



West Virginia E-Filing Notice

CC-26-2024-P-70

Judge: Richard Tatterson

To: Tanya Handley
handley@handleylawwv.com

NOTICE OF FILING

IN THE CIRCUIT COURT OF MASON COUNTY, WEST VIRGINIA
Point Pleasant Junior Senior High School by its Principal, William Cottrill and v. West Virginia
Secondary Schools Activities Commission
CC-26-2024-P-70

The following complaint was FILED on 11/11/2024 2:32:26 PM

Notice Date: 11/11/2024 2:32:26 PM

Elizabeth Jones
CLERK OF THE CIRCUIT COURT
Mason County
200 6th St
POINT PLEASANT, WV 25550

(304) 675-4400
Elizabeth.Jones@courtsww.gov

COVER SHEET

E-FILED | 11/11/2024 2:32 PM
CC-26-2024-P-70
Mason County Circuit Clerk
Elizabeth Jones

GENERAL INFORMATION

IN THE CIRCUIT COURT OF MASON COUNTY WEST VIRGINIA

Point Pleasant Junior Senior High School by its Principal, William Cottrill and v. West Virginia Secondary Schools Activities Commission

First Plaintiff: ☐ Business ☐ Individual ☐ Government ☒ Other First Defendant: ☐ Business ☐ Individual ☐ Government ☒ Other

Judge: Richard Tatterson

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: Tanya Handley, 419 Main St , Point Pleasant, WV 25550

SERVED PARTIES

Name: West Virginia Secondary Schools Activities Commission
Address: 2875 Staunton Turnpike, Parkersburg WV 26104
Days to Answer: 20 **Type of Service:** Filer - Private Process Server

IN THE CIRCUIT COURT OF MASON COUNTY, WEST VIRGINIA

POINT PLEASANT JUNIOR
SENIOR HIGH SCHOOL, by its
Principal WILLIAM COTTRILL, and its
Athletic Director JAMES HIGGINBOTHAM,
and FREDERICK W. HUNT, as parent and
next friend of REECE J. L. HUNT, minor,
PETITIONERS,

v.

CIVIL ACTION NO. 24-P-____
HONORABLE _____

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

RESPONDENT.

PETITION FOR EMERGENCY INJUNCTIVE RELIEF

Now comes Petitioners, Point Pleasant Junior Senior High School and Frederick W. Hunt, as parent and next friend of Reece J.L. Hunt, through counsel, Tanya Hunt Handley and Handley Law Office, PLLC, pursuant to West Virginia Code Section 53-5-1, *et seq.* and Rule 65 of the West Virginia Rules of Civil Procedure, and petition this Court to restrain and/or enjoin Respondent West Virginia Secondary Schools Activities Commission (“WVSSAC”) from commencing the West Virginia state football playoffs for the AAA division as it announced it intended to commence on November 9, 2024, and to instead order that said playoffs commence under the provisions requested herein. In further support of this Petition, the following is stated:

1. Petitioner Point Pleasant Junior Senior High School is a high school operated within Mason County, West Virginia, which has a football team that has been playing under the rules of the Respondent WVSSAC. William Cottrill is the principal of said school and James Higginbotham is the athletic director.

2. Petitioner Frederick W. Hunt is the father of Reece J.L. Hunt, a minor, who is a student at Point Pleasant Junior Senior High School, and a player on the football team for said school.

3. 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.

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 on the public secondary schools in their respective counties to said WVSSAC. 127 C.S.R. 141.

5. The WVSSAC may exercise the control, supervision and regulation of interscholastic athletic events of secondary schools. W.Va. Code Section 18-2-25(b).

6. 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.

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 such control, supervision and regulation, upon the same terms and conditions.

8. 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).

9. The Circuit Court of Mason County, West Virginia, has personal jurisdiction over the Respondent in that the Respondent transacts business in Mason County, West Virginia.

10. The Circuit Court of Mason County, West Virginia, has jurisdiction over the subject matter in that it involves, in part, the delegation by the Mason County Board of Education of the statutory mandate created by West Virginia Code Section 18-2-25. Moreover, some of the interscholastic athletic events which are at issue in this matter will occur in Mason County, West Virginia.

11. Venue lies in the Circuit Court of Mason County, West Virginia, in that the cause of action arose, in part, pursuant to the delegation by the Mason County Board of Education of the statutory mandate created by West Virginia Code Section 18-2-25.

12. Venue also lies in the Circuit Court of Mason County, West Virginia, because the WVSSAC's actions are directed to and impact Point Pleasant Junior Senior High School and each and everyone one of its football players, cheerleaders and band members.

13. 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.

14. In September, 2023, WVSSAC adopted revised Rules and Regulations which, among other things, included changes to Rule Section 127-3-10, which provided another classification, namely AAAA.

15. On or about December 20, 2023, the WVSSAC made its reclassification. *See Exhibit 1.*

16. Summer pre-season football practice began the first week of August, 2024, and the 2024 high school football season began on August 29, 2024.

17. Prior to the start of the 2024 football season, certain schools in the State of West Virginia appealed the WVSSAC's reclassification of said schools and, *prior to the start* of the football season, those appeals were dealt with and certain schools returned to their prior classification.

18. The 2024 football season was played by Point Pleasant Junior Senior High School, all Petitioners herein, and every high school in the State of West Virginia, with the understanding that the classification that was in effect prior to the season beginning, and the point system associated therewith, was to be the classification for the entire year.

19. Based on the classification and point system by the WVSSAC prior to the start of the football season, at the conclusion of the regular football season, Point Pleasant Junior Senior High School was ranked 15th in the Class AAA rankings and, as such, Point Pleasant Junior Senior High School Football Team, Senior Reece Hunt, and all football players, cheerleaders, band members, parents and community supporters were prepared for a playoff game.

20. 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 2).

21. 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 Point Pleasant Junior Senior High School and Hampshire High School no longer playing in a playoff

game and placed St. Albans High School (a team with a worse record than Point Pleasant) and Capital High School (also with a worse record than Point Pleasant) in their places.¹

22. In addition to the Circuit Court of Wood County, West Virginia, other circuits have awarded injunctive relief against the WVSSAC with regard to playoffs (concerning volleyball) based on issues with the reclassification system. (*See, Order, Tyler County Board of Education, et al. v. West Virginia Secondary Schools Athletic (sic) Commission*, attached hereto as Exhibit 2, and *Trinity Christian v. West Virginia Secondary Schools Activity (sic) Commission*, attached hereto as Exhibit 3).

23. In its Order, the Circuit Court of Tyler County, West Virginia, 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 the competition within the activity or sport itself. Hence, this decision is reached, intended to disrupt as least as possible, the student participation." (Tyler County Order, Pg. 2). Importantly, the WVSSAC in enacting the Tyler Circuit Court's order, did not eliminate any teams from the playoffs.

