

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

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

Plaintiffs,)

vs.)

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 of Penn High School,)
and MADISON CENTER, INC., an Indiana)
non-profit corporation,)

Defendants.)

COMPLAINT AND REQUEST FOR JURY TRIAL

This is a case of significant constitutional implications that will affect schoolchildren and the rights of parents in Indiana, as well as nationwide. Teresa Rhoades and Michael Allen Rhoades, individually and as parents and next friends of Chelsea Rhoades, by and through their attorney of record, John R. Price, participating attorney for The Rutherford Institute, bring this Complaint against the Defendants and, in furtherance of this Complaint, the Plaintiffs allege and

declare as follows:

I. JURISDICTION AND VENUE

1.1 Pursuant to 28 U.S.C. §§ 1331 and 1343, this Court has original jurisdiction over this lawsuit as it is an action seeking redress under the laws and statutes of the United States for rights secured by the Constitution and laws of the United States.

1.2 This Court has jurisdiction over the Plaintiffs' claims arising under the Constitution and laws of the State of Indiana pursuant to 28 U.S.C. § 1367(a), as such claims are a part of the same case or controversy giving rise to the claims over which this Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343.

1.3 Venue properly lies in the Northern District of Indiana under 28 U.S.C. § 1391(b), as one or all of the Defendants reside within this District, all Defendants reside within the State of Indiana, and a substantial part of the events giving rise to this action occurred within this District. Defendants Penn-Harris-Madison School Corporation and Madison Center, Inc. have sufficient contacts with the State of Indiana and this District to be considered residents of this District under 28 U.S.C. § 1391(c).

II. PARTIES

2.1 Plaintiffs TERESA RHOADES and MICHAEL ALLEN RHOADES are adult residents of the Town of Osceola, County of St. Joseph, State of Indiana. Currently and at all relevant times, Plaintiffs Teresa and Michael Rhoades have been wife and husband and reside within the areas encompassed and served by the Defendant Penn-Harris-Madison School Corporation. Plaintiffs Teresa and Michael Rhoades are the natural parents of Plaintiff Chelsea Rhoades.

2.2 Plaintiff CHELSEA RHOADES is the daughter of Plaintiffs Teresa and Michael Rhoades and currently and at all relevant times resides with her parents in the Town of Osceola, County of St. Joseph, State of Indiana. Plaintiff Chelsea Rhoades is currently 16 years old, but on December 7, 2004, she was 15 years old. Presently and at all relevant times, Plaintiff Chelsea Rhoades is an unemancipated minor.

2.3 Defendant PENN-HARRIS-MADISON SCHOOL CORPORATION is a political subdivision of the State of Indiana, created pursuant to Chapter 20 of the Code of Indiana, and is charged with the operation of public schools.

2.4 Defendant DAVID R. TYDGAT is and was on or before December 7, 2004, the duly appointed principal of Penn High School. With respect to all events and occurrences hereinafter set forth, Defendant Tydgat was acting within the course and scope of his employment by Defendant Penn-Harris-Madison School Corporation.

2.5 Defendant DAVE RISNER is and at all relevant times was the duly appointed associate principal of Penn High School. With respect to all events and occurrences hereinafter set forth, Defendant Risner was acting within the course and scope of his employment by Defendant Penn-Harris-Madison School Corporation.

2.6 Defendant STEVEN HOPE is and at all relevant times was the duly appointed assistant principal of Penn High School. With respect to all events and occurrences hereinafter set forth, Defendant Hope was acting within the course and scope of his employment by Defendant Penn-Harris-Madison School Corporation.

2.7 Defendants VICKIE MARSHALL and MARNI CRONK are and at all relevant times were duly appointed guidance counselors at Penn High School. With respect to all events

and occurrences hereinafter set forth, Defendants Marshall and Cronk were acting within the course and scope of their employment by Defendant Penn-Harris-Madison School Corporation.

