

IN THE CIRCUIT COURT OF WETZEL COUNTY, WEST VIRGINIA

**KATRINA NEFF, KELLI GOODARD,
LISA YOUNG, LUISSA LOPEZ,
MARY MCGINNIS, *et al.*,**

**Case No. 24-P-48
Judge C. Richard Wilson**

Petitioners,

v.

**CASSANDRA PORTER, WEST VIRGINIA
SECONDARY SCHOOLS ACTIVITIES
COMMISSION,**

Respondents.

ORDER GRANTING PRELIMINARY INJUNCTION

INTRODUCTION

On the 25th day of July 2024, the Petitioners, by and through counsel, Teresa C. Toriseva, Esq., Joshua D. Miller, Esq., and TORISEVA LAW, and Cassandra Porter, in her capacity as the County Superintendent of Wetzel County Schools, by and through her attorneys, Kenneth E. Webb, Jr., Esq., Richard S. Boothby, Esq., William M. Lorensen, Esq., and Bowles Rice, LLP, and the West Virginia Secondary School Activities Commission, by and through its attorneys Stephen F. Gandee, Esq., and Robinson & McElwee, PLLC, appeared before this Court for a hearing on the Petitioner's Petition for Injunctive Relief pursuant to West Virginia Code § 53-5-1 and West Virginia Rule of Civil Procedure 65. The Court has heard the parties' evidence and arguments.

Observers of the hearing, at or near capacity, filled the courtroom. Those viewing were instructed to withhold reactions and, in all respects, to maintain decorum within the courtroom. Notwithstanding the length of the proceedings, protracted taking of testimony and presentation of evidence, and argument and representations of counsel, and significant presence of security,

the judge wishes to commend all in attendance for their seriousness, attentiveness and behavior. While this matter is one of significant personal and emotional interest on both sides, all the parties and observers demonstrated the utmost civility each to the other.

The court is mindful of the backdrop upon which the issue of the closing of Paden City High School exists. To say that the City of Paden City is embattled may be an understatement. There exists decades of issues associated with environmental impacts from chemical contaminants in the air and water quality within and surrounding the city, and, indeed intersections to varying degrees where science and governmental decisions meet. If each individual circumstance is viewed, there are likely varying degrees of hardships upon the citizenry, which may invoke commensurate levels of sympathy, but sympathy does not dictate any decision made herein. This is still a democratic society, and in regard to the educational decisions made within a community, or like here in West Virginia, and particularly, in Wetzel County, West Virginia, such decisions are made by a representative body that is the Board of Education, comprised of elected officials who are often called upon to act in the best interests of their constituency as a whole, and which decisions cannot be determined or decided based on any single individual's unique traits, proclivities, or circumstances. This decision was developed from the culmination of the pleadings filed herein, consideration of the testimony and evidence offered and received at a full hearing on the matter, in interest of fairness and opportunity to be heard by each respective party to this action and is a narrow decision as to the issue of whether Paden City High School will remain open for the beginning of the 2024-2025 academic year. Decisions beyond that issue rest appropriately so with the authority conferred upon the Wetzel County Board of Education in their legal representative capacity.

Now, THEREFORE, the Courts does Order the following:

I. FINDINGS OF FACT

1. On July 12, 2024, the Petitioners¹, the Paden City Schools Athletic Association, Inc., et al., filed a Petition for Injunctive Relief Pursuant to West Virginia Code § 53-5-1 and West Virginia Civil Rules.
2. The Petitioners' claims for injunctive relief relate to the closure of Paden City High School (hereinafter referred to as "PCHS").
3. PCHS is a 7-12 grade, class "A" high school located in Paden City, Wetzel County, West Virginia. PCHS opened its doors to students in 1951.
4. In 2010, the Paden City's municipal water department learned that perchloroethylene (hereinafter referred to as "PCE"), also known as tetrachlorethylene, was present in the public drinking water.
5. The City's municipal water department tested their four municipal water wells and determined that the well nearest to the former Band Box Cleaners contained the highest amount of PCE pollutants.²
6. Band Box Cleaners was a local dry-cleaning business operational from about 1969 through 1997.
7. In the years following 2010, the municipal water department continued to monitor and test its water wells for the presence of PCE.
8. As the years progressed, the amount of PCE present in the municipal water supply increased periodically.
9. The Paden City Water Department routinely tests the municipality's water for environmental contaminants.

¹ Petitioners are comprised of certain faculty, staff, parents, and members of the Paden City community.

² A groundwater "plume" is stated to exist beneath a significant portion of Paden City, including the high school site.