24. The WVSSAC's actions in removing Point Pleasant Junior Senior High School from the AAA playoffs is arbitrary and capricious, as it fails to recognize and take into account that Point Pleasant Junior Senior High School, and all other football teams in the State of West Virginia—including the teams in Wood County, West Virginia—played their entire football season with an understanding of what was required to make the playoffs.

25. 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

¹ Point Pleasant Junior Senior High School Football Team was unable to play one game during the season as Mingo Central High School had to cancel the game due to a power outage caused by the effects of Hurricane Helene.

capricious. *Hamilton v. W.Va. Secondary Sch. Activities Comm’n*, 182 W.Va. 158, 386 S.Ed. 2d 656 (1989).

26. The Supreme Court of Appeals of West Virginia has established a four-factor test for a circuit court’s consideration 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 and (4) the public interest. *Camden-Clark Mem’l Hosp. Corp. v. Turner*, 575 S.E. 2d 362, 366 (W.Va. 2002).

27. Petitioners are likely to succeed on the merits herein.

28. The actions of the WVSSAC in eliminating Point Pleasant Junior Senior High School, and all other like teams in AAA, from the playoffs is arbitrary and capricious.

29. If this Petition is not granted, there will be immeasurable irreparable harm to the Petitioners, Point Pleasant Junior Senior High School Football Team, Senior Reece Hunt, and all football players, cheerleaders, band members, parents and community supporters, all of whom will be deprived of the opportunity to play in a state playoff game—that they had been assured of with a victory at their game played on November 8, 2024, under the rules that had been in effect the entire regular season.

30. There will be no harm to the Respondent herein if this Petition is granted.

31. Further, by granting this Petition, no other football team will suffer harm as the relief sought is limited to adding the two teams from AAA who were shockingly and wrongly denied their hard-fought place in the playoffs by the arbitrary and capricious decisions of the WVSSAC.

32. It is in the best interest of the public for this Petition to be granted as the granting of this Petition would ensure that all schools—those who earned a playoff spot under the rules in

effect throughout the entire football season (i.e. Point Pleasant and Hampshire) and those who were subsequently arbitrarily and capriciously added by the WVSSAC (i.e. Capital High School and St. Albans High School).

33. Petitioners have no other adequate remedy at law.

34. 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 therefore resort to those remedies may prejudice a subsequent judicial challenge of the agency action because of the delay to relief being obtained.

35. Further, exhaustion of administrative remedies would be inadequate because Respondent is biased or has otherwise predetermined the issues before it.

36. Moreover, exhaustion of administrative remedies is also not required because it would be futile and therefore would not serve the underlying principles of the exhaustion doctrine given the past pattern of Respondent's decision making, the Respondent's position on the merits of a case in litigation over exhaustion, or other statements by the Respondent on the issue, because the Respondent is committed to denying relief due to precedent, regulation or policy.

37. Exhaustion of administrative remedies is not required in this instance because irreparable injury will be caused because the injury, which is great and permanent, would not be capable of being corrected through later review.

38. Exhaustion of administrative remedies is not required in this instance because an overriding public interest calls for a prompt judicial decision.

COUNT 1 – DETRIMENTAL RELIANCE

39. The Petitioners adopt by reference each and every allegation set forth in Paragraphs 1 through 38 as if fully set forth herein.

40. The Petitioners herein relied upon the classification and point system announced by the WVSSAC in August, 2024, throughout its football season and, in fact, secured a spot in the playoffs under that system.

41. The WVSSAC altered the ranking system the day after the regular season ended, depriving Petitioners of the playoff spot they had secured.

42. That, as a direct and proximate result of the detrimental reliance by Petitioners, they will suffer irreparable harm.

43. That the actions of the Respondent will cause the Petitioners, Point Pleasant Junior Senior High School Football Team, Senior Reece Hunt, and all football players, cheerleaders, band members, parents and community supporters, to suffer irreparable harm.

COUNT 2 – CLEARLY ERRONEOUS

44. The Petitioners adopt by reference each and every allegation set forth in Paragraphs 1 through 43 as if fully set forth herein.

45. That the actions of the WVSSAC in altering the ranking system the day after the regular season ended, depriving Petitioners of the playoff spot they had secured, is clearly in error.

46. That the factual basis upon which action is taken and decisions made by the Respondent, a quasi-public body, must be subject to review under a clearly erroneous standard, where the sole authority by which the Respondent is authorized to act is by and through the delegation of authority statutorily mandated.

47. That as a direct and proximate result of the clearly erroneous findings and the conclusions and the lack of authority by the WVSSAC, the Petitioners will suffer irreparable harm.

COUNT 3 – ARBITRARY AND CAPRICIOUS

48. The Petitioner adopts by reference each and every allegation set forth in Paragraphs 1 through 47 as if fully set forth herein.

49. That the actions of the WVSSAC in altering the ranking system the day after the regular season ended, depriving Petitioners of the playoff spot they had secured, is clearly arbitrary and capricious.

50. That 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 and capricious. See *Mayo v. West Virginia Secondary Schools Activities Commission*, 223 W.Va. 88, 672 S.E.2d 224 (2008); *Jones v. Board of Education*, 218 W.Va. 52, 61, 622 S.E.2d 289, 298 (2005)(applying Syl. Pt. 4, *Appalachian Power Co., v. State Tax Dept.*, 195 W.Va. 573, 466 S.E.2d 424 (1995)).

51. As a direct and proximate result of the arbitrary and capricious conduct of the WVSSAC, the Petitioners will suffer irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, the Petitioners, POINT PLEASANT JUNIOR SENIOR HIGH SCHOOL, by its Principal WILLIAM COTTRILL, and its Athletic Director JAMES HIGGINBOTHAM, and FREDERICK W. HUNT, as parent and next friend of REECE J. L. HUNT 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 AAA State Playoffs as laid out by said entity and ORDERING, following the precedent of the Circuit Court of Monongalia County, West Virginia, that

(1) the WVSSAC delay the AAA playoff games by one week;

- (2) the WVSSAC cause the following games to be played on November 15, 2024:
 - a. Point Pleasant Junior Senior High School v. St. Albans High School and
 - b. Hampshire County High School v. Capital High School;
- (3) the winners of those respective “play-in” games then move on to play in AAA playoffs;
- (4) that Petitioners be awarded their attorney fees incurred herein; and
- (5) All other relief to which the Court deems Petitioner is entitled.