2.8 Defendant MADISON CENTER, INC. is a non-profit corporation formed and operating pursuant to the laws of the State of Indiana. Defendant Madison Center, Inc. owns and operates Madison Center, a community mental health center for St. Joseph County, Indiana, and Madison Center for Children, a division of Madison Center.

III. FACTUAL ALLEGATIONS

3.1 The incidents and claims in this action arise out of the administration and implementation of a program known as “TeenScreen.” “TeenScreen” was developed and is supported and promoted by Columbia University in New York, New York. The stated goal of the “TeenScreen” program is to “make voluntary mental health check-ups available for all American teens.” See <http://www.teenscreen.org>. “TeenScreen” has been promoted as a tool for screening children for mental health problems, particularly depression, and as a suicide prevention tool. The effectiveness of “TeenScreen” also has been questioned because the diagnoses made on the basis of the results of the examination are highly subjective, and there is a lack of evidence that the screening actually results in a decreased risk of suicide attempts.

3.2 Columbia University and others who support the collection and compilation of personal and private information relating to teens have aggressively promoted the “TeenScreen” program to schools and civic organizations throughout the United States. In response to grassroots efforts to limit the reach of “TeenScreen” and the collection of private and psychological information about America’s youth, supporters of “TeenScreen” have begun suggesting that schools and civic organizations adopt a “passive consent” policy for administration, under which

parents are deemed to have consented to the administration of “TeenScreen” upon their children unless they affirmatively, and in writing, object to administration of the test to their children.

3.3 On or before October 1, 2004, the administration of Penn High School, acting under the authority and with the approval of Defendant Penn-Harris-Madison School Corporation, decided to administer the psychological test developed and promoted by the “TeenScreen” program to all tenth grade students at Penn High School.

3.4 In conjunction with the administration of the “TeenScreen” test at Penn High School, a letter was prepared bearing the date October 1, 2004, and the names of Defendants Steven Hope, Assistant Principal, Vickie Marshall, Guidance Counselor, and Marni Cronk, Guidance Counselor. The letter was addressed to “Parent[s]” generally, not personally, and recited that Penn High School intended to administer the test to all tenth grade students at the school. The letter promised that all information would be kept confidential, would not be shared with the child’s teacher, and would not be entered on the child’s permanent record. It also promised that “if there are any concerns about your child you will be contacted by a project staff member.” A copy of the letter is attached to this Complaint as “**Exhibit A**”.

3.5 The letter also recited as follows: “If you DO NOT want your child to participate in TeenScreen, please complete the form below and return it to the Penn High School Guidance Office by November 8, 2004.” The bottom of the letter contained a form on which parents could indicate their choice to opt out of participation in the “TeenScreen” test by checking a box indicating that choice (“**Exhibit A**”).

3.6 The procedure adopted by the Defendants did not require affirmative parental consent before administering the “TeenScreen” psychological test to students. The Defendants

presumed consent to administer the test to children unless a parent requested that their child not be tested.

3.7 Neither Teresa nor Michael Rhoades ever received Defendants' letter with the attached notification form, and neither of them ever saw the notification form, attached to this complaint as "**Exhibit A**".

3.8 The Defendants' failure to obtain affirmative consent from the parents of unemancipated tenth grade students at Penn High School before subjecting those students to the "TeenScreen" test was in direct violation of federal law, namely, the Protection of Pupil Rights Amendment, 20 U.S.C. § 1232h(b), which provides that no student shall be required to submit to a survey, analysis, or evaluation that reveals information concerning, inter alia, mental or psychological problems of the student or student's family, sex behavior or attitudes, or religious beliefs or practices of the student or the student's family "without the prior written consent of the parent."

3.9 The Defendants' failure to obtain affirmative consent from the parents of unemancipated tenth grade students at Penn High School before subjecting those students to the "TeenScreen" test was also in direct violation of Ind. Code § 20-10.1-4-15(b), which provides that a student shall not be required to participate in a personal analysis, evaluation, or survey that reveals information concerning, inter alia, mental or psychological conditions that may embarrass the student or the student's family, sex behavior or attitudes, or religious beliefs or practices of the student or the student's family "without the prior written consent of the student's parent or guardian[.]"

