ELECTRONICALLY FILED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION
CIVIL ACTION NO. 3:09-CV-967-C

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

v.

NOTICE OF REMOVAL

KENTUCKY HIGH SCHOOL ATHLETIC ASSOCIATION **DEFENDANT**

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In accordance with the provisions of 28 U.S.C. § 1446, NOTICE IS GIVEN as follows:

1. Defendant, Kentucky High School Athletic Association (the "KHSAA"), hereby removes this action from the Circuit Court of Jefferson County, Kentucky, Division 5, where it was commenced and is presently pending (Civil Action No. 09-CI-011476) to the United States District Court for the Western District of Kentucky, Louisville Division. True copies of the "Appeal" is attached as Exhibit 1 and constitutes all process, pleadings and other pages received by the KHSAA in this action.

2. This notice received by the KHSAA that this case was subject to removal arises from the Appeal, and from pleadings and motion practice conducted in a related case. Specifically, the Appeal asserts claims on behalf of Plaintiffs that at least two Bylaws of the KHSAA are, *inter alia*, discriminatory. (Exhibit 1, p. 2, ¶¶ 4, 5; p. 3, ¶¶ 4,6.) Further, Plaintiff Ce.S. "incorporates any and all statements and/or allegations contained in Appellants amended Complaint filed of record herein." (Exhibit 1, p. 3, ¶ 8.) Upon information and belief, this reference applies to the Second Amended Complaint filed in *Evans, et al. v. Kentucky High School Ath. Ass'n*, Case No. 09-CI-007275, Commonwealth of Kentucky, Jefferson Circuit

Court, Division 13 (the "Second Amended Complaint").[1] Plaintiffs asserted in the Second Amended Complaint that "the rules and regulations of the Defendant, KHSAA are unfair discriminatory, arbitrary and capricious." (Second Amended Compl., ¶ 12.) The "rules and regulations" referred to include one of the Bylaws challenged in this case. (*See* Second Amended Compl., ¶ 5-7; Appeal, p. 2, ¶ 4; p. 3, ¶¶ 4-5.)

3. In their Response to the KHSAA's Motion to Dismiss in *Evans, et al. v. KHSAA* dated December 1, 2009 (the "Response"),[2] Plaintiffs asserted that their discrimination claim regarding the same Bylaw included a claim of discrimination based upon the First and Fourteenth Amendments to the United States Constitution. (Response, p. 12.) Based on this assertion, the KHSAA filed a notice of removal of *Evans, et al. v. KHSAA* with this Court (the "Notice").[3]

4. Plaintiffs have asserted that their challenge to the "rules and regulations" of the KHSAA, including Bylaw 13 which is challenged in both the *Evans* action and this action, are based on, *inter alia*, discrimination under the First and Fourteenth Amendments to the United States Constitution. Thus, the time within which Defendants are required to file a Notice of Removal to this Court has not yet expired.

5. The Court has original jurisdiction of this action under the provisions of 28 U.S.C. § 1331 (Federal question jurisdiction), and this action may be removed from the Jefferson Circuit Court, Division 5, under the provisions of 28 U.S.C. § 1441, because this is a civil action of which the district courts have original jurisdiction founded on claim or right arising under the Constitution, treaties or laws of the United States. This action is an action of which the district

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[1] A copy of the Second Amended Complaint is attached as Exhibit 2.

[2] A copy of the Response is attached as Exhibit 3.

[3] A copy of the Notice is attached as Exhibit 4. The Notice provides additional explanation regarding the Federal claims asserted by the Plaintiffs.

court would have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States because the allegations set forth in the amended Complaints, as clarified by the Response, establish that Plaintiff is asserting a claim under the Constitution of the United States.

6. Removal to this district and division is proper because this is the district and division embracing the place where the action is pending. 14 U.S.C. § 1441(a).

7. Written notice of this Notice of Removal is being promptly given to Plaintiffs, and a copy of this Notice of Removal is being promptly filed with the Clerk of the Jefferson Circuit Court, Division 13 as required by 28 U.S.C. § 1446(d), which provides that the state court shall proceed no further and that this Notice of Removal effects the removal.

WHEREFORE, the KHSAA gives notice of removal of this action from the Circuit Court of Jefferson County, Division 13, to the United States District Court for the Western District of Kentucky, Louisville Division.

/s/ Jason T. Ams
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COUNSEL FOR DEFENDANT KENTUCKY
HIGH SCHOOL ATHLETIC ASSOCIATION

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of December, 2009, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the following:

Hon. Teddy Gordon
807 West Market Street
Louisville, KY 40202
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ATTORNEY FOR PLAINTIFFS

/s/ Jason T. Ams
COUNSEL FOR DEFENDANT KENTUCKY
HIGH SCHOOL ATHLETIC ASSOCIATION

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