

HOME

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.)

DEFENDANT MADISON CENTER, INC.'S MOTION TO DISMISS

Comes now defendant, Madison Center, Inc., by counsel, pursuant to F.R.C.P. 12(b)(1)
and moves the Court to dismiss Madison Center, Inc. because the Court lacks subject matter
jurisdiction. In support of this motion, Madison Center, Inc. states:

1. During the month of December 2004, at the time of the incident alleged in plaintiffs' complaint, Madison Center, Inc. was a qualified health care provider as defined by Ind. Code 34-18-3-2. (See Affidavit of Annette Gunter, attached hereto, made a part hereof and marked as Exhibit A.)

2. Madison Center, Inc. is currently a qualified health care provider as defined by Ind. Code 34-18-3-2. (Gunter affidavit.)

3. All incidents and claims in plaintiffs' action arise out of the administration and implementation of a program known as "TeenScreen," a tool for screening children for mental health problems, particularly depression, and as a suicide prevention tool. (Plaintiffs' complaint, ¶ 3.1.)

4. Indiana Code 34-18-8-4 prohibits a claimant from commencing an action in any court before the claimant presents a proposed complaint to a medical review panel and an opinion is rendered by the medical review panel.

5. Indiana Code 34-18-8-7 prohibits a claimant from pursuing an action while the claimant's proposed complaint is being considered by a medical review panel and, further, prohibits a court from taking any action except setting a trial date.

6. A medical review panel has not rendered an opinion on plaintiffs' claims.

7. This Court lacks subject matter jurisdiction to make any ruling on plaintiffs' claims against Madison Center, Inc. prior to an opinion rendered by a medical review panel.

8. A memorandum in support of this Motion to Dismiss is being filed simultaneously with the motion.

WHEREFORE, defendant Madison Center, Inc. requests the Court to dismiss plaintiffs' complaint against Madison Center, Inc. for lack of subject matter jurisdiction and for all other just and proper relief.

/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 27th day of October, 2005

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