

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO. 3:09CV-953-H

RICHARD C. EVANS and NANCY J. EVANS
as next Friends and Parents of E.E.E.,

PLAINTIFFS

V.

KENTUCKY HIGH SCHOOL
ATHLETIC ASSOCIATION
DEFENDANT

* * * * *

CIVIL ACTION NO. 3:09CV-967-H

MARY ANN SEGER,
as Next Friend and Parent of
C.S. and CE. S.

PLAINTIFF

V.

KENTUCKY HIGH SCHOOL
ATHLETIC ASSOCIATION
DEFENDANT

MEMORANDUM OPINION AND ORDER

Plaintiffs, the parents of several high school athletes enrolled in parochial high schools, originally filed their cases in Jefferson Circuit Court. During argument concerning various dispositive motions, Plaintiffs presented arguments which appeared to invoke the United States Constitution in support of their claims. Based upon these arguments, Defendant, Kentucky High School Athletic Association, removed to federal court pursuant to 28 U.S.C. § 1446. In response, Plaintiffs filed a timely motion to remand.

Because the precise nature of Plaintiffs' arguments triggering the removal seemed unclear, the Court convened a conference. During that conference, the direction of the case and

the resolution of the motion to remand came into better focus. Plaintiffs allege that Defendant's regulations as to scholarships and athletic participation are arbitrary, capricious and without a rational basis so far as they affect, in particular, parochial school students. Plaintiffs contend that their primary claims are grounded in Kentucky state statutory and constitutional law. However, they also believe and are likely to argue that Defendant's regulations as applied also violate the United States Constitution.

After considerable discussion, the Court advised Plaintiffs' counsel that under an application of the well-pleaded complaint rule, he could limit his claims by excluding all federal constitutional remedies and arguments. Counsel declined to do so. Under these circumstances, it became clear that Plaintiffs have asserted and may well rely upon federal constitutional rights in support of their claims. Consequently, the rule under § 1446 was both proper and timely.

Being otherwise sufficiently advised,

IT IS HEREBY ORDERED that Plaintiffs' motion to remand is DENIED.

IT IS FURTHER ORDERED that on or before **March 24, 2010**, Plaintiffs shall respond to all pending dispositive motions; and that on or before **April 5, 2010**, Defendant shall reply. Thereafter, the motions will be submitted.

cc: Counsel of Record