3.10 On December 7, 2004, Plaintiff Chelsea Rhoades, who was a tenth grade student at Penn High School at the time, arrived at school and reported to her homeroom. Soon after she

arrived, Chelsea and the other students were told to go to another classroom unless they had an “opt out” slip. Only five students in the class had such slips.

3.11 The remainder of the students, including Chelsea, were divided into groups of about ten, herded into another classroom, and placed in front of computers. The purpose of their being in this other room was not told to them, other than that they were to take some kind of test.

3.12 Chelsea assisted a classmate, who was confined to a wheelchair, get situated in the new room in front of a computer. While she was busy offering such assistance, Chelsea was given a paper that required her signature. She was not told what the paper was for but signed it as she was instructed, just like every other student in the room.

3.13 The paper Chelsea was given was an “Assent Form” identifying the assent as part of the Columbia TeenScreen Program and setting forth certain disclosures. A copy of the form used is attached as “**Exhibit B**”. Among the disclosures was a promise that her answers would not be disclosed to school educational staff without her approval. It also provided that if her answers indicated a significant problem, her parents would be told, but only after the administrator discussed the indication with her. Chelsea filled out and signed the assent form.

3.14 Any execution of the Assent Form by Chelsea was not knowing, effective, or valid consent to the administration of the “TeenScreen” test upon Chelsea because she did not have the legal capacity to consent and she was not aware of the purpose of the assent, the nature of the test to be given, or the purpose for which the test was being given.

3.15 When Chelsea arrived at her homeroom class on December 7, 2004, she was not aware that she would be subjected to the “TeenScreen” test and had not discussed administration of the test with her parents, Teresa and Michael Rhoades.

3.16 Chelsea was subjected to the “TeenScreen” mental health examination by personnel of the Madison Center for Children, acting as agents and employees of Defendant Madison Center, Inc. Madison Center personnel were invited to Penn High School by employees and agents of Defendant Penn-Harris-Madison School Corporation to do the mental examination of Chelsea and other students. The Madison Center employees were also acting as agents and on behalf of all other Defendants in administering the “TeenScreen” test to Chelsea and other students.

3.17 The examination of Chelsea took place at approximately 9:00 a.m. on December 7, 2004. The examination consisted of questions seeking a “Yes” or “No” response and offered no room for explanation or alternative responses. Chelsea took about ten minutes to complete the examination. At the conclusion of the examination, Chelsea and the other students were told to wait outside the examination room.

3.18 Not long thereafter, Chelsea was approached by an employee or agent of Defendant Madison Center, Inc. This person then took Chelsea to a more private hallway.

3.19 The person told Chelsea that she (Chelsea) had two mental health problems: obsessive compulsive disorder (OCD) and social anxiety disorder. The person explained that the OCD diagnosis was based upon Chelsea’s response to the examination that she liked to help clean the house. The person told Chelsea that the social anxiety diagnosis was based upon a response in which Chelsea indicated that she did not “party” much. Chelsea also was told that if her condition got any worse, her mother should bring her to Madison Center for treatment.

3.20 The diagnoses were based upon a “TeenScreen” evaluation form that is signed by “C. Clarkston,” the identity of whom is not known, but the person is believed to be an agent and employee of Defendant Madison Center, Inc.

3.21 Upon information and belief, a majority of the students who were subjected to the “TeenScreen” examination at the same time as Chelsea also were told by employees or agents of Defendant Madison Center, Inc. that the students had some mental or psychological problem or disorder.

3.22 Before the examination, Chelsea had no mental health problems, was normal and well-adjusted, and was a high achiever in school and elsewhere. The diagnosis was erroneous, improper, and done with reckless disregard for the welfare of Chelsea.