POINT PLEASANT JUNIOR
SENIOR HIGH SCHOOL, by its
Principal WILLIAM COTTRILL, and its
Athletic Director JAMES HIGGINBOTHAM,
and FREDERICK W. HUNT, as parent and
next friend of REECE J. L. HUNT, minor,
PETITIONERS,

By Counsel,

s/Tanya Hunt Handley

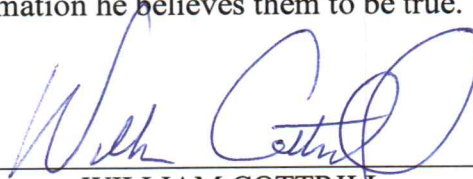
Tanya Hunt Handley (W.V. Bar No. 9070)
Handley Law Office, PLLC
419 Main Street
Point Pleasant, WV 25550
Telephone: (304) 675-5290
Facsimile: (304) 675-5297

VERIFICATION

STATE OF WEST VIRGINIA

COUNTY OF MASON, to-wit:

WILLIAM COTTRILL, as Principal of Point Pleasant Junior Senior High School, being first duly sworn, says that the facts and allegations contained in the foregoing document are true and correct, except such as are therein stated to be upon information and belief, and such as are therein stated to be upon information he believes them to be true.

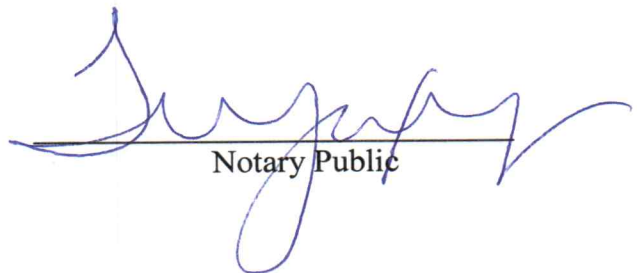


WILLIAM COTTRILL

Taken subscribed and sworn before me this 11th day of November, 2024.

My Commission expires: Feb. 11, 2025





Notary Public

VERIFICATION

STATE OF WEST VIRGINIA

COUNTY OF MASON, to-wit:

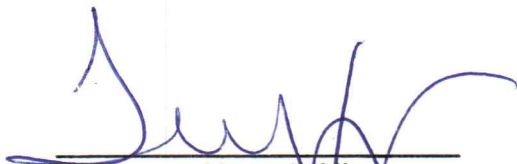
JAMES HIGGINBOTHAM, as Athletic Director of Point Pleasant Junior Senior High School, being first duly sworn, says that the facts and allegations contained in the foregoing document are true and correct, except such as are therein stated to be upon information and belief, and such as are therein stated to be upon information he believes them to be true.


JAMES HIGGINBOTHAM

Taken subscribed and sworn before me this 11th day of November, 2024.

My Commission expires: Feb. 11, 2025



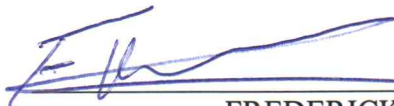

Notary Public

VERIFICATION

STATE OF WEST VIRGINIA

COUNTY OF MASON, to-wit:

FREDERICK W. HUNT, being first duly sworn, says that the facts and allegations contained in the foregoing document are true and correct, except such as are therein stated to be upon information and belief, and such as are therein stated to be upon information she believes them to be true.



FREDERICK W. HUNT

Taken subscribed and sworn before me this 11th day of November, 2024.

My Commission expires: Feb. 11, 2025

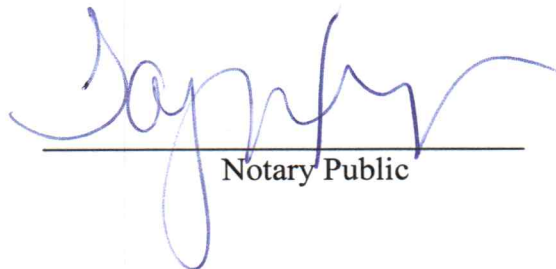

Notary Public

EXHIBIT I

School	Football, Girls Basketball, Baseball Softball			Total Score	Class
	80	10	10		
School	Enrollment Score	Location Score	Economic Score	Total Score	Class
Morgantown High School	1.00	0.99	0.47	94.6	AAAA
Musselman High School	0.98	0.86	0.77	94.3	AAAA
Huntington High School	0.96	0.94	0.26	88.7	AAAA
Cabell Midland High School	0.95	0.77	0.39	87.3	AAAA
Spring Mills High School	0.85	0.90	0.74	84.4	AAAA
Parkersburg High School	0.86	0.98	0.40	82.3	AAAA
Martinsburg High School	0.80	0.99	0.58	80.0	AAAA
Wheeling Park High School	0.82	0.93	0.38	78.6	AAAA
Jefferson High School	0.76	0.84	0.89	78.3	AAAA
Hedgesville High School	0.77	0.92	0.70	77.8	AAAA
Washington High School	0.76	0.76	0.85	76.7	AAAA
Parkersburg South High School	0.76	0.97	0.46	74.9	AAAA
University High School	0.75	0.92	0.43	73.7	AAAA
Hurricane High School	0.67	0.82	0.74	69.3	AAAA
George Washington High School	0.66	0.97	0.62	68.3	AAAA
Woodrow Wilson High School	0.69	0.97	0.27	67.8	AAAA
Riverside High School	0.62	0.82	0.35	61.3	AAAA
Preston High School	0.61	0.70	0.52	61.2	AAAA
John Marshall High School	0.60	0.83	0.45	61.0	AAAA
Oak Hill High School	0.60	0.79	0.33	58.8	AAAA
Capital High School	0.58	0.94	0.31	58.8	AAAA
Buckhannon Upshur High School	0.61	0.47	0.35	57.2	AAAA
Spring Valley High School	0.54	0.92	0.42	56.4	AAAA
Saint Albans High School	0.50	1.00	0.42	54.4	AAAA
South Charleston High School	0.51	0.97	0.38	54.1	AAAA
Bridgeport High School	0.45	0.92	0.71	52.4	AAA
Winfield High School	0.43	0.82	0.87	51.4	AAA
Brooke High School	0.46	0.92	0.50	51.0	AAA
Greenbrier East High School	0.55	0.32	0.35	51.0	AAA
Princeton Senior High School	0.53	0.50	0.37	50.9	AAA
Nitro High School	0.44	0.95	0.48	49.3	AAA
Fairmont Senior High School	0.42	0.99	0.50	48.8	AAA
Herbert Hoover High School	0.43	0.83	0.49	47.5	AAA
Shady Spring High School	0.43	0.89	0.33	46.5	AAA
Lincoln County High School	0.46	0.65	0.34	46.4	AAA
Hampshire Senior High School	0.44	0.60	0.44	45.9	AAA
Robert C. Byrd High School	0.40	0.97	0.35	45.0	AAA
Ripley High School	0.43	0.54	0.51	44.8	AAA
East Fairmont High School	0.37	0.94	0.56	44.8	AAA

