

COVER SHEET

E-FILED | 11/11/2024 6:51 PM
CC-55-2024-P-38
Wyoming County Circuit Clerk
Tony Paynter

GENERAL INFORMATION

IN THE CIRCUIT COURT OF WYOMING COUNTY WEST VIRGINIA

Wyoming County Board of Education v. West Virginia Secondary Schools Activities Commission

First Plaintiff: ☐ Business ☐ Individual ☐ Government ☒ Other

First Defendant: ☐ Business ☐ Individual ☐ Government ☒ Other

Judge: Micheal Cochrane

COMPLAINT INFORMATION

Case Type: Miscellaneous Proceedings

Complaint Type: Other - Civil

Origin: ☒ Initial Filing ☐ Appeal from Municipal Court ☐ Appeal from Magistrate Court

Jury Trial Requested: ☐ Yes ☒ No **Case will be ready for trial by:** _____

Mediation Requested: ☐ Yes ☒ No

Substantial Hardship Requested: ☐ Yes ☒ No

☐ Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other: _____

☐ I am proceeding without an attorney

☒ I have an attorney: Wyoming County CONFIDENTIAL Prosecuting Attorney, P.O. Box 462, Pineville, WV 24874

SERVED PARTIES

Name: West Virginia Secondary Schools Activities Commission
Address: 2875 Staunton Turnpike, Parkersburg WV 26104
Days to Answer: 20 **Type of Service:** Circuit Clerk - Certified Mail - Including Copy Fee

IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA

**THE BOARD OF EDUCATION
OF THE COUNTY OF
WYOMING**

**a political subdivision of the
State of West Virginia, and
Westside High School,
as an interested party,**

Petitioner,

Civil Action No: 24-

**WEST VIRGINIA SECONDARY
SCHOOLS ACTIVITIES COMMISSION,
a quasi-public body,**

Respondent.

PETITION FOR INJUNCTIVE RELIEF

Comes now the Petitioners, the Wyoming County Board of Education and Westside High School, by counsel, Joshua J. Miller and Derek Laxton, and Petitions this Court for injunctive relief pursuant to W.Va. Code 53-5-1 *et seq.* and Rule 65 of the West Virginia Rules of Criminal Procedure and require the West Virginia Secondary Schools Activities Commission (hereinafter WVSSAC) to apply their rule regarding point distribution for the state high school football playoffs as announced 17 days before the beginning of the 2024 fall sports season. This ranking point application as requested by the Wyoming County Board of Education would require the WVSSAC to distribute ranking points to teams based on which classification they actually competed in and will compete in during the high school football playoffs.

INTRODUCTION

Westside High School is located in Wyoming County, West Virginia. Westside's football team played its last game on Friday, November 8th, 2024, and after winning that game, Westside

earned its spot in the West Virginia High School Football Playoffs. At the close of the West Virginia High School Season on Friday night, the Westside Renegades were ranked number 16 in Class AA and were slated to play an Away first round playoff game against the Frankfort Falcons, the 1 seed in Class AA. The playoff structure, as managed by the WVSSAC, is built upon a well-established system of ranking teams according to their performance throughout the regular season. Westside High was within range of qualifying for the playoffs under the existing rules and had already begun making preparations for a playoff appearance.

However, on or about November 9th, 2024, the Wood County Circuit Court issued an Order concerning the manner in which the WVSSAC should calculate team ranking points. This order fundamentally altered the calculations used to determine which teams would make the playoffs, retroactively changing the ranking and excluding Westside High from postseason contention. The Order was issued with no notice to the affected teams, including Westside, or the Wyoming County Board of Education, who had a vested interest in ensuring the integrity of the playoff system and the eligibility of their team.

STATEMENT OF FACTS

1. Westside High School is a high school operated within Wyoming County, West Virginia, which has a football team that has been playing under the rules of the Respondent WVSSAC.
2. Respondent WVSSAC is a non-profit, non-stock corporation under the provisions of Chapter Thirty-One of West Virginia Code and is statutorily recognized and authorized pursuant to West Virginia Code Section 18-2-25.

3. The WVSSAC is by statute composed of the principals, or their representatives, of those secondary schools whose county boards of education have certified in writing to the state superintendent of schools that they have elected to delegate the control, supervision and regulation of their interscholastic athletic events and band activities of the students on the public secondary schools in their respective counties to said WVSSAC. 127 C.S.R. 141.
4. The WVSSAC may exercise the control, supervision and regulation of interscholastic athletic events of secondary schools. W.Va. Code Section 18-2-25(b).
5. All rules and regulations of the WVSSAC are subject to the approval of the State Board of Education, which has express constitutional authority over the schools of the State.
6. The WVSSAC promulgates rules and regulations providing for the control, supervision and regulation of the interscholastic athletic events and other extracurricular activities of private and parochial secondary schools and such schools delegate such control, supervision and regulation, upon the same terms and conditions.
7. The WVSSAC is not a state agency and therefore cannot demand that suits against it be brought in the Circuit Court of Kanawha County, West Virginia. See, *Mayo v. West Virginia Secondary Schools Activities Commission*, 672 S.E.2d 224, 223 W.Va. 88 (2008).
8. The Circuit Court of Wyoming County, West Virginia, has personal jurisdiction over the Respondent in that the Respondent transacts business in Wyoming County, West Virginia.
9. The Circuit Court of Wyoming County, West Virginia, has jurisdiction over the subject matter in that it involves, in part, the delegation by the Wyoming County Board of Education of the statutory mandate created by West Virginia Code Section 18-2-25.

10. Venue lies in the Circuit Court of Wyoming County, West Virginia, in that the cause of action arose, in part, pursuant to the delegation by the Wyoming County Board of Education of the statutory mandate created by West Virginia Code Section 18-2-25.
11. Venue also lies in the Circuit Court of Wyoming County, West Virginia, because the WVSSAC's actions are directed to and impact Westside High School and each and every one of its football players, cheerleaders and band members.
12. If its actions do not exceed the constitutional and statutory authority afforded it by Article 3, Section 10 of the West Virginia Constitution and West Virginia Code 18-2-25 or it otherwise does not act in an arbitrary or capricious manner, WVSSAC may exercise the control, supervision and regulation of interscholastic events of secondary schools.
13. Westside High School is currently classified as an AA school and competes in that classification with other WVSSAC member schools.
14. Prior to the 2024 fall sports season, the WVSSAC expanded the classifications it would use for competition as follows: from three classes, A, AA, and AAA, to four classes, A, AA, AAA, AAAA.
15. Some schools in the state took issue with their new classification and appealed their decision to the WVSSAC. The WVSSAC Board of Review made the following changes to the new classifications it released in early 2024: John Marshall, Oak Hill, Preston County, St. Albans, and Spring Valley's classifications were changed from AAAA to AAA. Frankfort, Sissonville, and Wayne County were moved from AAA to AA and Petersburg, St. Mary's, and Tyler Consolidated moved from AA to A.