10. In 2018, the City obtained grant money for the installation of an air stripper to filter out PCE from the water supply.
11. An air stripper, like the one installed by the City, injects air into the water pulled from a well in order to aerate the water. The PCE molecules in the water become attached to the air and are stripped away from the water. The air containing the PCE molecules is then vented to the atmosphere.
12. In July 2023, a power outage caused the air stripper to malfunction. The air stripper was not operational for approximately 14 hours. During that time, unknown levels of PCE were likely present in the municipal water supply.
13. Since that malfunction, the municipal water department has maintained additional spare parts in case a future malfunction occurs in order to reduce any potential repair times.
14. In 2018, the State of West Virginia referred Paden City to the U.S. Environmental Protection Agency (hereinafter regarded as the “EPA”) to assist in the determination and characterizing the extent of the impact of PCE in the local ground water.
15. In March of 2022, Paden City was added to the EPA list of Superfund Sites National Priority List (hereinafter referred to as the “NPL”) under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter in this section referred to as “CERCLA”). Paden City was added to the NPL due to the discovery of tetrachloroethylene (also called “perchloroethylene,” “PCE” or “perc”) at heightened levels in Paden City’s drinking water. PCE, a drycleaning chemical, is a probable human carcinogen. Acute or chronic human exposure to PCE carries known, long-term health risks.

16. Designation on the NPL allows the EPA and other federal agencies to sample, collect, monitor, test, and report on environmental contamination, in an on-going fashion.
17. The designation of a Superfund site also permits the allocation of federal funds for such testing, monitoring, and even the remediation of environmental contamination, also in an on-going fashion.
18. The EPA conducted several tests, last so in February 2024, of contaminants in and about Paden City, including PCHS. The EPA, among other things, sets conservative standards for allowable levels of indoor air pollutants that threaten the health and safety of citizens.³
19. The standards set by the EPA are industry standards that govern allowable pollution in indoor air without any increased risk of adverse health effects.
20. The EPA does not require zero contamination of pollutants to be considered safe for human beings. There were no other regulatory standards requiring zero level of contaminants.
21. Allowable levels of indoor air pollutants, as opposed to screening levels of indoor air pollutants, are levels set by the EPA that provide a rule for the maximum amount of concentration that would not pose any appreciable risk to the health and safety of citizens breathing the air for extended periods of time. A screening level, on the other hand, is the minimum amount of an indoor air pollutant that is detectable through testing and screening.

³ Contaminated groundwater carries risk of “vapor intrusion.” Vapor intrusion is a process by which volatile organic compounds (VOCs) from contaminated groundwater intrude into indoor facilities and make their way into indoor air. These risk assessments are caveated and cautioned with disclaimers about (i) variability of vapor intrusion testing and (ii) the need for additional testing. The EPA also limited its risk assessment to drycleaning VOCs. The EPA cautioned that if other harmful VOCs—for example, those unrelated to drycleaning—are a cause for concern to property owners, additional action may be needed.

22. Despite its addition to the EPA's NPL, PCHS remained open throughout the conclusion of the 2023-2024 school year.
23. On January 31, 2024, the U.S. Department of Health and Human Services Agency for Toxic Substances and Disease Registry (hereinafter referred to as the "ATSDR") published a "Health Consultation" report on its analysis of contaminants in Drinking Water and Air for Paden City, Wetzel County, West Virginia.
24. The ATSDR is a public agency and a part of the Center for Disease Control (hereinafter referred to as the "CDC") that performs public health evaluations for sites on the NPL.
25. In Paden City, the use of PCE by several local dry-cleaning businesses, including the Band Box Cleaners, caused and contributed to groundwater contamination.
26. Additionally, PCEs can migrate underground, in both groundwaters and soil gases, and cause a plume under the surface.
27. As of January 31, 2024, the ATSDR noted that Paden City's drinking water treatment system is treating the water to meet state and federal standards.
28. The ATSDR concluded in its report that Paden City residents who ingested and used Paden City municipal water through June 2023 were unlikely to experience any harmful effects from PCE and other compounds.
29. Additionally, based on air sampling conducted in Paden City, the ATSDR concluded that residents were unlikely to experience any harmful effects due to exposure to PCE, and other related compounds, through vapor intrusion in indoor air.
30. PCE molecules can also be present in soil gases. PCE in soil gas can, through hydrostatic pressure, be forced up into a building, including homes, stores, and schools.