Ritchie County High School	0.19	0.60	0.34	24.4	AA
Petersburg High School	0.22	0.24	0.44	24.3	AA
Wirt County High School	0.15	0.73	0.41	23.6	A
Sherman High School	0.17	0.66	0.30	23.6	A
Madonna	0.05	0.97	0.95	23.3	A
Greenbrier West High School	0.21	0.41	0.23	23.2	A
Trinity	0.05	0.96	0.91	22.8	A
Notre Dame	0.03	0.99	1.00	22.6	A
Magnolia High School	0.16	0.53	0.40	22.3	A
Tolsia High School	0.18	0.46	0.28	22.2	A
Wood County Christian	0.04	0.98	0.93	22.0	A
Parkersburg Catholic	0.03	0.96	0.93	21.3	A
Huntington St. Joseph	0.05	0.99	0.67	20.6	A
Wahama High School	0.14	0.51	0.43	20.4	A
Pendleton County Middle/High School	0.14	0.48	0.41	19.9	A
Cameron High School	0.10	0.70	0.50	19.6	A
Man Senior High School	0.18	0.28	0.20	19.2	A
Tucker County High School	0.16	0.21	0.46	19.2	A
Richwood High School	0.17	0.25	0.26	18.9	A
Clay-Battelle High School	0.10	0.71	0.34	18.6	A
East Hardy High School	0.11	0.44	0.41	17.6	A
River View High School	0.21	0.05	0.00	17.3	A
Hannan High School	0.08	0.69	0.38	17.2	A
Webster County High School	0.18	0.06	0.18	17.1	A
Mount View High School	0.17	0.31	0.00	17.1	A
Greater Beckley	0.02	0.94	0.56	16.6	A
Pocahontas County High School	0.16	0.09	0.33	16.6	A
Tug Valley High School	0.18	0.15	0.06	16.4	A
Calhoun Middle/High School	0.14	0.24	0.20	15.6	A
Valley High School (W)	0.07	0.52	0.43	15.2	A
Gilmer County High School	0.13	0.23	0.25	15.1	A
Meadow Bridge High	0.07	0.62	0.33	15.0	A
Montcalm High School	0.10	0.32	0.28	14.0	A
Hundred High School	0.04	0.65	0.41	13.6	A
Tygarts Valley Middle/High School	0.13	0.00	0.34	13.5	A
WV School for the Blind	0.01	0.65	0.62	13.4	A
WV School for the Deaf	0.01	0.65	0.62	13.4	A
Paden City High School	0.05	0.49	0.42	13.4	A
Paw Paw High School	0.02	0.66	0.37	12.2	A
Van Junior/Senior High School	0.05	0.44	0.25	10.7	A
Union Educational Complex	0.03	0.43	0.35	10.3	A
Harman High School	0.01	0.00	0.41	5.2	A
Pickens Elementary/High School	0.00	0.07	0.33	3.9	A

North Marion High School	0.39	0.87	0.44	44.3	AAA
Lewis County High School	0.40	0.65	0.37	42.0	AAA
Grafton High School	0.36	0.74	0.46	41.0	AAA
Keyser High School	0.36	0.68	0.43	40.0	AAA
Point Pleasant Junior/Senior High School	0.39	0.42	0.39	39.6	AAA
Elkins High School	0.41	0.19	0.41	38.8	AAA
Weir High School	0.31	0.97	0.42	38.7	AAA
Berkeley Springs High School	0.33	0.67	0.57	38.6	AAA
Sissonville High School	0.32	0.86	0.42	38.0	AAA
Nicholas County High School	0.38	0.38	0.34	37.5	AAA
Wayne High School	0.31	0.80	0.43	37.3	AAA
Independence High School	0.32	0.89	0.23	36.9	AAA
Frankfort High School	0.26	0.89	0.72	36.7	AAA
Pikeview High School	0.33	0.59	0.39	36.3	AAA
Lincoln High School	0.29	0.88	0.44	36.1	AAA
Chapmanville Regional High School	0.36	0.42	0.23	35.4	AAA
Phillip Barbour High School Complex	0.32	0.61	0.31	34.8	AA
Oak Glen High School	0.27	0.85	0.44	34.4	AA
Bluefield High School	0.35	0.35	0.30	34.1	AA
Scott High School	0.30	0.61	0.30	33.3	AA
Liberty (Harrison) High School	0.25	0.94	0.34	32.8	AA
Wheeling Central	0.16	1.00	0.95	32.3	AA
Poca High School	0.23	0.91	0.39	31.7	AA
Williamstown High School	0.19	0.98	0.61	31.3	AA
Westside High School	0.30	0.46	0.23	31.1	AA
Liberty (Raleigh) High School	0.25	0.81	0.27	30.7	AA
Roane County High School	0.28	0.40	0.30	29.5	AA
James Monroe High School	0.26	0.43	0.43	29.3	AA
Buffalo High School	0.20	0.69	0.61	29.2	AA
South Harrison High School	0.19	0.86	0.52	29.1	AA
Clay County High School	0.29	0.36	0.22	29.0	AA
Moorefield High School	0.27	0.36	0.37	28.6	AA
Logan High School	0.30	0.26	0.20	28.6	AA
Wyoming County East High School	0.24	0.62	0.25	28.3	AA
Ravenswood High School	0.22	0.62	0.42	28.0	AA
Mingo Central Comprehensive High School	0.34	0.02	0.06	27.6	AA
Braxton County High School	0.27	0.27	0.28	27.5	AA
Midland Trail High School	0.21	0.62	0.37	27.0	AA
Charleston Catholic	0.10	1.00	0.89	27.0	AA
Doddridge County High School	0.18	0.65	0.48	26.0	AA
St. Marys High School	0.16	0.74	0.54	25.5	AA
Summers County High School	0.21	0.68	0.21	25.3	AA
Tyler Consolidated High School	0.20	0.45	0.48	25.1	AA

/s/ C. Richard Wilson
Circuit Court Judge
Ref. Code: 24SLEA5MX

Monongalia County Circuit Clerk
Donna J. Hidock

IN THE CIRCUIT COURT OF TYLER COUNTY, WEST VIRGINIA

**TYLER COUNTY BOARD OF EDUCATION
AND TYLER CONSOLIDATED HIGH SCHOOL**

Petitioner,

vs.

**Civil Action No CC-48-2024-C-24
Honorable Charles Richard Wilson**

**THE WEST VIRGINIA SECONDARY
SCHOOLS ATHLETIC COMMISSION
("WVSSAC"),**

Respondent.

**TEMPORARY RESTRAINING ORDER
GRANTING INJUNCTIVE RELIEF**

INTRODUCTION

The matter before the Court is one of significant attention not only in Tyler County, West Virginia, specifically concerning Tyler Consolidated High School (hereinafter "TCHS"), but also throughout West Virginia. The decision herein potentially interests several schools and their extracurricular activities and in particular, their participation within the A-AAAA classification system as determined by the West Virginia Secondary Schools Activities Commission (hereinafter "WVSSAC"). However, this decision is specific to Tyler County Consolidated High School.

The WVSSAC is a non-profit private organization which is granted the administration of interscholastic sports pursuant to West Virginia Code § 18-2-25, which may be delegated by the County Boards of Education. The WVSSAC is made up of its member schools (middle and secondary), including Tyler Consolidated High School in West Virginia who voluntarily request the WVSSAC to oversee their competition in interscholastic sports. The WVSSAC's rules and

regulations are promulgated by these member schools (including the petitioner, Tyler Consolidated High School) during its annual Board of Control meeting usually in late March or April of each year.

This decision is reached while the classification system is, to say the least, in a highly contested state of change, criticism, review, and fluidity. Unfortunately, timing such a change or transition, might likely never occur during an optimum period throughout any academic year where any impacts would be lessened, and a course can be charted providing activities or athletic directors, principals, coaches and most importantly, student athletes and participants sufficient time for adjustment and preparation. Nonetheless, as far as the 2024-2025 academic year is concerned, TCHS and perhaps other institutions like it, are entitled to some semblance of assurance of stability until such time as the administrative decision-makers in their capacity determine the classification system to be utilized, after due discussion, input and consideration and analysis. While a consensus may never be achieved, ultimately, no doubt, a classification system will be ushered into the West Virginia extracurricular landscape.

There is no criticism that periodic review of the WYSSAC classification system is necessary. Multiple factors influence the composition of any particular school as noted in the briefs of the respective parties hereto. Presently, however, there exist inescapable conflicts of opinion and considerable disagreement as to those factors, how each factor is analyzed and assessed, and the proportional importance of each such factor. Those most impacted by any classification 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.

The issue before this Honorable Court in this action now is whether the classification of Tyler Consolidated High School as AA in volleyball and cheer, as well as other sports, should be set aside and the WVSSAC be required to have Tyler Consolidated High School compete at A level classification system for the current 2024-25 sports season, thus immediately affecting the upcoming volleyball and cheer State competition.

FINDINGS OF THE COURT

On a prior day the Petitioners, TYLER COUNTY BOARD OF EDUCATION and TYLER CONSOLIDATED HIGH SCHOOL, filed a Petition seeking a temporary restraining order and an injunction prohibiting the West Virginia Secondary Schools Activities Commission ("WVSSAC") from utilizing their new classification system and reclassifying Tyler Consolidated Board from Single A Classification to Double A classification

This Court heard arguments of Counsel in support of and in defense of the Petition on Wednesday, October 16, 2024. After having reviewed the pleadings of the parties, and having heard the arguments of counsel this Court does hereby **FIND** the following:

1. This Court has jurisdiction of this matter pursuant to the provisions of West Virginia Code §18-2-25 and West Virginia Code of State Regulations §127-1-13, Title IX of the Educational Amendments of 1972, 20 U.S.C. 1681, 1682, and 42 U.S.C. Sec. 1681. 1682 and 42 U.S.C. Sec. 18116. Further, this Court has jurisdiction to the extent that Tyler County Board of Education and Tyler Consolidated High School are only seeking to remain in Single A for all sports. The "Final Order" of the Review Board did not change the classifications, but rather acknowledged inadequacies and sought further investigations and deliberations. To that end, the

classifications remain so in that no change was made administratively, despite appeal of the same.

2. Venue is proper in this Court by virtue of the provisions of West Virginia Code §14-2-2.

3. In March 2023, pursuant to the WVSSAC Rules and Regulations 127-3-10, the Classification of member schools came before the Board of Control for consideration of an expansion of the number of classifications in certain sports from three (3) to four (4) following a pilot program which had been approved and implemented in 2019, for girls and boys Basketball only. The Board of Control (of which Tyler Consolidated High School is a member and likely participated, considered proposals, and voted on all such rules and regulations) had previously met in the Spring of 2019, to consider expanding on a pilot basis to four (4) classifications from three (3) classifications for boys' and girls' basketball competition. The Board of Control, upon a proposal of the rule by a member school, notified the member schools of the rule proposal change for girls' and boys' basketball, gave notice of a meeting date, was presented the rule for consideration, held a period of discussion, then voting on a subsequent day. The 2023 proposal to expand additional sports to four (4) classifications passed, including football, volleyball, softball, baseball, and cheer.¹

¹ In the instant matter, the petitioner, Tyler County Board of Education and Tyler Consolidated High School, did take action to appeal to the four (4) classification system and was granted relief, along with certain other schools; however, the Review Board had directed the Board of Directors to further review the classifications of the schools for 2024-2027, which is to occur on October 24, 2024, when a Board of Control meeting is to be convened to review proposals from member schools which were due to be submitted by October 9, 2024. The petitioner originally filed its appeal with the West Virginia State Board of Education which advised it its appeal had to start with the WVSSAC Board of Directors following the December 2023/January 2024 classification system distribution by the WVSSAC Board of Directors. The WVSSAC Board of Directors, upon hearing Tyler Consolidated High School appeal on May 15, 2024, denied its waiver request. Tyler Consolidated High School was notified by a letter of denial of waiver of its right to appeal the Board of Directors' decision to the Review Board as appointed by the West Virginia State Board of Education and as set forth in Rules and Regulations 127-2-6. Tyler Consolidated High School appealed to the Review Board on the issue which was decided. Their appeal resulted in administrative relief of waivers to the eleven (11) schools, including Tyler Consolidated High School for football, but no other sports.

4. The facts are straight forward, and the details of the process are not in significant dispute between the parties. The WVSSAC revealed their classification scores and assignment of class members within each of the four classes. Thereafter, the Petitioner claimed lack of competitive balance and inconsistencies in their own scores, requested the data used, the details of the investigation and an explanation of those scores and sought waiver pursuant to Section 127-3-10.7. All were summarily denied by the WVSSAC Board Of Directors without sufficient explanation. The Petitioner filed their first appeal to the WVSSAC Board of Review ("BOR") (a total of eleven appeals were filed and nine heard by the BOR in April 2024). The BOR noted the inconsistency issues and the lack of competitive balance and remanded the cases to the BOD for reconsideration and explanation of why and how the so-called "cut lines" dividing the four classes were established. The Appellant schools were again summarily denied. As to cut lines, the only response was "this was how we always do it." From these adverse second decisions, the schools have appealed to the BOR for a second time.

5. Meanwhile, Petitioner and other school systems have sought relief in the Circuit Court of other counties.

6. The BOR has considered the second appeal before them.

7. The Board of Review found "After due consideration, it was the unanimous decision of the Board of Review (BOR) to remand all nine [appeals] to the Board of Directors (BOD) for further information and consideration."

8. Accordingly, the Court takes Judicial Notice of the WVSSAC's Board of Review's Order, as it is the administrative appeal body of the WVSSAC, and the succeeding actions of the Board of Directors in reclassifying the original 11 schools that sought review as well as the additional 11 schools that were granted summary relief.

Rather, the Board of Control met on October 24, 2024, at which time Tyler Consolidated High School may participate in discussing the future classifications.

9. There is no need to review and analyze the classification rule since a determination has already been made that it produces illogical results and fails to accomplish its intended purpose.

10. The Board of Review (BOR) Order, August 12, 2024, acknowledges that the current "classification rule failed to accomplish the purpose for which it was intended." The cases were remanded back to the WVSSAC Board of Directors for further investigation and deliberations on (i) the entire reclassification model scores, (ii) its inconsistencies and lack of transparency, and (iii) proper classification of all schools for all applicable sports for 2024-2027, and football for 2025-2027.

11. Further, the BOR found: "Appellants Preston High School, John Marshall High School, Oak Hill High School, Spring Valley High School and Saint Albans High School are among the nine AAAA schools who were not placed within a competitively balanced classification and the waiver requests should have been granted because the classification rule failed to accomplish the purpose for which it was intended. These schools should be assigned to class AAA."

Similarly, the other appellant schools should have had their waiver requests granted by the BOD because competitive balance was not achieved and, therefore, the classification rule failed to accomplish the purpose for which it was intended. Sissonville High School, Wayne High School and Frankfort High School should be assigned to class AA and St. Mary's High School, Tyler Consolidated High School and Petersburg High School should be assigned to class A.

Because the eleven waivers (Tyler County was one of the eleven appeals) should have been granted, there is an impact on other schools in the classes. For that reason, the BOR has revised the membership of the four classes to follow as nearly as possible the cut lines previously proposed by the Executive Director and assistants but which the

BOD rejected. Additionally, these cut lines maintain the WVSSAC tradition of attempting to balance the number of football playing schools in each class except AAAA. The BOR notes that pursuant to Section 127-3-10.3, a school may choose to compete in any class above its classification if proper notification to the WVSSAC is made.

12. The WVSSAC BOR remanded the cases to the WVSSAC BOD stating: "The BOR recognizes that Rule 127-3-10 vests the classification process initially in the BOD with assistance from the Executive Director. But the decision is subject to the waiver provisions of Section 127-3-10.7 and to review by the BOR. The BOR believes it is preferable to have the BOD make decisions on the appropriate cut lines. However, the 2024 football season is upon us and the BOR is concerned about the injury risk for which there is ample evidence by making undermanned football programs compete against larger schools. Therefore, the BOR believes the wiser course of action is to grant the waivers (and the resulting revisions to the class membership) for the 2024 football season only and remand the eleven cases to the BOD for further consideration of the requests for waivers and to include further investigation and deliberations on the entire classification model scores and proper classification for all schools for all sports for 2024-2027 and football for 2025-2027."

13. Footnote 1 in the WVSSAC BOR ORDER made particular note that the scoring methodology on location and economics leads to illogical results and the WVSSAC BOD should investigate those inconsistencies and seek more logical results.

14. The WVSSAC BOR does not possess the inherent authority to enjoin the actions of the WVSSAC. Under *Mayo v. W.Va. Secondary Sch. Activities Comm'n*, 223 W.Va. 88, 95 n. 17, 672 S.E.2d 224, 231 n. 17 (2008). A SSAC 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.E.2d 656 (1989) (finding the SSAC's rule unenforceable under W.Va. Code § 18-2-25) this Court has the authority to do so.

15. That although the WVSSAC's own Board of Review remanded the eleven cases back to the Board of Directors with specific instructions, the WVSSAC's Board of Directors has failed the student athletes of the State of West Virginia, specifically Tyler Consolidated High School and despite a scheduled meeting of the Control Committee for the 24th day October, 2024, however, such process will not result in any timely remediation of the inadequacies of the classification system nor is the same tantamount to compliance with the Board of Review directive. Therefore, the Board of Directors has required the Court to act.

16. That the WVSSAC's Board of Directors has chosen to ignore their own Board of Review directives and continue to delay the matter.

17. The harm resulting from a failure to enjoin is imminent and irreparable inasmuch as the various sports seasons affected by the improper classification are upon us and prevention is not accomplished by any alternative remedy.

18. The Petitioner is likely to prevail on the merits inasmuch as the Respondent has already acknowledged failure of the current classification system.

19. It is in the public interest that the high school athletes participate in high school sports in a scenario that provides for a safe-and competitive balance among teams. This calculus applies equally to all activities, athletic or otherwise.

20. The Court in awarding the relief sought by Petitioner is not exceeding its authority or regulating any sovereign authority of Respondent. Rather, the Courts' action is an acknowledgment of Respondents' finding regarding a failed classification system

and implementing the only reasonable remedy therefor, to-wit: effectively vacating such system by prohibiting its implementation. Indeed, at this juncture, the only viable option or course of action available to Petitioners is judicial intervention.

21. That due to the action/inaction of the WVSSAC Board of Directors, the male and female student athletes are being treated differently, with the boys Football team being Single A and girls sports being Double A.

22. This Court agrees with the logic of the WVSSAC BOR and FINDS that the Petitioner is entitled to limited Preliminary Injunctive Relief requested herein as follows:

Now, Therefore, IT IS ORDERED that during the pendency of this action the above-named Respondent, and their officers, agents, employees, representatives, and all persons acting in concert or participating with them, are temporarily enjoined and restrained from changing the classification of Petitioner from A to AA for the sports of volleyball and cheer.

The Court reserves jurisdiction to modify this injunction and afford additional relief from time to time as the ends of justice may require.

The Clerk of this Court shall send copies to Counsel through the CourtsPlus E-Filing System.

IT IS SO ORDERED this 30th day of October, 2024.



Judge Charles Richard Wilson

/s/ CSScott
Circuit Court Judge
Ref. Code: 24NDZ3NEX

EXHIBIT 3

E-FILED | 11/4/2024 9:54 PM
CC-31-2024-P-303
Monongalia County Circuit Clerk
Donna J. Hidock

In the Circuit Court of Monongalia County, West Virginia

TRINITY CHRISTIAN SCHOOL,
Plaintiff,

v.

Case No. CC-31-2024-P-303
Judge Cindy Scott

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

ORDER GRANTING EMERGENCY INJUNCTIVE RELIEF

On the 4th day of November, 2024, came Petitioner Trinity Christian School ("Trinity"), by counsel, Kayla Cook, Esq. and Bowles Rice LLP, and Respondent, West Virginia Secondary Schools Activity Commission ("WVSSAC"), by counsel Stephen Gandee, Esq., and Robinson & McElwee PLLC, appearing in person, and interested parties, The Board of Education of the County of Wood ("Wood County Schools"), and Williamstown High School, and The Board of Education of the County of Wetzel ("Wetzel County Schools"), and Magnolia High School, appearing remotely via Microsoft Teams, also appearing by counsel, Kayla Cook, Esq. and Bowles Rice, pursuant to Petitioner's *Petition for Emergency Injunctive Relief*.

The Court, after reviewing the *Petition* and its supporting exhibits and hearing oral arguments from counsel, makes the following findings of fact and conclusions of law:

1. Petitioner Trinity is a West Virginia non-profit Christian School operating a private, parochial school in Morgantown, West Virginia.
2. Respondent West Virginia Secondary Schools Activity Commission ("WVSSAC") is a nonprofit, 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. Interested Parties, The Board of Education of the County of Wood, West Virginia ("Wood County Schools") and The Board of Education of the County of Wetzel, West Virginia ("Wetzel County Schools") , maintain a corporate character and are authorized to join this action under West Virginia Code § 18-5-5. W. Va. Code § 18-5-5. Williamstown High School is a school operated within Wood County, West Virginia by Wood County Schools. Magnolia High School is a school operated within Wetzel County, West Virginia by Wetzel County Schools.

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. 127 C.S.R. 1.4.1

5. The WVSSAC may exercise the control, supervision, and regulation of interscholastic athletic events of secondary schools. W. Va. Code § 18-2-25(b).

6. 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.

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. Trinity has delegated its statutorily mandated control, supervision and regulation of interscholastic athletic events to the WVSSAC as set forth in West Virginia Code § 18-2-25(c).

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 Monongalia County has personal jurisdiction over the Respondent, in that the Respondent is transacting business with Trinity in Monongalia County, West Virginia.

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

12. Venue lies in the Circuit Court of Monongalia 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. Tyler Consolidated is one of eleven (11) schools who have challenged and/or appealed its re-classification to WVSSAC's Board of Review, alleging inconsistencies and lack of competitive balance in the classes. The Board of Review Order dated August 12, 2024, acknowledged that the current "classification rule failed to accomplish the purpose for which it was intended," and remanded the appeals to the WVSSAC Board of Directors for further information and consideration on (i) the entire reclassification model scores, (ii) its inconsistencies and lack of transparency, and (iii)

proper classification of all schools for all applicable sports for 2024-2027, and football for 2025-2027 school years.

14. In response to the Board of Review's Order, the WVSSAC granted waivers to the 11 schools who were "not placed within a competitively balanced classification," and reclassified those schools for the 2024 football season only.

15. On or around October 1, 2024, Tyler Consolidated High School filed a Petition in the Circuit Court of Tyler County, West Virginia, seeking 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. Oral arguments were heard on October 16, 2024. (Civil Action No. CC-48-2024-C-24).

16. On October 30, 2024, the Circuit Court of Tyler County, West Virginia entered a Temporary Restraining Order ("TRO") Granting Injunctive Relief. The TRO temporarily enjoined and restrained the WVSSAC from changing the classification of the Tyler Consolidated from Class A to Class AA for the sports of volleyball and cheer for the 2024-2025 sports season.

17. At the time the TRO was entered, Tyler Consolidated had already begun play in Class AA, Region I, Section 1 of the Sectional Tournament of the West Virginia State Volleyball Tournament, which is sanctioned by the WVSSAC, and began on or around October 28, 2024.

18. 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.

19. Within the four classifications, the WVSSAC divided the schools within each particular "Class" into four regions, with each region having two sections.

20. The girls' volleyball season commenced August 5, 2024. Following the end of the regular season, eligible teams compete to earn the right to compete at the State Girls' Volleyball Tournament ("State Tournament") in Charleston, West Virginia, which is a WVSSAC sanctioned event.

21. Pursuant to the WVSSAC's regulations on tournament play, each section is required to play a Sectional Tournament amongst all of its participating schools. The winner of that tournament is considered the "Sectional Champion." In the following round of play, the teams in each section compete against the teams in the other section, with the matches being scheduled based on "seeding" (i.e.: the winner of one section competing against the second place in the other section, etc.). The winners of those two games are then considered the "Co-Regional Champions." Regional matches are scheduled to be played November 5-7, 2024. The Co-Regional Champions then advance to the State Tournament in Charleston, West Virginia.

22. As a result of this format, a total of eight (8) teams from each classification who have competed at both the sectional and regional levels will earn the opportunity to advance to the State Tournament to compete for a State Championship title in each respective class. (i.e.: there will be a state champion in Class A, AA, AAA, and AAAA.)

23. The State Tournament will be held at the Charleston Coliseum and Convention Center November 12-14, 2024.

24. Pursuant to the WVSSAC's classification system, Trinity's volleyball team is a member of the Class A, Region I, Section 1.

25. Williamstown High School is participating in the Sectional Tournament, under the WVSSAC's classification system as a member of Class AA, Region I, Section 2.

26. Magnolia High School is participating in the Sectional Tournament, under the WVSSAC's classification system as a member of Class A, Region I, Section 2.

27. The Sectional Tournament began October 28, 2024.

28. The TRO was issued on Tuesday, October 30, 2024. At the time the TRO was issued, tournament play had already begun and had progressed to the Sectional Championships.

29. Prior to the entry of the TRO, Tyler Consolidated had been competing in the Sectional Tournament, under the WVSSAC's classification system as a member of Class AA, Region I, Section 1.

30. Trinity is the Sectional Champion of Class A, Section 1. Magnolia is the Sectional Champion of Class A, Section 2. Therefore, each entered regionals as a No. 1 seed.

31. Weirton Madonna was the No. 2 seed in Section 1, and St. Mary's High School was the No. 2 seed in Section 2.¹

32. On October 30, 2024, the Class A Sectional Championship games were played and the Class A Region I matchups were set. Trinity was scheduled to play St. Mary's High School on Tuesday, November 5, 2024, at Trinity High School at 7:00 p.m. Magnolia was scheduled to play Weirton Madonna on Tuesday, November 5, 2024, at Magnolia High School at 7:00 p.m. This was the same day the TRO was entered.

33. On Tuesday, October 29, 2024, the day before the TRO was entered, Tyler Consolidated defeated Wheeling Central High School in the semi-finals, to advance to the Class AA, Region I, Section I Sectional Championship against Oak Glen High School, which was scheduled for Thursday, October 31, 2024.