16. Later in 2024, the Board of Review further moved additional schools between classifications, as follows: Buckhannon Upshur, Capital, Riverside, and South Charleston were moved from AAAA to AAA, Chapmanville, Independence, Lincoln, Nicholas County, and Pikeview were moved from AAA to AA, and Ritchie County and Summers County were moved from AA to A.
17. As a result of these changes, many schools inquired on how the point systems would work for the upcoming season. For example, football schedules for high school teams in West Virginia are generally made months in advance of the season's beginning, but the final classification changes didn't take place until later in 2024 on the brink of the fall sports season's beginning.
18. 17 days prior to the beginning of the high school football season, the WVSSAC informed its member schools that ranking points would be calculated based on which classification each member school was now located; for example, the points distributed for a win against Independence would be counted as an AA win because Independence was one of the member schools who lowered a class, from AAA to AA.
19. On November 8, 2024, the Circuit Court of Wood County, West Virginia, entered an "Order Granting Injunctive Relief" that directed the WVSSAC to disregard the rankings that were announced prior to the start of the 2024 football season and to, instead, revert back to the classification that were released in January 2024. (See, Order, attached hereto as Exhibit 1).
20. On November 9, 2024, the WVSSAC announced new rankings, which were based on classifications that were contra to the rulings of the appeals referenced above, and

completely different from what the entire 2024 football season was played under, which resulted in Westside High School no longer playing in a playoff game

21. The Wood County Order required the WVSSAC to apply ranking points as if the schools who moved down a classification had remained in the classification they were previously assigned. For example, this would mean that ranking points would be assigned for Independence as if they were in AAA, rather than AA, even though Independence would be permitted to compete as an AA school in the playoffs.
22. This rule change, made one day after the conclusion of the 2024 high school football season, changed the way ranking points were calculated and knocked Westside High School, who won 7 of their 10 games, out of the playoffs, and allowed Lincoln High School, who won 3 of their 10 games, into the playoffs.
23. The WVSSAC's actions in removing Westside High School from the AA playoffs is arbitrary and capricious, as it fails to recognize and take into account that Westside High School, and all other football teams in the State of West Virginia played their entire football season with an understanding of what was required to make the playoffs.
24. A WVSSAC rule is subject to challenge, like all properly promulgated legislative rules, on grounds that it exceeds constitutional or statutory authority and for being arbitrary or capricious. *Hamilton v. W.Va. Secondary Sch. Activities Comm'n*, 182 W.Va. 158, 386 S.Ed. 2d 656 (1989).

ARGUMENT

I. Standard for Granting Preliminary Injunction.

Rule 65 of the West Virginia Rules of Civil Procedure provides for preliminary injunctions. W. Va. R. Civ. P. 65(a). In determining whether to grant a preliminary injunction, the Court should employ the balance of hardship test:

Under the balance of hardship test the ... the court 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 plaintiffs' likelihood of success on the merits; and (4) the public interest. W. Va. R. Civ. P. 65(a)

Jefferson County Bd. of Educ. v. Jefferson County Educ. Ass'n, 183 W. Va. 15,24,393 S.E.2d 653, 662 (1990) (citing *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bradley*, 756 F.2d 1048, 1054 (4th Cir.1985)). While Petitioner needs not satisfy each of these factors in order for an injunction to issue, *see id.* (noting that courts assess these factors in "flexible interplay"), Petitioner's claim in fact clears all of these equitable considerations.

II. A Preliminary Injunction Is Appropriate as All Four Factors in the Balance of Hardship Test Militate In Favor of Issuance.

A. Plaintiffs Have a High Likelihood of Success on the Merits.

The Wyoming County Board of Education has a high likelihood of success on the merits because it is simply asking the Court to apply the rule as was intended by the WVSSAC. Prior to the Wood County Order being entered on November 8, 2024, the WVSSAC desired to distribute ranking points based on the points distribution system that it informed its member schools it would apply 17 days prior to the seasons' beginning. Therefore, the Wyoming County Board of Education

is asking that the Rule be applied as was intended by the WVSSAC and not by an interpretation of a Circuit Court Judge in Wood County. It was not until the Wood County Circuit Court's Order granting injunctive relief for its three member schools that the WVSSAC was required to implement a different point ranking system. The new point ranking system will require the WVSSAC to distribute points to teams based on what classification they would have held when scheduled, rather than the classification that they actually held and played the 2024 season. This is completely illogical. As an example, Independence is permitted to compete in the state high school football playoffs as an AA school, but teams that played and beat Independence were awarded points as an AAA school, and strength of schedule bonus points could have been impacted for certain schools as well based on this new ranking point distribution.

Moreover, certain bonus points are provided to teams throughout the season based on strength of schedule, and those points are impacted by the new way in which the WVSSAC distributes ranking points as a result of the injunction granted by the Wood County Circuit Court. It makes zero sense that teams are awarded AAA points for playing a school that is permitted to play in the AA playoffs as an AA school. And that is what happened for all the member schools playing other member schools that were moved down a class before the start of the 2024 season.

However, all 112 WVSSAC member schools were put on notice of how points would be calculated prior to the 2024 season beginning. These schools operated under the assumption that points would be distributed based on the actual classification of the school they were playing when they played the game. An injunction filed on behalf of 3 of those 112 member schools on the eve of the playoff's beginning disrupted the entire process by which playoff teams are selected. This overreach by the Wood County Circuit Court will certainly not hold muster and the Wyoming County Board of Education will likely be successful on the merits.

Additionally, the application of the rule by the WVSSAC the way the Wood County Circuit Court will require the WVSSAC to apply the rule is clearly *arbitrary or capricious*, another indicator that evidences Wyoming County Board of Education's likely success on the merits. The enforcement of a WVSSAC rule is subject to challenge when the rule or the WVSSAC's actions upon that rule exceeds constitutional or statutory authority or when the WVSSAC's action is arbitrary or capricious. *Mayo v. W. Va. Secondary Sch. Activities Comm'n*, 223 W.Va. 88, 672 S.E. 2d 224 (2008).

In September 2023, the WVSSAC adopted revised Rules and Regulations which, among other things, included changes to Rule §127-3-10, which provided for the addition of another classification namely AAAA. The Rule reads in its entirety:

10.1. Each member high school shall be classified as either AAAA, AAA, AA, or A based on the total score given by the classification model that considers the factors of enrollment, location, and economics. The designation shall be done after the end of the second school month of the odd numbered year preceding the classification. For an explanation of the classification model, and how scores are assigned, see Appendix 1.

10.2. Classification of member high schools shall be determined every four years on the even numbered years and will remain in effect for a four year period unless the school experiences a 20% change in enrollment using WVDE enrollment figures at the end of the second school month. Classification changes due to a 20% change in enrollment becomes effective next academic year.