31. The PCE can enter the structure through cracks or separations in the foundation or ground slab. This occurrence is what is referred to as “vapor intrusion.” The scientific understanding of vapor intrusion is relatively new as it emerged in environmental sciences in about 2010.
32. The Petitioner’s expert, Douglas Snider, testified that PCE is approximately five times heavier than air. PCE in indoor air will typically accumulate in the lowest point in a building or other structure. PCE in indoor air is commonly found in basements and other low points in the building. Mr. Snider testified as a certified safety professional and is a graduate of PCHS. This Court qualified Mr. Snider as an expert in certain environmental reports published by the EPA and other authorities about the EPA Superfund Site. Mr. Snider opined that conditions at PCHS were not detrimental to students. However, Mr. Snider admitted that he had not seen the most recent vapor intrusion data and that his opinion might change if he had. Mr. Snider testified that his opinion also might change if there were readings above screening levels, but testified he needed more information to render an opinion. Mr. Snider submitted an affidavit subsequent to the hearing on this specific, narrow issue.
33. The ATDSR recommended continued monitoring of Paden City’s drinking water and indoor air for vapor intrusion.
34. The ATDSR did not recommend closing PCHS.
35. The EPA did not recommend closing PCHS.
36. Mr. Snider testified that the highest sampling of PCE in indoor air in PCHS was taken in November of 2020 and was reported at 0.02ppb, parts per billion.

37. Mr. Snider also commented that the highest levels of PCE concentration in indoor air was collected in the Paden City Elementary School.
38. Mr. Snider testified that based on his research and knowledge, a human could live his or her entire life breathing air with PCE concentrated in the amount of 3.4ppb without an increased risk of cancer of more than 1 in one million. The indoor air sampled at PCHS has about 17 times less PCE concentration than that amount.
39. In June of 2020, the EPA requested that Tetra Tech, Inc. perform an environmental analysis of Paden City's ground water and the PCE plume. Tetra Tech, Inc. specifically concluded that "Indoor air samples collected from the Paden City High School indicate that concentrations of PCE document an Area of Observed Exposure. However, the indoor air concentrations of PCE and its breakdown products in samples collected at the high school and residence do not present unacceptable risk to the occupants. There are approximately 184 students in the high school..."
40. No evidence of PCE being present in indoor air at concentrations above any allowable EPA standard, at any time, was presented to this Court during the hearing.
41. In July 2023, Respondent Cassandra Porter was appointed as the county superintendent for Wetzel County Schools by the Wetzel County Board of Education (hereinafter referred to as the "Board")
42. For months during the 2023-2024 school year, the Board held meetings where members of the public attended to express concerns about a possible merger of PCHS with Magnolia High School for reasons unrelated to any health and safety issues.
43. Dozens of community members attended those meetings.

44. At no point during those meetings were concerns of environmental contamination, whether from PCE or benzene, at PCHS raised or discussed by Superintendent Porter, the members of the Board, or the public.
45. The discussions concerned the closure of PCHS and its merger with Magnolia High School, another Wetzel County School.
46. On September 25, 2023, the Board voted unanimously in a 5-0 vote to not close PCHS.
47. On June 12, 2024, Superintendent Porter notified Wetzel County Schools’s faculty and staff that she was closing PCHS. Specifically, Superintendent Porter stated “Pursuant to West Virginia Code § 18-4-10(5), and due to the health risks associated with Paden City High School being located atop an EPA designated Superfund site, all students and staff of Paden City High School will be relocated at the start of the 2024-2025 school year.... The temporary closure of PCHS and reassignment of students and staff shall continue until further notice.”
48. Superintendent Porter closed PCHS, and the students enrolled at PCHS are in the process of being merged into Magnolia High School. Magnolia High School is approximately 5.8 miles from PCHS; New Martinsville School is approximately 8.2 miles from PCHS.
49. Superintendent Porter testified that the only authority she relied upon to close PCHS was W. Va. Code § 18-4-10(5).
50. She testified that she closed the school “temporarily.”
51. The definition of “temporary” is “during a limited time.”⁴
52. Despite stating that the closure was temporary, Superintendent Porter stated she did not know when the school would re-open.

⁴ <https://www.merriam-webster.com/dictionary/temporarily> (accessed on July 28, 2024).