¹ St. Mary's High School was also reclassified by WVSSAC as Class AA for the 2024-2025 school year, and competed a majority of this volleyball season in Class AA. However, prior to the Sectional Tournament, St. Mary's High School successfully challenged the re-classification and by court order, WVSSAC was directed to classify St. Mary's High School as Class A. St. Mary's Class A classification occurred prior to the beginning of the State Tournament and they competed in the Sectional Tournament within Class A, Region I, Section 2. St. Mary's lost to Magnolia in the semi-finals, resulting in them being seeded as the No. 2 team in Section 2.

34. In granting the TRO, the Court 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." (TRO, at Page. 2).

35. Following the entry of the TRO, on Thursday, October 31, 2024, as Tyler Consolidated was preparing to head to the Sectional Championship against Oak Glen, WVSSAC canceled the matchup, informing the schools that due to the TRO, Tyler Consolidated would be competing on Class A, Section 2 for the remainder of the tournament. The WVSSAC then allowed Oak Glen to advance as the Class AA, Section 1 Sectional Champion by default.

36. Also on October 31, 2024, in response to the TRO, the WVSSAC arbitrarily and capriciously attempted to shoehorn Tyler Consolidated into the Class A Sectional Tournament *mid-tournament* and *after* the Sectional Champions for Class A had been decided, which significantly disrupted the Tournament for both Class A and Class AA, and negatively prejudiced and harmed the participants from each.

37. Despite the fact that Sectional Champions for Class A, Region 1 had already been decided (Trinity and Magnolia), and despite the fact that seeding had already been decided within Section 1 and 2, and despite the fact that Tyler Consolidated had not competed in a Sectional Championship, WVSSAC arbitrarily created an additional and brand new "play-in" sectional match *mid-tournament* within Section 2, scheduled for November 2, 2024 at 1:00 p.m. between St. Mary's High School and Tyler Consolidated, wherein the winner would advance to play Trinity in the Regional Championship. At the time, St. Mary's High School had already competed in the

Sectional Tournament against Magnolia, and St. Mary's had already been the runner-up/second seed in its region.

38. Trinity and St. Mary's High School's student athletes earned the right in the Sectional Tournament to compete against each other in the Regional Championship. This had already been decided prior to the WVSSAC's response to the entry of the TRO.

39. WVSSAC substantially, unfairly, and unevenly disrupted the tournament play for both Class A and Class AA teams. WVSSAC allowed Oak Glen to advance as the Class AA Section 1 Sectional Champion, without competing in a Sectional Championship. Because the Section 1 Sectional Championship was never played, there was no runner-up team to play against Williamstown, the Section 2 Sectional Championship. The WVSSAC then "brought back" Wheeling Central High School (who had been previously eliminated in the semi-final round) to play against Williamstown in the Regional Championship.

40. As Judge Wilson explained in issuing the TRO, "[Tyler Consolidated] and perhaps other institutions like it, are entitled to some semblance of assurance of stability until such time as the administrative decision-makers in their capacity [WVSSAC] determine the classification system to be utilized, after due discussion, input, and consideration and analysis." However, the WVSSAC's response to Judge Wilson's TRO, once again disrupted the last remaining semblance of stability and assurances these student athletes had in set bracket play during their volleyball state tournament. Sectional Champions had already been decided, rankings had been made, and regional matchups had been set.

41. The TRO did not direct the WVSSAC to insert Tyler Consolidated into the sectional tournament, mid-tournament, after Sectional Champions and seeding had already been decided, and the WVSSAC's decision to do so in response to the TRO is

arbitrary and capricious.

42. The WVSSAC does not dispute that its response to the TRO disrupted the tournament play for both Class A and Class AA teams.

43. Petitioners properly filed this matter pursuant to Rule 65(b) of the West Virginia Rules of Civil Procedure. The Supreme Court of Appeals of West Virginia has set forth four factors for the Court's consideration 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*, 575 S.E.2d 362, 366 (W. Va. 2002).

44. The Court FINDS that the WVSSAC's decision to disrupt the scheduling and bracket play of the tournament, mid-tournament, and after Sectional Championships had already been awarded and teams had been seeded, was unreasonable, arbitrary, and capricious.

45. The Court FINDS that irreparable harm is likely to occur to Petitioner Trinity and its student athletes if the *Petition* is not granted, as Trinity and its student athletes will not have the opportunity to compete in the matchups earned as part of the Regional Volleyball Tournament.

46. The Court FINDS that Trinity and St. Mary's High School's student athletes earned the right in the Sectional Tournament to compete against each other in the Regional Championship where the winner would advance to the State Tournament.

47. The Court FINDS that the WVSSAC faces no likelihood of harm if an injunction is granted.

48. The Court FINDS that Petitioner Trinity is likely to succeed on the merits.

49. The Court FINDS that by granting the *Petition*, there will be minimal disruption to the State Tournament and all parties will be benefited as the WVSSAC will be required to comply with the TRO in a manner that protects the interests of all competing teams and student athletes.

50. The Court FINDS that the public interest favors the issuance of injunctive relief. Petitioner Trinity must be allowed to compete against a rightful opponent, as opposed to an opponent that was placed arbitrarily and capriciously in the midst of the ongoing Sectional Volleyball Tournament.

51. The Court FINDS that Petitioner Trinity has no other adequate remedy at law.

IT IS, THEREFORE, ORDERED:

- a) Petitioner's *Petition for Emergency Injunctive Relief* is GRANTED;
- b) Respondent is enjoined and barred from altering, interfering with, or disrupting the Regional Tournament for Class A, Region 1, Sections 1 and 2, or otherwise interfering with or preventing Trinity from competing in the Regional Tournament against St. Mary's High School on November 5, 2024;
- c) WVSSAC is enjoined and barred from altering, interfering with, or disrupting the schedule/progression of the State Tournament, which includes the Sectional Tournament and Regional Tournament, as it relates to Trinity;
- d) WVSSAC is required to return Trinity to its original position and allow the Sectional and Regional Tournaments to proceed as originally decided in matches competed prior to October 31, 2024, before the WVSSAC's implementation of the TRO;

- e) WVSSAC is required to permit Trinity to play St. Mary's High School on November 5, 2024, at Trinity High School at 7:00 p.m. in the Regional Championship, wherein the winner would be considered "Co-Regional Champion" and advance to the State Tournament which will be held in Charleston, West Virginia November 12 through 14, 2024.
- f) The Clerk of this Court shall send copies to Counsel through the CourtsPlus E-Filing System.

/s/ CSScott
Circuit Court Judge
17th Judicial Circuit

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

Prepared by:

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