3.23 Neither Teresa Rhoades nor Michael Rhoades gave explicit permission to any Defendant to conduct the examination upon Chelsea or to tell Chelsea any purported “diagnosis” based upon Chelsea’s responses to the “TeenScreen” examination.

3.24 The examination and ensuing diagnosis have caused Chelsea and her parents severe emotional harm.

3.25 On June 3, 2005, the Plaintiffs, acting pursuant to and in accordance with Ind. Code §§ 34-13-3-1, et seq., filed a Tort Claim Notice with Defendants Penn-Harris-Madison School Corporation and Madison Center, Inc. and with the Attorney General of the State of Indiana and the Indiana Political Subdivision Risk Management Commission, reciting the circumstances set forth above. More than 90 days have passed since the filing of the Tort Claim Notice.

IV. FIRST CLAIM – INTERFERENCE WITH PARENTAL RIGHTS U.S. Const. Amendment 14

4.1 The Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1.1 through 3.25 set forth above.

4.2 Plaintiffs Teresa and Michael Rhoades have a right to control the care, custody, and upbringing of their daughter, Chelsea, under the Fourteenth Amendment to the United States Constitution, as such right is a fundamental liberty interest secured to all parents. This right

includes the right to determine the nature of and consent to medical and psychological examinations of Chelsea and to determine the use of information obtained as a result of such examinations.

4.3 The Defendants deprived Plaintiffs Teresa and Michael Rhoades of their fundamental right to control the care, custody, and upbringing of their child by subjecting Chelsea to psychological testing, disclosing the results of that testing to Chelsea, and offering Chelsea a diagnosis of her mental health without the consent or participation of Plaintiffs Teresa and Michael Rhoades.

4.4 The Defendants acted under color of state law in depriving Plaintiffs Teresa and Michael Rhoades of their fundamental rights to the care, custody, and control of their daughter, Chelsea.

4.5 As a direct and proximate result of the Defendants' actions and/or omissions, as described above, Plaintiffs Teresa and Michael Rhoades have each sustained damages for which they are entitled to be made whole and/or for compensation under 42 U.S.C. § 1983, in amounts to be determined at trial, including without limitation their lost past and future income, out-of-pocket expenses, general damages for pain and suffering, mental anguish, humiliation and/or emotional distress, and their attorneys' fees and costs, from each of the Defendants.

V. SECOND CLAIM – INVASION OF PRIVACY **U.S. Const. Amendment 14**

5.1 The Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1.1 through 3.25 set forth above.

5.2 The Plaintiffs have a fundamental constitutional right to privacy by virtue of the protection afforded personal liberty by United States Constitution Amendment 14.

5.3 The Plaintiffs' right of privacy protects the Plaintiffs from intrusions by the state, which seek the disclosure of personal or family matters.

5.4 The Defendants deprived the Plaintiffs of their right to privacy by subjecting Chelsea to the "TeenScreen" examination without the valid consent of any of the Plaintiffs, by extracting highly personal and private matters from Chelsea, and by using such information to make and convey a fallacious diagnosis of Chelsea's mental and psychological condition.

5.5 The Defendants acted under color of state law in depriving the Plaintiffs Teresa and Michael Rhoades of their rights to privacy embodied in United States Constitution Amendment 14.

5.6 As a direct and proximate result of the Defendants' actions and/or omissions, as described above, Plaintiffs Teresa, Michael, and Chelsea Rhoades have each sustained damages for which they are entitled to be made whole and/or for compensation under 42 U.S.C. § 1983, in amounts to be determined at trial, including without limitation their lost past and future income, out-of-pocket expenses, general damages for pain and suffering, mental anguish, humiliation and/or emotional distress, and their attorneys' fees and costs, from each of the Defendants.

VI. THIRD CLAIM – VIOLATION OF IND. CODE § 20-10.1-4-15

6.1 The Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1.1 through 3.25 set forth above.

6.2 The "TeenScreen" psychological test to which Plaintiff Chelsea Rhoades was subjected was a "personal evaluation," "evaluation," and/or "survey" for purposes of Ind. Code § 20-10.1-4-15(b).

