

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DAWN J. WACKER, mother and
natural guardian of Spencer L. Houk,,

Plaintiff,

v.

SUN PRAIRIE AREA SCHOOL DISTRICT and
JIM McCLOWRY, Athletic & Activities Director,

Defendants.

ORDER

07-C-611-C

This civil action was removed from the Circuit Court for Dane County to federal court by defendants Sun Prairie Area School District and Jim McClowry and set for hearing on plaintiff's motion for preliminary injunction on October 26, 2007 before United States District Judge Barbara B. Crabb. David Lasker appeared for plaintiff, who was also present in person. Dave Rohrer and Joanne Harmon Curry appeared for defendants.

At the outset of the hearing, Mr. Lasker informed the court and opposing counsel that he did not believe that removal was proper. Plaintiff had alleged a violation of her son's "constitutional right to due process" without specifying whether the claim arose under state or federal constitution. Mr. Lasker stated that it was plaintiff's intent to proceed only on

a state constitutional claim. Mr. Rohrer noted his surprise that Mr. Lasker had not informed him earlier that plaintiff was not raising a federal claim and that had Mr. Lasker done so either orally or by making it plain in the complaint, defendants would not have removed the case to federal court. Mr. Rohrer conceded that if plaintiff was raising only a state constitutional issue, defendants had no ground on which to move for removal and could not oppose remand of the case.

In light of plaintiff's clarification of her constitutional claim, I find that no federal question is involved in this case. Accordingly, it is REMANDED to the Circuit Court for Dane County, Wisconsin.

Entered this 30th day of October, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge