

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS**

**Leslie A. Nickels,**

**Plaintiff,**

**v.**

**Case No. 08-2173-JWL**

**Unified School District #453,**

**Defendant.**

**MEMORANDUM & ORDER**

Plaintiff filed a petition in state court alleging violations of the Kansas Age Discrimination in Employment Act, K.S.A. § 44-1111 et seq. Plaintiff's petition, however, contained an isolated reference to the federal statute prohibiting age discrimination, 29 U.S.C. § 621 et seq., and defendant removed the case to federal court in light of the reference. *See Topeka Housing Authority v. Johnson*, 404 F.3d 1245, 1247 (10th Cir. 2005) (removal to federal court generally appropriate when a federal question is presented on the face of the plaintiff's properly pleaded complaint). Thereafter, plaintiff moved to remand the case (doc. 11) to state court on the grounds that the reference to the federal statute was entirely inadvertent. Plaintiff has also filed a motion for leave to amend her petition (doc. 15) to remove the reference to the federal statute.

Defendant has notified the court that it does not oppose plaintiff's motion for leave to amend her petition. That motion is therefore granted and the amended petition attached to plaintiff's motion for leave is deemed filed. Moreover, because that amended petition is based

entirely on state law and undisputedly lacks any other basis for federal jurisdiction, plaintiff's motion to remand is granted and the case is remanded to state court.

**IT IS THEREFORE ORDERED BY THE COURT THAT** plaintiff's motion for leave to amend her petition (doc. 15) is **granted** and plaintiff's motion to remand (doc. 11) is **granted**. **The case is remanded to the District Court of Leavenworth County, Kansas. A certified copy of this order of remand shall be mailed by the clerk to the clerk of the state court.**

**IT IS SO ORDERED.**

Dated this 11<sup>th</sup> day of August, 2008, at Kansas City, Kansas.

s/ John W. Lungstrum  
John W. Lungstrum  
United States District Judge