



## West Virginia E-Filing Notice

CC-52-2024-P-48

Judge: Charles Richard Wilson

**To:** Teresa Clark Toriseva  
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# NOTICE OF FILING

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IN THE CIRCUIT COURT OF WETZEL COUNTY, WEST VIRGINIA

Katrina Neff v. Cassandra Porter

CC-52-2024-P-48

The following order - case was FILED on 7/12/2024 3:00:30 PM

Notice Date: 7/12/2024 3:00:30 PM

Lori J. McCoy  
CLERK OF THE CIRCUIT COURT  
Wetzel County  
PO Box 263  
NEW MARTINSVILLE, WV 26155

(304) 455-8234

**In the Circuit Court of Wetzel County, West Virginia**

**Katrina Neff,  
Kelli Goddard,  
Lisa Young,  
Luissa Lopez,  
Mary McGinnis ET AL,**  
Plaintiffs,

v.

Case No. CC-52-2024-P-48  
Judge Charles Richard Wilson

**Cassandra Porter,  
West Virginia Secondary Schools  
Activity Commission,**  
Defendants

**ORDER GRANTING A TEMPORARY RESTRAINING ORDER PURSUANT TO  
PLAINTIFF'S PETITION FOR INJUNCTIVE RELIEF PURSUANT TO WEST VIRGINIA  
CODE §53-5-1 AND WEST VIRGINIA CIVIL RULE 65**

On the 12<sup>th</sup> day of July, 2024, came the Plaintiffs, by and through counsel, Teresas C. Toriseva, Esq. and Joshua D. Miller, Esq., *ex parte*, by way of a Petition for Injunctive Relief pursuant to West Virginia Code §53-5-1 and West Virginia Rule of Civil Procedure 65. The Court has considered Plaintiff's *ex parte* petition and Orders as follows:

**FACTS**

1. Paden City High School (hereinafter referred to as PCHS) is a 7–12 grade, class A high school in Wetzel County, West Virginia in the small town of Paden City.
2. PCHS opened its doors as a 9-12 school in 1951 and graduated its first class in 1952. As of 2024, Paden City High School houses grades 7-12 with an enrollment of approximately 160 students.
3. PCHS has received recognitions for academics and has been named a West Virginia Department of Education High Achieving School and for the W.V.D.E. Annual Performance Index, PCHS received the status of "Distinguished School," which means it was the upper quartile for academic performance.

4. In 2013, PCHS, received Full Accreditation Status by the W.V. Board of Education following a positive assessment of PCHS by the W.V. Office of Education Performance Audits as well as a rating as a WV Success School, an honor given to only three schools in RESA 6, **and the only high school in Wetzel County to receive this honor.**
5. PCHS has several West Virginia State Champions, Ohio Valley Athletic Conference Champions (OVAC), and Mason-Dixon Champions.
6. PCHS is a great source of pride for the members of the community.
7. In March of 2021, Paden City was added to the US EPA list of Superfund Sites National Priority List;
8. [After the Superfund Site designation, PCHS continued as a high school for the remainder of the 2020-2021 school year.](#)
9. After the Superfund Site designation, PCHS continued as a high school for the entire 2021-2022 school year.
10. After the Superfund Site designation, PCHS continued as a high school for the entire 2022-2023 school year.
11. After the Superfund Site designation, PCHS continued as a high school for the entire 2023-2024 school year.
12. Cassandra Porter was appointed by the publicly elected Wetzel County Board of Education Wetzel to the position of Wetzel County Schools Superintendent on July 1, 2023. She was hired under a one-year contract.
13. For years prior to Ms. Porter becoming Superintendent, it was known that Paden City was designated a Superfund Site.
14. On July 7, 2023, the Board held a public meeting to discuss options for schools in Wetzel County.
15. At that meeting, Superintendent Porter stated:

“They [the local high schools] don’t really want to merge. They would want to build a new facility so that all the communities that would be affected would come together as one Wetzel County or two Wetzel County high schools. We don’t have enough teachers to serve all of our students in all of our buildings right now.

We want to make sure that all of our students get the education they deserve.”

Superintendent Porter made no mention of the Superfund or the health and safety of students as a result of the Superfund Site.