53. She testified that the test results meant that the conditions at PCHS “could be” detrimental to the health and safety of the student population.
54. Superintendent Porter testified that she was integrating PCHS students into Magnolia High School.
55. The term “integrate” means “to form, coordinate, or blend into a functioning or unified whole.”⁵
56. There was no evidence of any testing for possible environmental contamination, including vapor intrusion of VOCs, at Magnolia High School before or since PCHS was closed.
57. Superintendent Porter conceded during her testimony that she did not have any such testing or evaluation conducted at Magnolia High School.
58. Upon extensive questioning, Superintendent Porter testified that she closed PCHS to allow for further EPA testing and for the EPA to establish a plan for the remediation of any environmental contamination at PCHS.
59. Superintendent Porter also testified about possible liability for the Board from civil claims and stated that she did not believe that the West Virginia Board of Risk and Insurance Management (hereinafter referred to as “BRIM”) afforded coverage for liabilities for environmental contamination.
60. After Superintendent Porter closed PCHS, the EPA updated its website and noted its prior conclusion that it did not recommend the closure of PCHS. Specifically, the EPA’s website stated the following:

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

⁵ <https://www.merriam-webster.com/dictionary/integrate> (accessed on July 28, 2024).

regarding vapor intrusion. Vapor intrusion is the migration of vapor-forming chemicals from any subsurface source into an overlying 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. EPA is continuing to evaluate the contamination at the Superfund Site in Paden City and will provide updates to the community as new information becomes available.

61. Mr. Micah Whitlow, West Virginia Department of Education's Director of Facilities, testified on behalf of Superintendent Porter.⁶
62. Mr. Whitlow testified that the Dept. of Education permits county board of education and county superintends broad leeway with the running and operation of schools.
63. Mr. Whitlow testified that the Dept. of Education did not recommend that PCHS be closed for any reason, including any possible environmental contamination or pollution.
64. The Dept. of Education, however, does have, as per the testimony of Mr. Whitlow, the authority to close down a West Virginia public school, including in cases of emergencies.
65. In late June or early July 2024, Superintendent Porter testified that she received a letter, dated June 24, 2024, from the EPA forwarding to her the air sampling analytical results from PCHS. The testing related to testing that occurred in February 2024.
66. The letter was from Victoria Schartz of the EPA.

⁶ In the spring of 2024, Superintendent Porter consulted with the WVDE about the conditions at PCHS and possible next steps. The WVDE encouraged a proactive solution that would eliminate the risk of educational disruption and/or adverse health consequences to students. Superintendent Porter considered less drastic alternatives, and the WVDE provided its input. The WVDE questioned Wetzel County Schools' ability operate a school on a Superfund Site while adequately monitoring and eliminating the risk of exposing students to toxic chemicals in the school facility. Superintendent Porter considered relocating students to other non-school facilities in the area outside of the Superfund site. The WVDE questioned the feasibility of those options, too.

67. Superintendent Porter received the letter after she closed PCHS based on the Paden City Groundwater Superfund site

68. The June 24th letter stated, in part, “The [EPA] is conducting environmental sampling as part of the ongoing investigation at the Paden City Groundwater Superfund Site... The results of the analysis indicate that VOCs⁷ from the former Band Box Cleaners drycleaning facility have not caused a vapor intrusion concern for the Paden City High School.”

69. The contents of the June 24th letter concerning VOCs from the Superfund site were generally consistent with the earlier testing.

70. The June 24th letter further stated:

Based on the analytical results presented above, results indicate that there is not a vapor intrusion concern related to the Band Box Cleaners drycleaning facility for the Paden City high School. These results show that vapor intrusion is not occurring at levels that may contribute to health concerns for people using and occupying the buildings. Current results for samples collected in February 2024 were compared to prior results for samples collected in February/March 2023 and November 2020, and the results were generally consistent.

71. The June 24th letter revealed that benzene, a common, bio-degradable organic compound was discovered in the indoor air of PCHS.⁸

72. Superintendent Porter could not have relied on the existence of benzene in PCHS as she had no knowledge of the existence of benzene when she closed PCHS earlier in June.

⁷ A VOC is a volatile organic compound.

⁸ Included were the results from prior indoor sampling taken in 2020 and 2023. These samples tested for PCE and a range of other VOCs at PCHS. The results showed PCE contamination. The PCE results were generally below the EPA’s vapor intrusion screening levels (VISL) with the exception of one large exceedance in the business lab in February of 2024. The sampling shows known or probable carcinogens. Benzene, in particular, is a known carcinogen (specifically, a known leukemogen) associated with fuel contamination.

73. In that letter, the EPA reported that benzene was detected exceeding and nearly exceeding the EPA's vapor intrusion screening levels (hereinafter referred to as "VISL") in several samples collected from PCHS.
74. Superintendent Porter did not disclose the existence of benzene to the Petitioner since this lawsuit was filed or otherwise disseminate the information to public at large.
75. Superintendent Porter's expert witness, Philip B. Simon, reviewed the EPA's data concerning benzene and generated a chart with the information for his testimony.
76. Mr. Simon has not visited Paden City or been to PCHS.
77. Mr. Simon never spoke or emailed with Superintendent Porter.
78. During Mr. Simon's testimony, he explained that he was first retained by Superintendent's attorneys in February or March of this year. After retrieving his retention letter from his file in this matter, he explained that he was retained by Superintendent Porter's legal counsel on July 5, 2024.
79. Mr. Simon, an expert environmental scientist, testified that he reviewed the data collected by the EPA and that benzene is a fuel VOC not associated with the Superfund site.
80. In Mr. Simon's opinion, the concentrations of airborne benzene, which were in excess of the EPA's VISL, collected from the indoor air samples in PCHS were detrimental to the health and safety of the building's occupants.
81. Mr. Simon, however, could not testify as to what the EPA's allowable levels of indoor airborne benzene are for a public school in West Virginia. Additionally, Mr. Simon could not opine on West Virginia's position on VISL and whether it is an acceptable methodology for indoor air pollutions.

82. Benzene is, according to Mr. Simon's testimony, remediable through the use of carbon activated filters. The cost to install and operate carbon filters is not "particularly expensive," according to Mr. Simon.
83. The Petitioners called several members of the Paden City community to testify as to the impact that the closure of PCHS has had on the community. Those individuals included Joshua Billiter, Eric Hayes, Dalton Hayes, and William Bell.
84. Mr. Billiter⁹, in addition to being offered as an expert by the Petitioners, is also a Paden City community member, a coach at PCHS and has a son and a daughter attending PCHS.
85. Mr. Billiter testified that PCHS is the heart of Paden City's community and that since its closure, the people of Paden City have generally expressed their unhappiness with the closure and their discontent for the closure.
86. Mr. Billiter's child is in the PCHS's band. She will be a senior in the 2024-2025 school year. Currently she is to be relocated to Magnolia High School. His daughter has been devastated by the closure of PCHS.
87. Petitioner Eric Hayes is a Paden City resident and the father of Dalton Hayes. Eric Hayes testified that the closure of PCHS has extremely upset his son, who is a student of PCHS. The closure of PCHS was done without notice and is causing a merger of PCHS with Magnolia High School. He explained that a merger of two schools will make the students who are being merged will not feel a part of the community of Magnolia High School. A consolidation, as opposed to a merger, gives all of the students being consolidated a new school, new colors, a new mascot, and a new identity.

⁹ Mr. Billiter was recognized as an expert on Paden City water issues, but not otherwise, as an expert in the specific area of vapor intrusion. In this regard, Mr. Billiter's testimony related to air quality is considered beyond his specific area of expertise.

88. Petitioner Dalton Hayes is a current student at PCHS, plays drums in the marching band, and is on the baseball team. He testified that prior to going to PCHS, he attended Tyler Consolidated High School. During his time at Tyler County Schools, he experienced constant bullying that was so intense he had thoughts of self-harm.
89. Since transferring to PCHS, Dalton has not been bullied, has been accepted for who he is, and has become a part of the PCHS family. He now has close friends and is very concerned about the possibility of being merged into Magnolia High School. The closure of PCHS has negatively impacted him and his friends. All feel uncertain about what lies ahead of them at Magnolia High School.
90. William Bell is a Paden City city council member and a teacher at PCHS.
91. Mr. Bell testified that when a school closes in West Virginia the local property values decrease by approximately 20 percent and that the local municipality suffers from a loss of tax revenue.
92. Additionally, Mr. Bell testified that he has taught many subjects at PCHS. He expressed that his home room class is a very diverse classroom where people from different backgrounds, political affiliations, and beliefs have come together and have respectful conversations.
93. In Paden City, the local high school is the heart and foundation of the community.
94. 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 June 12, 2024 closure.
95. On August 12, 2024, teachers and staff are to report to the respective schools for work.
96. On August 19, 2024, students are to report for the first day of classes.

