the opportunity to conduct discovery to fully meet the factual assertions of the School Defendants in these respects.

10. Case law holds that summary judgment should not be entered until the party opposing the motion has had a fair opportunity to conduct such discovery as may be necessary to meet the factual basis for the motion. *Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986); *Grayson v. O'Neill*, 308 F.3d 808, 815 (7th Cir. 2002).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 22nd day of March, 2006 in Indianapolis, Indiana.

Respectfully submitted,

JOHN R. PRICE & ASSOCIATES

s/John R. Price

John R. Price,
Counsel for Plaintiffs

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PARTICIPATING ATTORNEY FOR
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CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2006, a copy of the foregoing *Affidavit in Support of Plaintiffs' Fed. R. Civ. P. 56(f) Motion* 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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s/John R. Price
John R. Price, Counsel for Plaintiffs