10.3. A school may choose to compete in WVSSAC tournaments in any class above its classification providing proper notification is made to the WVSSAC prior to Friday of week 27 after classification has been approved by the Board of Directors. Approval of this option will be for a four year period and will be effective for individual sports sponsored by the school.

10.4. The Board of Directors may structure the WVSSAC tournament series in each sport by classification (AAAA-AAA-AA-A). Each sport will be structured according to the level of interest

and accommodation for tournament alignment. The WVSSAC will conduct a survey of the membership prior to any change of structure of any given sport.

10.5. If a consolidation of two or more member schools occurs during the classification period, the new member school will be reclassified based on the total score given by the classification model that considers the factors of enrollment, location, and economics.

10.6. No member school shall, based on the classification, be compelled to play more than one class up from where it would be classified in a three class system based strictly on enrollment.

10.7. The WVSSAC Board of Directors is authorized to grant a waiver to a classification assignment when it determines the rule fails to accomplish the purpose for which it is intended.

W. Va. Code R. § 127-3-10

In the case at hand, the Injunction granted by the Wood County Circuit Court requires the WVSSAC to distribute ranking points based on where schools would have been classified prior to the beginning of the 2024 season, rather than where they are actually classified, where they have actually competed, and where they will compete in the 2024 high school state football playoffs. This application is not only arbitrary and capricious under the law, it is completely illogical, and antithetical to the plain language of the WVSSAC rules governing point distribution for wins over different classifications: for winning against an AAAA opponent, 15 points, for an AAA win, 12 points, for an AA win, 9 points, and for an A win, 6 points. For tying against an AAAA school, 7.5 points, for a tie with an AAA school, 6 points, for a tie against an AA school, 4.5 points, and for a tie against an A school, 3 points. For each game won by a defeated opponent, for all classifications, 1 point. For each game tied by a defeated opponent, for all classifications, 0.5 points. For each game won by a tied opponent, for all classifications, 0.5 points. For each game tied by a tied opponent, for all classifications, 0.25 points. For each game won by a winning

opponent in its class or above, for all classifications, 1.5 points. And for each game tied by a winning opponent in its class or above, for all classifications, 0.75 points.

The Wood County Circuit Judge's requirement of the WVSSAC in its application of the rule completely ignores the above point system. It requires the WVSSAC to apply points on an imaginary basis by distributing points based on classifications that schools used to be in, not classifications they are actually in and competing in throughout the year and including in the playoffs. Another example of this illogical application is if a team played Pikeview during the 2024 regular season, and beat Pikeview, they would garner points as if they had won a game against an AAA opponent. However, Pikeview competed as an AA team all throughout the year, and if Pikeview had garnered enough points to make the postseason, they would have been permitted to compete in the postseason as an AA school. Thus, the WVSSAC's application of the rule as required by the Wood County Circuit Court is clearly arbitrary and capricious, and points toward Wyoming County Board of Education's success on the merits.

B. The Likelihood of Harm to Westside High School Outweighs Any Harm to Defendant.

The WVSSAC's decision to alter the ranking system, by virtue of the injunction granted in the Circuit Court of Wood County, at the last minute not only affected Westside High School but also disrupted the integrity of the entire playoff structure. High school football teams across the state had been competing under a clear and consistent set of rules, and teams, including Westside, structured their seasons with the expectation that those rules would remain unchanged until after the season. By altering the calculation of ranking points without prior warning or consultation, the WVSSAC has introduced confusion and inequity into the process, undermining the predictability and fairness that is crucial for the operation of the playoff system. The student athletes, particularly

the senior student athletes, on Westside High School's football team face an irreparable loss due to their abrupt exclusion from the playoffs.

These players, many of whom have dedicated years to the sport, will now be denied the opportunity to participate in the culmination of their high school football careers. Senior athletes have a limited window of opportunity, and the decision to exclude Westside from the playoffs, without prior notice or explanation, deprives them of a fair and just opportunity to compete at the highest level of high school sports in West Virginia. The harm to these students is irreparable because no monetary or alternative relief can adequately compensate them for the loss of their opportunity to compete in the playoffs. The Court has previously recognized that the harm to students' educational and extracurricular opportunities may be irreparable, particularly when it involves a matter of public concern such as high school sports.

Conversely, the WVSSAC would suffer little to no harm if an injunction were awarded permitting Westside High School to participate in the playoffs because prior to the injunction being granted in the Circuit Court of Wood County it is how the WVSSAC intended playoff ranking points to be calculated. Thus, according to the WVSSAC's own interpretation of its rule, Westside High School should be competing in the playoffs. Accordingly, for these reasons the likelihood of harm for Westside High School and its student athletes is high – especially, in comparison to the harm to the WVSSAC.

C. The Public Interest Is Served by Granting the Injunction.

The public interest is best served in many significant ways by the granting of an injunction allowing the Westside High School Football Team to participate in the playoffs. For instance, the public has a strong interest in being assured that its laws and regulations, like W. Va. CSR §127,

et seq., are followed and fairly executed. These rules were followed as the WVSSAC intended for the entire 2024 football season, only be altered one day after the season concluded by Order of a Circuit Judge of Wood County who had no business getting involved in the way points were calculated and the redistribution of points for all 112 member schools in 55 counties across the state.

The Wood County Circuit Court's Order, while attempting to redress the three aggrieved schools within its county's borders, has created a catastrophic, confusing debacle and changed the rules on how and which schools qualify for the playoffs, on the eve of the playoffs, for the other member schools in the 54 other counties in this state. Lincoln County is one of the schools who jumped Westside and gained entrance into the playoffs as the 16 seed. Lincoln County won only 3 of their 10 games in the 2024 season. Westside won 7 of 10. So, the result from Wood County's Order will see a team making the playoffs that won only 30% of their total games played, which same team knocked out a team that won 70% of their total games.

The rules that govern these athletes should be fair, and one of the paramount concerns regarding fairness in competition is notice of the rules governing the sport. Here, all 112 member teams of the WVSSAC were put on notice that points would be governed by the points classification system put in place by the WVSSAC. A new classification system was put in place by the WVSSAC prior to the beginning of the 2024 football season, and placed schools in four classes: A, AA, AAA, and AAAA. The rules for how points were calculated changed 17 days prior to the season's beginning. This change went into effect before the season's beginning, and all of the WVSSAC member schools operated under that rule change for the entirety of the 2024 season. Football is a game of strategy, and increasingly, of analytics, and teams often utilize different strategies each week depending on where they lie in the rankings. That can include resting

players late in the season if, for example, teams run the numbers and see that they're likely to make the playoffs, or secure home field advantage in the playoffs, those teams may choose to rest their star players and lose a game that they may otherwise win, affecting the points distributed. These strategies are made during the season, with the understanding of the rules that govern point distribution that were given to all teams 17 days prior to the season's start. The Wood County Circuit Court's Order changes those rules governing point distribution yet again, with no notice of any of the other affected schools, and such Order was entered one day *after* the conclusion of the 2024 season.