97. The school closure reached past school classes and instruction.
98. The West Virginia Secondary School Activities Commission (hereinafter referred to as the “WVSSAC”) 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.
99. On July 12, 2024, this Court granted the Petitioners’ request for a temporary restraining order and set a full evidentiary hearing for July 25, 2024.
100. The Court has heard the parties’ evidence and finds that this matter is ripe for decision.
101. Petitioners represented their July 12, 2024, filing was mislabeled as a “Combined Writ of Mandamus,” and they do not seek such relief. Respondents contend that this matter is one of “mandamus.” For reasons stated hereafter, the Court treats this matter of one proceeding under Rule 65, Injunctions.
102. A review of the Petition filed herein is clearly presented under W. Va. R. Civ. P. 65. The Petition was neither presented nor prosecuted pursuant to W. Va. R. Civ. P. 71.B, Extraordinary Writs or in the form contained in Form 32, Complaint for Writ of Mandamus of the West Virginia Rules of Civil Procedure.
103. This Court held an evidentiary hearing on July 25, 2024, at the Wetzel County Courthouse. At the outset of the hearing, counsel for Petitioners and the WVSSAC announced a willingness to enter a stipulation to resolve the dispute. In short, participation in extra-curricular activities, at either school, will not be impacted. Thereafter, this Court heard testimony and evidence adduced by Petitioners and Superintendent Porter.

104. Further, Petitioners' Exhibits 1 through 6 and Respondent's Exhibits 1 through 10 were admitted into evidence.

105. The plaintiffs' expert Snider and defendant's expert Simon were both duly qualified as experts, particularly in the area of VOC testing and air quality analysis, and as such, offered testimony in the form of opinion and otherwise. Both demonstrated adequate qualifications to offer testimony regarding environmental impacts upon the population due to air quality, contamination, remediation and response, and testing. Not unexpectedly, however, the experts reached different conclusions as to the ultimate issue of whether or not the determination of closing Paden City High School by Superintendent Porter was justified. The court has considered the evidence adduced from the respective experts in that regard, including information in the respective exhibits, including "Defense Exhibit 6," and the Affidavit of expert Snider submitted following the hearing of July 25, 2024. To the extent that the information contained within all of the exhibits of the respective parties, including "Defense Exhibit 6" and Mr. Snider's affidavit, assisted the trier of fact in understanding the issue of VOC's, contamination, and in particular, the presence of the chemical compound, benzene, due consideration is afforded such evidence.

II. CONCLUSIONS OF LAW

Based on the evidence presented to the Court at the hearing held on July 25, 2024, the Court makes the following conclusions of law.

1. The alternative relief of mandamus is abandoned. This matter was prosecuted and argued pursuant to W. Va. R. Civ. P. 65 "Injunctions." Any objection to the same is overruled and exceptions to this ruling are preserved.

2. As a preliminary matter, the parties, in particular, the Petitioners and the WVSSAC stipulated on the record that the June 12, 2024 closure of PCHS and its subsequent re-opening will not cause any impact on PCHS's students' eligibility for sports or band membership. The WVSSAC will take the position as if the June 12, 2024 closure and subsequent re-opening never occurred for determining students' eligibility under the rules and regulations of the WVSSAC.
3. The Petitioners' Petition for Injunctive Relief seeks an injunction against Casandra Porter in her capacity as the county superintendent for Wetzel County Schools, from closing PCHS in violation of West Virginia law.
4. 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.
5. 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.
6. 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.
7. 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).

8. 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.

9. 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).

10. 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.”

11. 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....

12. 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.

13. 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. Accordingly, the harm occasioned by a transfer to another school in such close proximity to the beginning of the 2024-2025 school year, the lack of an immediate or emergent conditions detrimental to pupils and staff at PCHS, no bond is or was required.
14. 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).

15. In July of 2023, Superintendent Porter was appointed, not elected, as the superintendent of Wetzel County Schools.
16. She was appointed by the Board.
17. As relevant to this matter, in the fall of 2023, the Board held several public meetings concerning the closure of PCHS and its merger into Magnolia High School.
18. On September 25, 2023, the Board voted unanimously 5-0 not to merge PCHS into Magnolia High School.
19. On June 11, 2024, Superintendent Porter closed PCHS.
20. No governmental organization, either state or federal, ordered or recommended that PCHS be closed.
21. In closing PCHS, Superintendent Porter relied solely on her statutory authority, as a county superintendent, pursuant to W. Va. Code § 18-4-10(5).
22. West Virginia Code § 18-4-10(5) states the following:
 - The county superintendent shall:
 - ...
 - (5) Close a school temporarily when conditions are detrimental to the health, safety or welfare of the pupils;
23. The plain language of W. Va. Code § 18-4-10(5) requires that a current condition, then-existing, within a school that is detrimental to the health, and safety or welfare of the pupils be present in order for a county superintendent to have the statutory authority to close a school temporarily.
24. The term “temporarily” in W. Va. Code § 18-4-10(5) expresses the legislative intent to permit a county superintendent the authority to close a school for only as long as conditions that are detrimental to the health and safety of the pupils exists thereupon.