6.3 The Defendants or employees, officers, and/or agents of the Defendants for whom the Defendants are responsible subjected Plaintiff Chelsea Rhoades to the "TeenScreen" psychological test without obtaining the written or verbal consent of either Plaintiff Teresa or

Michael Rhoades, in violation of Ind. Code § 20-10.1-4-15(b). The Defendants' failure to obtain the consent of Plaintiffs Teresa and Michael Rhoades was intentional, willful, and/or wanton.

6.4 As a direct and proximate result of the Defendants' violation of Ind. Code § 20-10.1-4-15(b), as described above, Plaintiffs Teresa, Michael, and Chelsea Rhoades have each sustained damages for which they are entitled to be made whole and/or for compensation, in amounts to be determined at trial, including without limitation their lost past and future income, out-of-pocket expenses, general damages for pain and suffering, mental anguish, humiliation and/or emotional distress, and their attorneys' fees and costs, from each of the Defendants.

VII. FOURTH CLAIM – NEGLIGENT BREACH OF DUTY

7.1 The Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1.1 through 3.25 set forth above.

7.2 The Defendants owed the Plaintiffs a duty not to subject Plaintiff Chelsea Rhoades to psychological tests without the express consent of her parents, Plaintiffs Teresa and Michael Rhoades.

7.3 The Defendants owed the Plaintiffs a duty not to relate to Plaintiff Chelsea Rhoades any diagnosis or analysis of Plaintiff Chelsea Rhoades' psychological or mental condition without the express consent of her parents, Plaintiffs Teresa and Michael Rhoades.

7.4 The Defendants owed the Plaintiffs a duty to act with due care in making and communicating any diagnosis or analysis of Plaintiff Chelsea Rhoades' psychological or mental condition.

7.5 The Defendants, their employees, and/or agents breached each of the duties to the Plaintiffs described in paragraphs 7.2-7.4.

7.6 As a direct and proximate result of the Defendants' actions and/or omissions, as described above, Plaintiffs Teresa and Michael Rhoades have each sustained damages for which they are entitled to be made whole and/or for compensation, in amounts to be determined at trial, including without limitation their lost past and future income, out-of-pocket expenses, general damages for pain and suffering, mental anguish, humiliation and/or emotional distress, and their attorneys' fees and costs, from each of the Defendants.

VIII. FIFTH CLAIM – INVASION OF PRIVACY

8.1 The Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1.1 through 3.25 set forth above.

8.2 The Defendants willfully, intentionally, and tortiously invaded the Plaintiffs' right of privacy by subjecting Plaintiff Chelsea Rhoades to the "TeenScreen" examination, thereby extracting from Chelsea highly personal and private information about Chelsea and her family and using that information for the purpose of conveying a fallacious and highly damaging diagnosis of Chelsea's mental condition.

8.3 The Defendants' conduct was highly offensive, objectionable, and unreasonable in that it was done without the consent of the Plaintiffs and constituted an intrusion into the Plaintiffs' personal and family solitude.

8.4 As a direct and proximate result of the Defendants' actions and/or omissions, as described above, Plaintiffs Teresa, Michael, and Chelsea Rhoades have each sustained damages for which they are entitled to be made whole and/or for compensation, in amounts to be determined at trial, including without limitation their lost past and future income, out-of-pocket expenses, general damages for pain and suffering, mental anguish, humiliation and/or emotional distress, and their attorneys' fees and costs, from each of the Defendants.

IX. SIXTH CLAIM – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

9.1 The Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1.1 through 3.25 set forth above.

9.2 The Defendants' conduct of relating to Plaintiff Chelsea Rhoades a diagnosis that she suffered from obsessive compulsive disorder and social anxiety disorder was extreme and outrageous conduct and utterly intolerable in a civilized community.