The Wood County Circuit Court highlights the inability to retroactively apply the ranking system it desires because of the imminency of the state high school football playoffs as a reason for granting the injunction. However, should that same injunction that is currently in place be lifted in the middle of the high school state playoffs, the inability to retroactively apply the correct points ranking system, which all member schools were made aware of prior to the season's start, would still exist. At that point, games would already be played and irreparable harm to any teams left out of the state high school football playoffs due to an incorrect point distribution system being applied as a result of an injunction being granted in Wood County.

In fact, the Wood County Court's resolution to the application of point distribution methods is wholly inadequate and fails to provide the other member schools within the umbrella of the WVSSAC, 112 member schools, with sufficient notice of the impending changes that will impact, to some degree, a vast majority of those 112 schools. The three member schools at issue in the Wood County case resulting in its Order granting injunctive relief represent only 2.6% of the member schools affected by that Court's decision. Thus, an Order seeking to redress potential grievances in the form of injunctive relief for Williamstown High School, Parkersburg High

School, and Parkersburg South High School, has essentially changed the rules of the game on the eve of the playoffs' beginning one day after the conclusion of the regular season and without notice given to the other 97.4% of member schools affected by this injunctive relief.

It is clearly against the interests of fairness and public interest that this form of injunctive relief was granted from a Circuit Court located in 1 of 55 counties, which sought to redress grievances for 3 out of 112 member schools, when such injunctive relief imposes a huge impact on which schools all across the state make the playoffs and secure a home field advantage in the playoffs.

PRAYER FOR RELIEF

WHEREFORE, the Petitioners, WYOMING COUNTY BOARD OF EDUCATION WESTSIDE HIGH SCHOOL, by its Athletic Direction, Darren Thomas, and the Superintendent of Wyoming County Schools, Jonathan Henry, prays that this Honorable Court will immediately issue a temporary order and/or a permanent order enjoining the Respondent, the West Virginia Schools Activities Commission from moving forward with the AA State Playoffs as laid out by said entity and ORDER THE FOLLOWING:

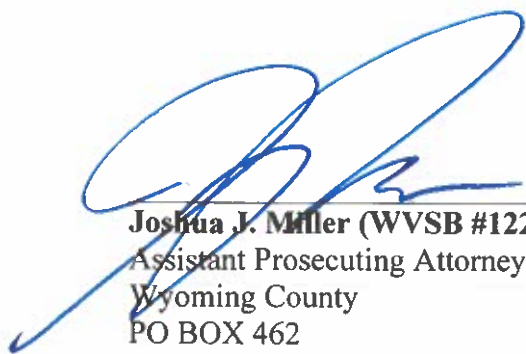
- (1) The WVSSAC delay the AA Playoff games and create a playoff process that would fairly and equitably include all teams that earned the right to participate in post season play.
- (2) the Petitioners be awarded their attorney fees and expenses incurred herein; and
- (3) All other relief to which the Court deems Petitioner is entitled.

CONCLUSION

For the foregoing, the Wyoming County Board of Education seeks injunctive relief, and moves the Court for a hearing on its Petition at its earliest convenience

Respectfully submitted,

**Wyoming County Board of Education,
By Counsel**



Joshua J. Miller (WVSB #12231)
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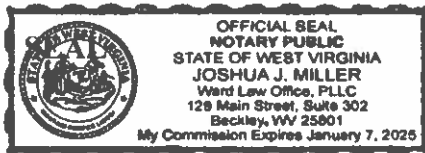
VERIFICATION

I, Darren Thomas, being the Athletic Director at Westside High School, after being duly cautioned and sworn, makes this Verification and state that I have personal knowledge of the matters set forth, in the foregoing Petition as they relate to matters involving Westside High School, and that the facts and information relating to Westside High School set forth in the foregoing Petition are true and correct to the best of my knowledge and belief. Also, with respect to the other factual matters set forth in this Verification which do not specifically relate to Westside High School, it is my good faith belief that those matters are true and accurate as stated therein.


Darren Thomas

STATE OF WEST VIRGINIA,
COUNTY OF WYOMING, TO-WIT:

Taken, subscribed and sworn to me before me in my said County and State this 11th
day of November, 2024.




NOTARY PUBLIC

My Commission expires: January 7, 2025

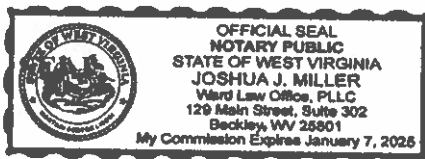
VERIFICATION

I, Johnathan Henry, being the Superintendent of Wyoming County Schools, after being duly cautioned and sworn, makes this Verification and state that I have personal knowledge of the matters set forth, in the foregoing Petition as they relate to matters involving Westside High School, and that the facts and information relating to Westside High School set forth in the foregoing Petition are true and correct to the best of my knowledge and belief. Also, with respect to the other factual matters set forth in this Verification which do not specifically relate to Westside High School, it is my good faith belief that those matters are true and accurate as stated therein.


Johnathan Henry

STATE OF WEST VIRGINIA, COUNTY OF WYOMING, TO-WIT:

Taken, subscribed and sworn to me before me in my said County and State this 9th
day of November, 2024.




NOTARY PUBLIC

My Commission expires: January 7, 2025

IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA

**THE BOARD OF EDUCATION
OF THE COUNTY OF
WYOMING**

**a political subdivision of the
State of West Virginia, and
Westside High School,
as an interested party,**

Petitioner,

Civil Action No: 24-

**WEST VIRGINIA SECONDARY
SCHOOLS ACTIVITIES COMMISSION,
a quasi-public body,**

Respondent.

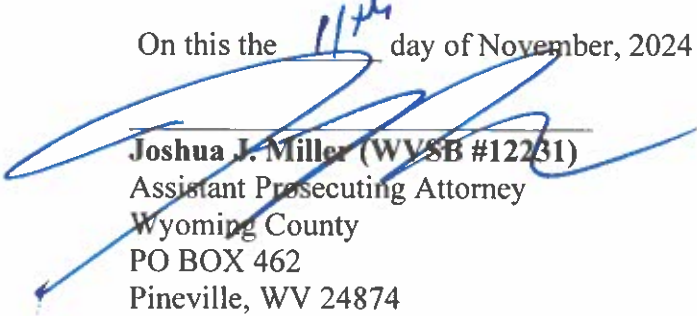
CERTIFICATE OF SERVICE

We, Joshua J. Miller and Derek Laxton, counsel for Plaintiff does hereby certify that the foregoing has been served upon opposing counsel, and all other parties relevant to this matter, via email and personal service, as follows:

**West Virginia Secondary Schools Activities Commission
2875 Staunton Turnpike
Parkersburg, WV 26104**

**Stephen Gandee, Esq
Counsel for Respondent
sfg@ramlaw.com
304-326-5313
140 West Main Street
Suite 300
Clarksburg, WV 26301**

On this the 11th day of November, 2024


Joshua J. Miller (WYSB #12231)
Assistant Prosecuting Attorney
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Derek Laxton (WVSB #14076)
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/s/ J.D. Beane
Circuit Court Judge
Ref. Code: 248APDZRX

E-FILED | 11/9/2024 1:25 PM
CC-54-2024-P-275
Wood County Circuit Clerk
Celeste Ridgway

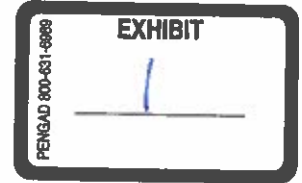
In the Circuit Court of Wood County, West Virginia

**The Board of Education of the County
of Wood,**
Plaintiff,

v.

**Department of Education and the
Arts,**
Defendant

Case No. CC-54-2024-P-275
Judge John D. Beane



Order Granting Injunctive Relief

This matter came before the court on November 8, 2024, upon Petitioner's request for emergency relief pursuant to West Virginia Code §53-5-1, *et seq.*, and Rule 65 of the West Virginia Rules of Civil Procedure with respect to how Respondent should compute the respective school/team rankings for the 2024 West Virginia state football playoffs. The court finds and concludes as follows:

FINDINGS OF FACT

1. Petitioner, The Board of Education of the County of Wood, maintains a corporate charter and is authorized to join this action under West Virginia Code §18-5-5.
2. Respondent, West Virginia Secondary Schools Activities Commission (WVSSAC), is a non profit, non-stock corporation under the provisions of Chapter Thirty-One of West Virginia Code and is statutorily recognized and authorized pursuant to West Virginia Code § 18-2-25.
3. The "interested parties," Williamstown High School, Parkersburg High School and Parkersburg South High School, respectively, are schools operated within Wood County, West Virginia by the Wood County Board of Education.
4. The WVSSAC is by statute composed of the principals, or their representatives, of those secondary schools whose county boards of education have certified in writing to the state superintendent of schools that they have elected to delegate the control, supervision and regulation of their interscholastic athletic events and band activities of the students in the public secondary schools in their respective counties to said WVSSAC.

5. If its actions do not exceed the constitutional and statutory authority afforded to it by Article 3, § 10 of the West Virginia Constitution and W. Va. Code § 18-2-25 or it otherwise does not act in an arbitrary or capricious manner, WVSSAC may exercise the control, supervision, and regulation of interscholastic athletic events of secondary schools.

6. All rules and regulations of the WVSSAC are subject to the approval of the State Board of Education, which has constitutional authority over the schools of the State.

7. The WVSSAC promulgates rules and regulations providing for the control, supervision and regulation of the interscholastic athletic events and other extracurricular activities of private and parochial secondary schools and such schools delegate to such commission such control, supervision and regulation, upon the same terms and conditions, subject to the same regulations and requirements and upon the payment of the same fees and charges as those provided for public secondary schools.

8. WVSSAC classifies its members into four different classifications based on multiple factors, which have been the issue of recent challenges. Nonetheless, the four classifications of the member schools are Class A, AA, AAA, and AAAA.

9. The WVSSAC is not a state agency and therefore cannot demand that suits against it be brought in the Circuit Court of Kanawha County. See *Mayo v. West Virginia Secondary Schools Activities Commission*, 672 S.E.2d 224, 223 W. Va. 88 (2008).

10. The Circuit Court of Wood County has personal jurisdiction over the Respondent, in that the Respondent's principal office is located in Wood County, and in that Respondent is transacting business with the Wood County Board of Education in Wood County, West Virginia.

11. The Circuit Court of Wood County has jurisdiction over the subject matter in that it involves, in part, the delegation by the Wood County Board of Education of the statutory mandate created by West Virginia Code §18-2-25. Moreover, some interscholastic athletic events which are at issue in this matter are scheduled to occur (and have already occurred) in Wood County, West Virginia.

12. Venue lies in the Circuit Court of Wood County in that the cause of action arose, in part, pursuant to the delegation by the Petitioner of the statutory mandate

created by West Virginia Code § 18-2-25.

13. Venue also lies in the Circuit Court of Wood County because the WVSSAC's actions are directed to and impact Williamstown High School, Parkersburg High School and Parkersburg South High School and Wood County residents, including many, if not all, of the student athletes on Williamstown High School, Parkersburg High School and Parkersburg South High School respective football teams.

14. In September 2023, WVSSAC adopted revised Rules and Regulations which, among other things, included changes to Rule §127-3-10, which provided for the addition of another classification namely AAAA. The Rule reads in its entirety:

§127-3-10. Classification

10.1. Each member high school shall be classified as either AAAA, AAA, AA, or A based on the total score given by the classification model that considers the factors of enrollment, location, and economics. The designation shall be done after the end of the second school month of the odd numbered year preceding the classification. For an explanation of the classification model, and how scores are assigned, see Appendix 1.

10.2. Classification of member high schools shall be determined every four years on the even numbered years and will remain in effect for a four-year period unless the school experiences a 20% change in enrollment using WVDE enrollment figures at the end of the second school month. Classification changes due to a 20% change in enrollment becomes effective next academic year.

10.3. A school may choose to compete in WVSSAC tournaments in any class above its classification providing proper notification

ismadetothewvssac prior to Friday of week 27 after classification has been approved by the Board of Directors. Approval of this option will be for a four-year period and will be effective for individual sports sponsored by the school.

10.4. The Board of Directors may structure the WVSSAC tournament series in each sport by classification (AAAA-AAA-AA-A). Each sport will be structured according to the level of interest and accommodation for tournament alignment. The WVSSAC will conduct a survey of the membership prior to any change of structure of any given sport.

10.5. If a consolidation of two or more member schools occurs during the classification period, the new member school will be reclassified based on the total score given by the classification model that considers the factors of enrollment, location, and economics.

10.6. No member school shall, based on the classification, be compelled to play more than one class up from where it would be classified in a three-class system based strictly on enrollment.

10.7. The WVSSAC Board of Directors is authorized to grant a waiver to a classification assignment when it determines the rule fails to accomplish the purpose for which it is intended.