16. On August 7, 2023, a work session was held where Richard Boothby, Esq., counsel for the Board, provided materials and held a discussion regarding the consolidation of Wetzel County BOE. No mention of merging PCHS with Magnolia was discussed. No mention of the Superfund Site impacting the health and safety of the pupils was mentioned.
17. On September 25, 2023, less than three (3) full months after Superintendent Porter took office, at a Regular meeting of the Wetzel County BOE, Superintendent Porter attempted to again close Paden City High School to begin her 5-10 year plan of reorganizing Wetzel County Schools. There was no mention of health risks to the students created by the Superfund Site made as the reason for the illegal and unauthorized closure of Paden City High School;
18. Paden City residents filled the BOE office at that September 2023 meeting. Twenty-three people including teachers, principals, students and community members spoke before the board.
19. The Wetzel County Board of Education members, who are elected by the people, unanimously voted (5-0) against the illegal closure by the appointed Superintendent; See Exhibit 1.
20. After the vote on September 25, 2023, the question of whether PCHS was to be merged with any other Wetzel County School had been asked and answered by the Wetzel County BOE.
21. Undeterred, Superintendent Porter looked for a new reason to close the PCHS.
22. On or about March 13, 2024, the Board of Education granted Superintendent Porter a three (3) year employment contract.

23. Shortly thereafter, on July 1, 2024, Superintendent Porter closed PCHS despite the 5-0 vote by Wetzel County BOE vote against her plan to close and consolidate the school. See Exhibit 2.
24. Superintendent Porter's new plan to circumvent the BOE's unanimous vote to not close PCHS was in place for some time before she announced it to the public.
25. By using [W. Va. Code § 18-4-10\(5\)](#) to temporarily close the school due to health and safety reasons, Superintendent Porter could avoid the BOE's vote and further involvement;
26. Superintendent Porter's sole authority to close PCHS is/was [W. Va. Code § 18-4-10\(5\)](#).
27. But as early as June 12, 2024 the US EPA had made the following statements regarding the proposed illegal and unauthorized closure of PCHS:

On June 12, 2024, EPA was made aware that the Paden High School will be temporarily relocating for the 2024-2025 school year due to its location on top of a Superfund Site and concerns regarding vapor intrusion. Vapor intrusion is the migration of vapor-forming chemicals from any subsurface source into an overlaying building. EPA has conducted three rounds of vapor intrusion sampling at the Paden City High School. EPA communicated to the Wetzel County School District in May 2024 that the results consistently indicate that there is no unacceptable risk to students resulting from the Superfund Site. **Vapor intrusion data collected at the High School does not indicate any unacceptable risks to the students or staff using the High School. Based on the sampling results to date, a school closure was not recommended by EPA during any communications with the School District.** See Exhibit 3. Emphasis added.

28. The US EPA has determined that no health and safety risk exists. Its conclusions are based on the US DHHR ATSDR's report from January 31, 2024.
29. [W. Va. Code § 18-4-10\(5\)](#) therefore does not apply and cannot be used as authority to "temporarily" close PCHS as there is no condition at PCHS that is "detrimental to the health, safety, and welfare of the pupils."
30. Superintendent Porter cannot claim on one hand that the EPA designation as a Superfund Site is the reason for the closure while on the other hand ignore the EPA's recommendation to not close the school because there is no safety and health risk.
31. Superintendent Porter's illegal and unauthorized closure of PCHS was done without the Board of Education's involvement or approval.

32. In fact, as stated above, the Board specifically disapproved of any merger or closure on at least two (2) occasions.
33. Further, nothing in her illegal and unauthorized closure appears temporary as there is no plan to re-open PCHS and its closure will remain “until further notice”. “Until further notice” is not temporary.
34. In Paden City, the local high school is the heart and foundation of the community.
35. Closing PCHS when no threat to the students’ safety exists is rash, unreasonable, and will devastate the students, the teachers and staff, and the overall community.
36. Closing PCHS will devastate the students, the teachers and staff, and the overall community.
37. Employees from Wetzel County Schools have been seen removing athletic equipment, band equipment, teaching equipment, and other school equipment from PCHS in the days and weeks following the illegal closure.
38. The 2024-2025 school year starts in August, mere weeks away from the filing of this Petition.
39. On August 12, 2024, teachers and staff are to report to the respective schools for work.
40. On August 19, 2024, students are to report for the first day of classes.
41. The school closure reached past school classes and instruction.
42. The WV SSAC requires individual players of a team to have practiced on 12 separate days, exclusive of the day of the contest, before participating in an interscholastic contest.
43. Time is running out for the PCHS Wildcats to field any sports team, including a football team and a marching band.
44. The Wildcat Band is scheduled to begin Band Camp on July 22, 2024. This is in less than two (2) weeks away from the filing of this Petition.
45. But if there is no school in which to be enrolled, there can be no band.
46. The fundamental right to an education of West Virginia school students is in jeopardy because of the illegal and unauthorized closing of PCHS by Superintendent Porter.