9.3 The Defendants acted recklessly in causing severe emotional distress to the Plaintiffs.

9.4 As a direct and proximate result of the Defendants' actions and/or omissions, as described above, Plaintiffs Teresa, Michael, and Chelsea Rhoades have each sustained damages for which they are entitled to be made whole and/or for compensation, in amounts to be determined at trial, including without limitation their lost past and future income, out-of-pocket expenses, general damages for pain and suffering, mental anguish, humiliation and/or emotional distress, and their attorneys' fees and costs, from each of the Defendants.

X. SEVENTH CLAIM – VIOLATION OF CONSTITUTIONAL RIGHT TO PRIVACY Indiana Constitution Article I, § 1

10.1 The Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1.1 through 3.25 set forth above.

10.2 The Plaintiffs have a core, fundamental, and inalienable right to privacy protected by the guarantee to life, liberty, and the pursuit of happiness set forth in Indiana Constitution Article I, § 1.

10.3 The Plaintiffs' right to privacy guaranteed by the Indiana Constitution protects the Plaintiffs' right and ability, both individually and as a family, to make decisions about their health and the integrity of their minds and bodies.

10.4 The Defendants violated the Plaintiffs' right to privacy guaranteed by the Indiana Constitution by subjecting Chelsea to the "TeenScreen" examination without the valid consent of any of the Plaintiffs, by extracting highly personal and private matters from Chelsea, and by using such information to make and convey a fallacious diagnosis of Chelsea's mental and psychological condition.

10.5 The Defendants acted under color of state law in depriving the Plaintiffs Teresa, Michael, and Chelsea Rhoades of their rights to privacy guaranteed by Indiana Constitution Article I, § 1.

10.6 As a direct and proximate result of the Defendants' actions and/or omissions, as described above, Plaintiffs Teresa, Michael, and Chelsea Rhoades have each sustained damages for which they are entitled to be made whole and/or for compensation in amounts to be determined at trial, including without limitation their lost past and future income, out-of-pocket expenses, general damages for pain and suffering, mental anguish, humiliation and/or emotional distress, and their attorneys' fees and costs, from each of the Defendants.

XI. PRAYER FOR DAMAGES

WHEREFORE, having asserted various causes of action and alleging facts in support thereof, the Plaintiffs Teresa, Michael, and Chelsea Rhoades each pray for judgment and damages against the Defendants, and each of them:

- a. awarding the Plaintiffs general and/or compensatory damages, including without limitation damages for his/her pain and suffering, mental anguish, humiliation, and/or general emotional distress, in amounts to be determined at trial;
- b. awarding the Plaintiffs special damages, including without limitation reimbursing the Plaintiffs for any out-of-pocket expenses incurred as a result of the Defendants'

- conduct;
- c. awarding the Plaintiffs punitive damages for the Defendants' willful and/or malicious conduct;
 - d. awarding the Plaintiffs their costs and attorneys' fees; and
 - e. for all other legal and/or equitable relief this Court deems just and proper in the premises.

DATED this _____ day of September, 2005.

Respectfully submitted,

JOHN R. PRICE & ASSOCIATES

By: _____
John R. Price
Counsel for Plaintiffs

PARTICIPATING ATTORNEY FOR
THE RUTHERFORD INSTITUTE

REQUEST FOR JURY TRIAL

The Plaintiffs, Teresa, Michael, and Chelsea Rhoades, each and jointly request that this cause be tried by jury.

Respectfully submitted,

JOHN R. PRICE & ASSOCIATES

By: _____
John R. Price [#5828-49]
Counsel for Plaintiffs

John R. Price
Attorney No. 5828-49
JOHN R. PRICE & ASSOCIATES
9000 Keystone Crossing, Suite 150
Indianapolis, Indiana 46240
Telephone: (317) 844-8822
Facsimile: (317) 844-7766
E-mail: john@johnpricelaw.com

PARTICIPATING ATTORNEY FOR
THE RUTHERFORD INSTITUTE