15. Petitioner argues that Rule 127-3-10.7 exceeds the constitutional and statutory authority granted to Respondent and otherwise leads to arbitrary and capricious results in that the phrase “when it determines the rule fails to accomplish the purpose for which it was intended” is without sufficient definition and is therefore both vague and overbroad. As a result, the classification rules set forth in WVCSR 127-3-10 *et. sequitur* do not comply with the statutory grant of authority given to Respondent in that there is no “proper review procedure” required by W.Va. Code § 18-2-25(b) (“The rules of the West Virginia Secondary Schools Activities Commission shall contain a provision for a proper review procedure...” (Emphasis supplied)).

16. On or about December 20, 2023, WVSSAC announced new classifications for all secondary schools in West Virginia. In justifiable reliance upon these new classifications Williamstown High School, Parkersburg High School and Parkersburg South High School (as well as other teams in the state) assembled their respective schedules for the 2024 football season with the purpose of and with the specific intent to maximize the point calculation system which was in existence at the time so as to enhance each school’s opportunity to accumulate points toward the state football playoff rankings.

17. After this reclassification was announced in early 2024, Petitioner’s member high schools, Williamstown High School, Parkersburg High School, and Parkersburg South High School, each started to adjust their respective football schedules so that each school could compete against as many of schools in their respective classification so that they could maximize their respective opportunities to earn points toward a more favorable ranking with respect to the state football playoffs. When establishing their respective schedules, schools (including each of Petitioner’s 3-member high schools) enter into contracts with other schools to play the scheduled game. More often than not, these contracts are 2-year contracts representing a so-called “home-home” series. These contracts to schedule and play football games are in place long before the football season begins.

18. Statewide, the 2024 high school football season had long been scheduled to begin on August 29, 2024. Preseason summer practice for the 2024 high school football season began during the first few days of August 2024. By this time, a school's football schedule is set, and it is virtually impossible to adjust a team's schedule and find other opponents to play.

19. A school's ranking for the state football playoffs is determined by a points system which awards base points to a team for each win, and awards points essentially for the team's strength of schedule, including so-called bonus points awarded for wins by opponents which a team has beaten. More points are awarded to school when the school beats another team within its own classification, and so-called bonus points are awarded when an opponent they play beats another team within that classification or higher. It is a substantial advantage for a teams to play as many teams within their own classification or a higher classification. And it is a substantial hardship if a team which had scheduled an opponent within its own classification or a higher classification when with 17 days before the football season is to begin the opponent team's classification is lowered. Again, it is virtually impossible to schedule new opponents within a team's own classification (particularly when teams have been pulled out of a higher classification and placed in a lower classification) at such a late date in such close proximity to be beginning of the football season.

20. The point value for wins over different classification of the opponent are as follows:

	AAAA	AAA	AA	A
For winning against	15	12	9	6
For tying against	7.5	6	4.5	3
For each game won by a defeated opponent	1	1	1	1
For each game tied by a defeated opponent	.5	.5	.5	.5
For each game won by a tied opponent	.5	.5	.5	.5
For each game tied by a tied opponent	.25	.25	.25	.25
For each game won by	1.5	1.2	.9	.6

a winning opponent in its class or above				
For each game tied by a winning opponent in its class or above	.75	.6	.45	.3

21. At some point in 2024 the following high schools--John Marshall, Oak Hill, Preston County, St. Albans, Spring Valley, Frankfort, Sissonville, Wayne County, Petersburg, St. Mary's, and Tyler Consolidated--challenged and/or appealed their re-classification or otherwise sought a waiver from its re-classification to WVSSAC's Board of Review. The Board of Review issued an Order dated **August 12, 2024**, wherein it acknowledged that the current "classification rule failed to accomplish the purpose for which it was intended," and John Marshall, Oak Hill, Preston County, St. Albans, Spring Valley were reclassified by Respondent and moved from a AAAA classification to a AAA classification; Frankfort, Sissonville, and Wayne County each moved from a AAA classification to a AA classification; and Petersburg, St. Mary's, and Tyler Consolidated were each moved from a AA classification to a single A classification.

22. At some point in 2024 the following high schools--Buckhannon-Upshur, Capital, Riverside, South Charleston, Chapmanville, Independence, Lincoln, Nicholas County, PikeView, Ritchie County, and Summers County--also challenged and/or appealed their re-classification or otherwise sought a waiver from their re-classification to WVSSAC's Board of Review. Following an Order from the Board of Review dated **August 16, 2024**, Buckhannon-Upshur, Capital, Riverside, and South Charleston were each moved by Respondent from a AAAA classification to a AAA classification; Chapmanville, Independence, Lincoln, Nicholas County, and PikeView were each moved by Respondent from a AAA classification to a AA classification; and Ritchie County and Summers County were each moved by Respondent from a AA classification to a single A classification. The reclassification of these 11 schools was for the 2024 football season only.

23. On August 19, Doddridge County High School successfully received a judicial injunction which compelled the WVSSAC to change Doddridge County High School's re-classification from from Class "AA" to Class "A."

24. Williamstown High School has a AA classification. Williamstown High School will lose base points due to St. Mary's High School, Tyler Consolidated High School, and Ritchie County High School dropping in class from AA to A. Williamstown High School will also lose base points from beating Frankfort High School due to Frankfort High School being dropped in class from AAA to AA. It will also lose points with any Frankfort High School win.

25. Based upon a justifiable reliance upon the classifications established by Respondent in December 2023, Williamstown High School began working on its 2024 football schedule so as to play as many schools as possible in its classification or higher. In response to the December 2023 classifications, Williamstown High School released Wirt County, Webster County, and Calhoun County from scheduling contracts, as they were classified as Class "A." These teams were replaced with Scott and Poca (both Class "AA") and Frankfort (Class "AAA"). Additionally, Williamstown retained scheduled games against Ritchie County, Tyler Consolidated, St. Mary's, and Doddridge, all of which were initially classified as Class "AA."

26. As result of Respondent's reclassification following the Board of Review's Order of August 12, 2024, three teams on Williamstown's schedule (St. Mary's, Tyler Consolidated, and Frankfort) were moved to a lower classification.

27. As a result of Respondent's reclassification following the Board of Review's Order of August 16, 2024, another team of Williamstown High School's 2024 football schedule, Ritchie County, was moved from Class "AA" to Class "A."

28. As a result, five of Williamstown High School's scheduled opponents were moved down a classification. This has impacted Williamstown's state ranking, costing the team at least 12 points in the WVSSAC football ratings due to victories over four of the reclassified schools. The reduced ranking diminishes the likelihood of securing a high enough ranking to host the same number of playoff games; for example, rather than hosting a home playoff game throughout the entirety of the playoffs, the loss of points and accompanying lower ranking could mean that Williamstown might only host two, or even one, home playoff game. Hosting home playoff games is crucial for community engagement and school spirit, student-athlete experience, and the loss of this opportunity would cause significant financial harm to the school and community through decreased revenue; travel expenses, alone, could increase nearly \$3,000. Other financial losses would include the athletic boosters organization (which helps fund athletics at Williamstown High School in a meaningful

way) losing \$3,000 to \$4,000 per lost home game for concession sales, raffles, merchandise sales and other fund raising activities conducted at each home game. Williamstown High School's marching band would also lose an estimated \$600 per game.