25. This Court has received no evidence that the PCE plume in the soil gas and groundwater under or near PCHS poses any unacceptable risk to the health, safety, or welfare of the pupils of PCHS.
26. To the contrary, the EPA, its private contractor, Tetra Tech, Inc., and the ATDSR have performed environmental analysis of the soil and ground water in Paden City, West Virginia, and none have concluded that a threat to the health, safety, or welfare of the pupils of PCHS exists.
27. Furthermore, none of those organizations have concluded or recommended that PCHS should be closed due to any threat from the PCE plume.
28. Neither the EPA, National Institute for Occupational Safety and Health, commonly referred to as “NIOSH”, nor the Occupational Safety and Health Administration, commonly referred to as “OSHA” require that zero airborne contaminants or pollution, including the presence of VOCs, exist in order to be considered safe.
29. To the contrary, those governmental organizations are tasked with setting and determining the allowable levels of, among other things, airborne pollutants that are generally safe for human beings.
30. Generally speaking, the allowable levels set by the EPA are conservative in nature and err on the favor of human health and safety.
31. All of the testimony, both lay and expert, presented to this Court was that the EPA, and other governmental agencies, control whether the concentration of pollutants exceeds any allowable levels or pose a health and safety risk to humans.
32. The only known carcinogen that was tested in excess of screening levels at PCHS was benzene, as indicated by the EPA’s testing conducted in February 2024.

33. Benzene is a common, bio-degradable organic compound.
34. The benzene found at PCHS was not associated with the Superfund site.
35. There was no evidence presented to this Court that the levels of benzene found at PCHS were detrimental to the health and safety of the pupils at PCHS.
36. While Superintendent Porter's expert Mr. Simon testified that, in his opinion, that the levels of benzene were detrimental to the health and safety of the pupils at PCHS, this Court finds that his testimony is unpersuasive.
37. Benzene is a relatively inexpensive indoor air pollutant to remediate. Benzene is remediable through the use of carbon activated air filters.
38. Mr. Simon did not and could not testify as to the allowable levels of airborne benzene in a West Virginia public school setting.
39. He compared screening levels and allowable levels to apples and oranges. An exceedance of a screening level does not automatically mean an exceedance of an allowable level.
40. Additionally, during Mr. Simon's testimony, it became apparent that he did not have access to documents that he purported to authenticate during his testimony. During his direct testimony, Mr. Simon referenced the September 2021 Paden City Groundwater NPL proposed listing and the March 2022 Paden City Groundwater NPL listing. On cross examination, Mr. Simon stated that he did not have those documents with him during testimony. As such, this Court does not find that those documents are in any manner controlling, however, to the extent the same were useful in understanding the overall conditions associated with contamination discussed, and, a document cited and relied upon by the expert, it is admitted. Cross examination was not thwarted such that allowing consideration of the same, constitutes an injustice.

41. To the extent, Superintendent Porter's Exhibit 6 assists the trier of fact in understanding the contamination issue in a general sense, the exhibit is admitted over Petitioners' objections. Petitioners' objection to the admission of Superintendent Porter's Exhibit 6 is preserved.
42. Contrary to Mr. Simon's testimony, this Court finds that the testimony of Mr. Billiter and Mr. Sinder was helpful and relevant regarding the concentration of pollutants, in particular PCE, at PCHS.
43. Mr. Billiter established that the drinking water supplied to PCHS from Paden City's municipal water source posed no threat to the health, safety, and welfare of the pupils at PCHS.
44. Mr. Snider testified that the concentrations of PCE were not only below the EPA's allowable level for indoor air quality but were 17 times less than the amount of concentrated airborne PCE that a human being can live in indefinitely without a 1 in one million increased risk of cancer.
45. For all of those foregoing reasons, this Court finds that Mr. Simon's testimony is not as persuasive to the extent invited by the Respondent.
46. This Court finds that Mr. Billiter and Mr. Snider's testimonies demonstrate that the health and safety risk from PCE at PCHS are below the allowable levels set by the government.
47. While benzene is a known human carcinogen, the Court does not find that its presence in PCHS's indoor air exceeds any allowable level.
48. Furthermore, benzene is remediable by relatively inexpensive means, such as the use of carbon activated filters.