47. The careers of school professionals are in jeopardy because of the illegal and unauthorized closing of PCHS.

### **DISCUSSION AND ORDER**

48. Venue is proper in this Court as pursuant to W.Va. Code §53-5-3, jurisdiction to hear and grant injunctions is proper in the circuit court of the county where the act is to be done.

49. Venue is proper in this Court, pursuant to W.Va. Code §56-1-1, in that the real property that is the subject of this action is located in Wetzel County, West Virginia and all acts described herein arose within Wetzel County, West Virginia.

50. This action is for the protection of rights in the confines of Wetzel County, West Virginia, and all acts and/or omissions alleged herein by the Defendants were made within the State of West Virginia.

51. The Court notes Plaintiffs specifically deny and disclaim any money damages as to this Petition.

52. The West Virginia Supreme Court has proclaimed that education is a fundamental right: “The mandatory requirements of ‘a thorough and efficient system of free schools’ found in Article XII, Section 1 of the West Virginia Constitution, make education a fundamental, constitutional right in this State.” *State v. Beaver*, 248 W. Va. 177, 196, 887 S.E.2d 610, 629 (2022) citing Syl. Pt. 2, *Pauley v. Kelly*, 162 W. Va. 672, 255 S.E.2d 859 (1979).

53. W. Va. R. Civ. P., Rule 65(b) states **Temporary restraining order**; notice; hearing; duration:

A temporary restraining order may be granted without written or oral notice to the adverse party or the party’s attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party’s attorney can be heard in opposition, and (2) the applicant’s attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and reasons supporting the claim that notice should not be required.

54. W. Va. R. Civ. P. 65 (a) Preliminary Injunction states:

(1) Notice. No preliminary injunction shall be issued without notice to the

adverse party.

(2) Consolidation of Hearing With Trial on Merits. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subdivision (a)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

55. Courts “must consider, in ‘flexible interplay,’ the following four factors in determining whether to issue a preliminary injunction: (1) the likelihood of irreparable harm to the plaintiff without the injunction; (2) the likelihood of harm to the defendant with an injunction; (3) the plaintiff’s likelihood of success on the merits; and (4) the public interest.” *Justice v. W. Virginia AFL-CIO*, 246 W. Va. 205, 866 S.E.2d 613 (2021).

56. W. Va. Code § 53-5-4 states “[e]very judge of a circuit court shall have general jurisdiction in awarding injunctions, whether the judgment or proceeding enjoined be in or out of his circuit, or the party against whose proceeding the injunction be asked reside in or out of the same.”

57. W.Va.Code §53-5-8 states:

After an injunction is awarded or denied in any such case, at any time prior to final adjudication, any party to the proceedings, after reasonable notice to all other parties of record, which notice shall not in any case exceed five days, may move for a hearing on any particular issues or phases of the case which may properly be heard interlocutorily. Such hearing may, in the discretion of the court or judge, be had at the time the motion is made but shall be commenced within the ten days next thereafter....

58. Relief under §53-5-1 provides:

An injunction may be awarded.... to protect any plaintiff in a suit for specific property, pending either at law or equity, against injury from the sale, removal, or concealment of such property.

59. An order of injunction is of no legal effect, unless the court requires a bond or *recites in the order that no bond is required for good cause*, or unless the movant is a personal representative.



*Multiplex, Inc., v. Town of Clay*, 231 W.Va. 728, 730, 749 S.E.2d 621, 623 (2013). Emphasis added.

60. In general, the essential elements of an emergency are that the condition be unforeseen or unanticipated and that it call for immediate action. *Randolph Cnty. Bd. of Educ. v. Scalia*, 182 W. Va. 289, 292, 387 S.E.2d 524, 527 (1989); *First Continental Sav. & Loan Ass'n, Inc. v. Director, State Dep't of Assessment & Taxation*, 229 Md. 293, 183 A.2d 347 (1962); *Layne Minnesota Co. v. Town of Stuntz*, 257 N.W.2d 295 (Minn.1977); *Bethlehem Steel Corp. v. Board of Educ. of City School Dist. of Lackawanna*, 91 Misc.2d 258, 397 N.Y.S.2d 882 (1977); *Hatfield v. Meers*, 402 S.W.2d 35 (Mo.App.1966); *Scatuorchio v. Jersey City Incinerator Auth.*, 14 N.J. 72, 100 A.2d 869 (1953); *Board of Educ. v. City of Elizabeth*, 13 N.J. 589, 100 A.2d 745 (1953); *Scaccia v. Borough of Old Forge*, 373 Pa. 161, 94 A.2d 563 (1953); *City of Rock Springs v. Police Protection Ass'n*, 610 P.2d 975 (Wyo.1980). See generally 29A C.J.S. Emergency pp. 141–42 (1965 & Supp.1989).