29. Parkersburg High School has a AAAA classification. Parkersburg High School, which beat St. Albans High School, Capital High School, and South Charleston High School, will lose base points due to St. Albans High School, Capital High School, and South Charleston High School each dropping in class from AAAA to AAA. It will also lose points attributed to each win St. Albans High School, Capital High School, and South Charleston High School have.

30. As a result, three of Parkersburg High School's scheduled opponents were moved down a classification. This has impacted Parkersburg High School's state ranking, costing the team to lose points in the WVSSAC football ratings due to victories over three of the reclassified schools. The reduced ranking diminishes the likelihood of hosting a home playoff game. Hosting home playoff games is crucial for community engagement and school spirit, student-athlete experience, and the loss of this opportunity would cause significant financial harm to the school and community through decreased revenue; travel expenses, alone, could increase between \$6,000 to \$8,000. Other financial losses would include the athletic boosters organization (which helps fund athletics at Parkersburg High School in a meaningful way) losing \$3,000 to \$4,000 per lost home game for sale of concessions and merchandise, raffles, merchandise sales and other fund raising activities conducted at each home game.

31. Parkersburg South High School has a AAAA classification. Parkersburg South High School will lose base points due to John Marshall High School dropping in class from AAAA to AAA. It will also lose points attributed to each win John Marshall High School has.

32. Each of Petitioner's 3-member schools, Williamstown High School, Parkersburg High School, and Parkersburg South High School, find themselves in a situation where they are facing opponents who have had their classification lowered, but yet must compete for playoff rankings with other schools which have not had their schedule similarly diluted. Applying the WVSSAC's point system in a situation such as this results in various schools being treated differently.

33. Each of Petitioner's 3-member schools, Williamstown High School, Parkersburg High School, and Parkersburg South High School, have sought

administrative relief with Respondent but each has been denied, and now there is no longer time remaining before irreparable harm will be caused to each of Petitioner's 3-member schools,

34. Each of Petitioner's 3-member schools, Williamstown High School, Parkersburg High School, and Parkersburg South High School, learned about the downward reclassification of opponents on their respective 2024 football schedules in late-August 2024, but by that time it was impossible for them to alter their respective schedules which had long been in place. Moreover, Petitioner's 3-member schools could not effectively seek administrative relief at that time because the harm to them was not known, so no remedy was available to them through either judicial or administrative action at that time. Each of Petitioner's 3-member schools did seek administrative relief in October 2024, when the harm to them began to become known. Given this context, the actions of each of Petitioner's 3-member schools is not unreasonable.

35. The final weekend of the regular season for West Virginia high school football is the weekend of Friday November 8, 2024 and Saturday November 9, 2024. The first round of the playoffs begins on the weekend of Friday November 15, 2024 and Saturday November 16, 2024. The final rankings, and playoff seedings based on those final rankings, will be announced on Sunday November 10, 2024.

36. The court further finds that the first round of the West Virginia state high school football playoffs will begin before an administrative appeal can be heard and that waiting for any such administrative remedies may prejudice a subsequent judicial challenge. The court further finds that any administrative remedy at this point would be inadequate because the respective rankings of the various participants in the state football playoffs cannot be retroactively changed after the playoffs begin. In addition, testimony was received at the hearing that the athletic director of PHS *did* make an administrative complaint in October, with no relief.

37. The court further finds that Respondent is biased or has otherwise predetermined the issues before it.

38. The court further finds that pursuing further administrative remedies at this point would be futile.

39. The court further finds that irreparable injury will be caused to Petitioner's 3-member schools in this instance because the injury, which is great and permanent, would not be capable of being corrected through later administrative review.

40. The court further finds that administrative remedies are not required in this instance because an overriding public interest calls for a prompt judicial decision.

41. As a result of the failure of the WVSSAC to follow the Board of Review's Order and reclassify the schools for all sports, Tyler Consolidated High School filed a Petition in the Circuit Court of Tyler County, West Virginia, *Tyler County Board of Education and Tyler County Consolidated High School v. West Virginia Secondary Schools Activity Commission*, Case No. 2024-P-24, wherein it sought a temporary restraining order and injunction to allow Tyler Consolidated High School to compete as a member of Class A for the current 2024-2025 sports seasons in all sports, thus immediately affecting the upcoming volleyball and cheer State competition.

42. Essentially finding that Respondent did not conduct its August 12, 2024, reclassification in accord with the mandate of the Board of Review, and also finding that the "football only" classification for certain schools resulted in certain boys and girls being treated differently in contravention of equal protection principles, on October 30, 2024, the Circuit Court of Tyler County, West Virginia entered TRO which enjoined and restrained the WVSSAC from changing the reclassification with respect to Tyler Consolidated regarding the sports of volleyball and cheer for the 2024-2025. A similar finding was made by the Circuit Court of Monongalia County in the case of *Trinity Christian School v. West Virginia Secondary Schools Activity Commission*, Case No. 24-P-303, where Trinity Christian School argued that the WVSSAC acted arbitrarily and capriciously with respect to its participation in the volleyball state tournament for the 2024-2025.

43. In granting the TRO, the Circuit Court of Tyler County recognized that those impacted the most by WVSSAC's classifications "are the student participants themselves. They are the most deserving of consideration as it is them who sacrifice the most through dedication, training, practice, the rigors and time demands upon them, in addition to the competition within the activity or sport itself. Hence, this decision is reached, intended to disrupt as least as possible, the student participants."

CONCLUSIONS OF LAW:

1. This court has jurisdiction over both the subject matter of and the parties to this action.
2. Venue is proper in this court.
3. The court is not being asked to restrain or enjoin the action of *citizens* residing in counties over whom the court does not have jurisdiction. Instead, the

injunction sought in this case relates to parties and actions over which this court does have jurisdiction.

4. The determination of whether to grant an injunction is left to the sound discretion of the Court. Syl. Pt. 4, *State ex rel Donley v. Baker*, 112 W. Va. 263, 164 S. E. 154, (1932).

5. The Supreme Court of Appeals of West Virginia has established a four-factor test when deciding whether to grant injunctive relief. These factors are: (1) the likelihood of irreparable harm to the petitioner without the injunction; (2) the likelihood of harm to the respondent with an injunction; (3) the petitioner's likelihood of success on the merits; and (4) the public interest. *Camden-Clark Mem'l Hosp. Corp. v. Turner*, 212 W. Va. 752, 756, 575 S.E.2d 362, 366 (2002).

6. West Virginia law places an emphasis on the balance of the harm to a plaintiff absent an injunction versus the harm a defendant would incur with an injunction. *Hart v. National Collegiate Athletic Ass'n*, 209 W. Va. 543, 547-48 (2001).