49. This Court finds that any consideration of insurance coverages afforded by BRIM are the prerogative of a county board of education, not a county superintendent. Regardless of any insurance coverage under BRIM, a risk of liability because of alleged environmental contamination does not afford a county superintendent authority under W. Va. Code § 18-4-10(5) to close a school.
50. This Court specifically finds there were no unacceptable risks of harm to the health, safety, and welfare of the pupils at PCHS.
51. The evidence presented to this Court does not establish that Superintendent Porter's closure of PCHS is temporary. Witnesses have observed athletic equipment, band equipment, teaching equipment, and other school equipment being removed from PCHS since its closure in June.
52. Furthermore, the County Superintendent closed PCHS "until further notice" and has not made any indication to the public as to when PCHS will be re-opened.
53. The inclusion of the phrase "until further notice" does not indicate that the closure of PCHS was temporary. "Until further notice" operates as a permanent closure until it is not, in this specific action.
54. Superintendent Porter did not have the statutory authority to close PCHS.
55. Injunctive relief is proper in this matter.
56. The Petitioners have established the likelihood of irreparable harm to the Petitioners without an injunction.
57. The closure of PCHS may jeopardize and threaten its students with eligibility to play in sports and be members of a marching band. Until such time a definite order or stipulation

is entered providing the binding protections referenced here and above between the WVSSAC and Petitioners herein, this particular threat of harm exists.

58. The students of PCHS have been forcibly relocated to other schools within Wetzel County.

59. The Petitioners have testified that their community will be harmed because of the closure of PCHS.

60. PCHS is a great source of pride for the members of the community.

61. PCHS has several West Virginia State Champions, Ohio Valley Athletic Conference Champions (OVAC), and Mason-Dixon Champions.

62. In Paden City, the local high school is the heart and foundation of the community.

63. 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.

64. As articulated by the testimony of Mr. Billiter, Mr. Eric Hayes, Mr. Dalton Hayes, and William Bell, PCHS was a place that students can be themselves.

65. There is no harm to Superintendent Porter if this injunction is granted.

66. As discussed, Superintendent Porter did not have the authority under W. Va. Code § 18-4-10(5) to close PCHS as there was no threat to the pupils of PCHS from the Superfund site. Furthermore, there is no indication that the closure of PCHS is temporary.

67. The burden on Superintendent Porter to close the school and merge PCHS students with Magnolia High School and the burden on PCHS students and Paden City community members in living through the closure is relatively equal. While the Superintendent Porter's burden in the administrative and logistical burdens of the closure is generally

more quantifiable than the burden placed on the Petitioners, the burden on the Petitioners' in the closure is no less severe.

68. In West Virginia, our State Constitution proclaims 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).
69. The students of PCHS have the right to their education and for it not to be interrupted through the unilateral closure of PCHS by Superintendent Porter.
70. The community of PCHS will be harmed from the closure of PCHS by Superintendent Porter.
71. Having found that Superintendent Porter acted unjustifiably so, Paden City High School remains open, and its longevity, future, and fate is appropriately an issue for the elected representatives on the Wetzel County Board of Education to determine.
72. The Court is NOT persuaded that Superintendent Porter's decision was an act or effort towards the permanent closure of the school or subterfuge under the guise of the statute relied upon.
73. Further, a reasonable interpretation of W. Va. Code § 18-4-10(5), which the Court agrees, may permit superintendents to close a school temporarily, not an indeterminant or indefinite period, suggestive of such circumstances as emergency conditions, e.g. unforeseen, unexpected, or critical circumstances like flood, fire, industrial accidents, potentially catastrophic events like train derailment, or public safety and personal safety

issues such as active shooter or hostage situations or other law enforcement related events or circumstances, civil unrest, etc.

74. For all of the foregoing reasons, the Court finds that the temporary restraining order and request for injunctive relief was proper and is appropriately hereby extended in this matter.

Therefore, the Court **GRANTS** the Petitioners' request for a preliminary injunction. Further, this Court **ENJOINS** Respondent Cassandra Porter from closing or continuing the closure of Paden City High School. This Court **ORDERS** that Paden City High School is re-opened immediately and kept open as if it never closed. 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 Paden City High School be returned to Paden City High School. Therefore, the Court **ORDERS** the WVSSAC to suspend any and all prohibitions to the members of the Paden City High School sports teams and marching band from reforming and participating in their regular and respective seasons because the due to the closure of Paden City High School.

Moreover, this Court **FINDS** good cause for excusing that any bond be required by the Petitioners. Therefore, the Petitioners are not required to post any bond.

The parties are to contact the Court for any further proceedings in this matter.

All objections are noted and preserved.

The Circuit Clerk is directed to provide a certified copy of this Order to all counsel of record.

It is so **ORDERED**.

ENTER this 31st day of July, 2024



Judge Charles Richard Wilson