61. The law governing this conduct is a single statute: W. Va. Code § 18-4-10 states: [t]he county superintendent shall:

(5) Close a school **temporarily** when conditions are **detrimental to the health, safety or welfare of the pupils**; Emphasis added.

62. Regarding the WV SSAC, W. Va. Code R. 127-1-3.1. states “[t]his Commission through the employment of the instrumentalities hereinafter established, shall supervise and control interscholastic athletics and band activities among member schools.”

63. W. Va. Code R 127-2-7.2. c. states “[a] student may be transferred from one attendance zone to another zone within the same county by a county board of education and maintain eligibility.”

64. W.Va. Code R. 127-5-2.1. states “[a]ll members of a member school band must be enrolled in that school;”

65. Based upon the Petition, there appears to be no emergency, the status of Paden City as a

Superfund Site has been known for many years and these conditions are not unforeseen or unanticipated.

66. Plaintiff's counsel indicates that the Defendant is aware of the dispute through various plaintiffs who have made their opinions known in the community and at Wetzel County Board of Education meetings and will be served with notice of this Petition and Order immediately.

67. Because irreparable injury and loss to the Plaintiffs will result if the emergency injunction is not granted and because it appears Paden City High School closure is NOT pursuant to W. Va. Code §18-4-10(5) and further because time is of the essence here required activities to begin a new school year at PCHS should be starting in days, Plaintiffs' Petition for Emergency Injunctive Relief is **GRANTED. Specifically:**

- For Superintendent Porter to close the school under W. Va. Code § 18-4-10, there must be conditions that are detrimental to the health, safety or welfare of the pupils;
- At the time of the illegal and unauthorized closure of PCHS there was no evidence of a health and safety condition detrimental to the students, faculty, or staff of PCHS.
- The only evidence produced and reliable is the US EPA statement of June 12, 2024 that "Vapor intrusion data collected at the High School does not indicate any unacceptable risks to the students or staff using the High School. Based on the sampling results to date, a school closure was not recommended by EPA during any communications with the School District."
- The fundamental right to an education of West Virginia school students exists in West Virginia.

- If the illegal and unauthorized closure is permitted to continue, the fundamental rights of the PCHS students to be educated at their local high school will be harmed irreparably.
- Further, if the illegal and unauthorized closure is allowed to continue, the students will be harmed irreparably by being blocked from participating in their chosen sport, marching band, or other extra-curricular activity at their local high school in the town where they live.
- Further, if the illegal and unauthorized closure is allowed to continue, the faculty, staff, student grandparents and community members will be harmed irreparably by being blocked from their chosen careers at their chosen school.
- It appears from the Petition, the Plaintiffs have a high likelihood of success on the merits at a full hearing.
- Further, if the illegal and unauthorized closure is allowed to continue, the community of Paden City will be irreparably harmed.
- There is no likelihood of harm to the defendant by granting the injunction;
- There is high public interest in this matter.
- This Court hereby ENJOINS Defendant Superintendent Porter from illegally closing PCHS.
- This Court ORDERS immediately that PCHS is re-opened.
- This Court Orders that all teachers, staff, and faculty be reinstated and direct that any positions that have been vacated because of this illegal closure be filled.
- This Court Orders any and all equipment removed from PCHS be returned to PCHS.

- Therefore, the Court Orders the WV SSAC to suspend any and all prohibitions to the members of the PCHS sports teams and marching band from reforming and participating in their regular and respective seasons because the illegal and unauthorized closure of PCHS.
- No bond is required of the Plaintiffs.

It is further **ORDERED** that a Preliminary Hearing shall be set for the **25<sup>th</sup> day of July, 2024, at 4 p.m. in the Wetzel County Courthouse, 2<sup>nd</sup> Floor Courtroom.**

ENTER this 12th day of July, 2024.

**/s/ C. Richard Wilson**  
Circuit Court Judge  
2nd Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit [www.courtswv.gov/e-file/](http://www.courtswv.gov/e-file/) for more details.