7. The enforcement of a WVSSAC rule is subject to challenge when the rule or the WVSSAC's actions upon that rule exceeds constitutional or statutory authority or when the WVSSAC's action is arbitrary or capricious. *Mayo v. W. Va. Secondary Sch. Activities Comm'n*, 223 W. Va. 88, 672 S.E.2d 224 (2008). Respondent's reclassification rule, 127 CSR 3-10 *et sequitur*, exceeds the constitutional and statutory authority granted to Respondent and otherwise leads to arbitrary and capricious results in that the phrase "when it determines the rule fails to accomplish the purpose for which it was intended" contained in 127 CSR 3-10.7 is without sufficient definition and is therefore both vague and overbroad. No purpose for the rule is expressly stated, and any supposition as to what the intended purpose of the rule is, is pure speculation. As a result, there is no proper review procedure regarding the classification rules set forth in WVCSR 127-3-10 *et. sequitur*, and the rule therefore does not comply with the statutory grant of authority given to Respondent as required by W.Va. Code § 18-2-25(b) ("The rules of the West Virginia Secondary Schools Activities Commission shall contain a provision for a proper review procedure..." (Emphasis supplied).

8. Petitioner, through its various high schools has asked that Respondent apply Respondent's point system to the classifications that existed at the time that Petitioner's 3 high schools made their respective schedules, i.e., apply it to

Respondent's December 2023 classifications which Petitioner's 3 high schools justifiably relied upon when making their respective 2024 football schedules. Respondent has denied Petitioner's request. Administrative appeals of Respondent's decision cannot be timely made given that the final games of the regular season begin on November 8, 2024, and the first round of football playoffs beginning November 15, 2024.

9. To the extent the WVSSAC has decided to apply its points system in accordance with the reclassifications of 23 high schools two weeks before the start of the football season at a time when all other schools, including Petitioner's 3-member schools, Williamstown High School, Parkersburg High School, and Parkersburg South High School had long had their respective schedules in place in justifiable reliance of the December 2023 classifications issued by Respondent, the WVSCA's decision is arbitrary and capricious and is beyond the constitutional and statutory grant of authority given to Respondent by Petitioner and other similarly situated entities. While the points system being applied by Respondent is valid on its face, the manner in which WVSSAC plans to implement that points system given the circumstances presented is both arbitrary and capricious.

10. By way of example, Respondents argue that applying the points system using the new classifications will cause some teams to make the playoffs who otherwise wouldn't, and some teams to miss the playoffs who otherwise would have made them. However, *all teams* in the state who made their schedule made it using the *previous* classifications. While *some* teams are or will be impacted by using the old classifications instead of the new, *all* teams were impacted when the change was initially made, as *all* teams came to find out they made their schedules without a proper picture of what schools would be in what classification.

11. While the reclassification in itself may not be arbitrary or capricious, the decision to reclassify certain teams after a point at which schedules can be changed is, almost definitionally, arbitrary. By using the August 12 and 16 reclassifications to determine playoff points, certain teams will benefit, certain teams will be harmed, certain teams will avoid any impact at all. and there is nothing that a school can do about it, as nobody can change its schedule.

12. Additionally, Respondents argued during the hearing of November 8, 2024 that the reason the rule change was *implemented* immediately rather than, for example, announced and then implemented for the 2025 season, when teams could

properly make a schedule, was because of "safety concerns." This justification does not hold water. The schools had no ability to change their schedule, irrespective of their--or anyone else's--classification. If anything, changing the classifications two weeks before the season created the appearance of a *more* dangerous season. If a AAA team scheduled primarily AAA and AAAA teams in December and then was reclassified to AA, it could not change its schedule accordingly and would be stuck playing those AAA and AAAA teams.

13. Petitioner is likely to succeed on the merits.

14. There is no likelihood of harm to the WVSSAC if this *Petition* is granted. However, if this *Petition* is not granted, Petitioner and Williamstown High School, Parkersburg High School, and Parkersburg South High School, their respective student athletes, and the other teams competing in the state football playoffs will not have the opportunity to compete in the matchups *earned* as part of their planned scheduling. In and of itself, this is irreparable harm.

15. Respondent will not be harmed by injunctive relief that compels it to fairly implement its points system to as it would have if the August 2023 reclassifications had not occurred. While Respondent notes that re-calculating the playoff points will take time and effort, the Court notes that it made the initial change just two weeks before the season.

16. The Court is mindful that this decision has an impact on the West Virginia high school football playoffs, and more importantly, the student athletes who have competed and sacrificed all season. While the Court acknowledges that some programs may be negatively affected, notions of fairness trump arbitrariness. The implementation of classifications that negatively impact some schools, positively impact others, and leave the rest untouched, all within two weeks of the beginning of the season, should not supplant the schedules and understanding that *all* teams had when building their schedules.

17. There will be minimal disruption to the state football playoffs and all parties will be benefited as WVSSAC will be required to apply its points system to the schedules Petitioner and other similarly situated entities purposefully established in justifiable reliance on Respondent's December 2023 classifications.

18. The public interest favors the issuance of injunctive relief. Petitioner and its 3 high schools must be allowed to compete against a rightful opponent, as opposed to an opponent that was placed before them in an arbitrary and capricious manner. The

same is true for all other teams participating in state football playoffs as participating Class AAAA, Class AAA, Class AA and Class A members.

19. Petitioner has no other adequate remedy at law.

20. Exhaustion of administrative remedies is not required in this instance given that the first round of the playoffs will begin before an administrative appeal can be heard and therefor resort to those remedies may prejudice a subsequent judicial challenge. Further, the respective rankings of the various participants in the state football playoffs cannot be retroactively changed after the playoffs begin. In addition, the court finds that Respondent is biased or has otherwise predetermined the issues before it and that pursuing further administrative remedies at this point would otherwise be futile. The court further finds that irreparable injury will be caused to Petitioner's 3-member schools in this instance because the injury, which is great and permanent, would not be capable of being corrected through later administrative review, and that administrative remedies are not required in this instance because an overriding public interest calls for a prompt judicial decision.

WHEREFORE, be it hereby found, concluded and ordered that it is appropriate for the court to grant injunctive relief restraining and/or enjoining Respondent from computing the respective team rankings for the 2024 West Virginia state football playoffs upon reclassifications done on or after August 12, 2024, and that Respondent should be compelled to apply its point system to the classifications released to the public in January 2024.

So found, concluded and ordered this 9th day of November, 2024.

/s/ J.D. Beane
Circuit Court Judge
4th Judicial Circuit

Prepared and Submitted By:

/s/ Patrick E. McFarland

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The Board of Education of the County of Wood

and Williamstown High School, Parkersburg High School,

and Parkersburg South High School, interested parties.

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/ for more details.