

**JOHN NIEHLS, ELIZABETH WEIR AND
KAITLIN DERSTINE**

Plaintiff,

v.

**MONTGOMERY COUNTY BOARD OF
COMMISSIONERS, VALERIE A.
ARKOOSH, KENNETH E. LAWRENCE,
MONTGOMERY COUNTY DEPARTMENT
OF HEALTH AND HUMAN SERVICES,
JANET PANNING, RICHARD S.
LORRAINE, MONTGOMERY COUNTY
BOARD OF HEALTH, MICHAEL B.
LAIGIN, FRANCIS
JEYARAJ, STEVEN KATZ, BARBARA
WADSORTH, AND MARTIN D.
TRICHTINGER**

Defendants.

COURT OF COMMON PLEAS OF
MONTGOMERY COUNTY,
PENNSYLVANIA

No. 2020-19389

DECLARATION OF LAUREN HUGHES, ESQUIRE

Lauren Hughes, Esquire, solemnly declares under penalty of perjury under the laws of the United States of America and the Commonwealth of Pennsylvania as follows:

1. I am a Senior Assistant Solicitor for Montgomery County and I submit this Declaration in Opposition to the Petition for Special and Preliminary Injunction of Plaintiffs.
2. On March 6, 2020, the Commonwealth of Pennsylvania issued a state-wide Declaration of Emergency due to the wide-spread outbreak of the Corona Virus (COVID-19).
3. On March 8, 2020, the Montgomery County Commissioners similarly declared a disaster emergency in Montgomery County because of the wide-spread outbreak of COVID-19 (the "Emergency Declaration").

4. The Emergency Declaration was extended by the Montgomery County Commissioners four times, with the last extension by Resolution dated October 1, 2020 and lasting for a period of sixty days. (Attached hereto as Exhibit "A" is a true and correct copy of the Resolution of the Montgomery County Commissioners extending the Emergency Declaration for a period of sixty days).

5. That Emergency Declaration currently remains in effect in Montgomery County.

6. On April 20, 2020, the General Assembly passed COVID-19 related amendments to a number of statutes, including the Sunshine Law. 35 P.S. §5741.

7. Section 5741 (f) provides:

Public participation.--To the extent practicable, an agency, department, authority, commission, board, council, governing body or other entity of a political subdivision shall allow for public participation in a meeting, hearing or proceeding through an authorized telecommunication device or written comments. Written comments may be submitted to the entity's physical address through United States mail or to an e-mail account designated by the entity to receive the comments.

8. Section 5741(j) defines "Authorized telecommunications device" to include any device which permits, at a minimum, audio communication between individuals.

9. On November 10, 2020, the Montgomery County Board of Health (the "Board") gave notice of a special meeting to be held at noon on November 12, 2020 (the November 12th meeting).

10. Due to the Emergency Declaration, the meeting was scheduled to be held by Zoom.

11. Notice of the November 12th meeting was posted on the Board's website. (Attached hereto are true and correct copies of such notices).

12. Member of the public could attend the meeting by emailing the Board to obtain the Zoom link and login information.

13. The November 12th meeting was commenced at 10:00 am.

14. At the outset of the meeting, I gave instructions to all in attendance as to the two ways in which the public could communicate their thoughts to the Board. First, I advised that members of the public could speak orally at the meeting by entering their name into the “chat” feature to be called upon. Each speaker was asked to state their name and in what township they reside at the outset of their oral comments. Each speaker was limited to two minutes of speaking time. There was, however, no limit to the aggregate time period for public comment.

15. I further advised that, alternatively, members of the public could submit their comments in writing to the Board via the email address: publichealth@montcopa.org. Throughout the meeting, I was asked via the chat feature to provide that email address, which I did multiple times.

16. I also acknowledged at the start of the meeting that members of the public had previously sent letters and emails on the topic at hand, which would not be read out loud at the special meeting, but that had been sent to the Board members for their consideration.

17. The Chair then introduced the subject matter of the meeting, which was virtual education only in both public and private schools in Montgomery County for a two-week period due to the rising numbers of COVID cases.

18. While no motion was made, the proposed resolution was posted on the screen and stated as follows:

All schools, both public and private in Montgomery County are required to support virtual education only, for the period of November 23 through December 6, 2020 with the potential for expansion beyond this date. This requirement includes virtual education only for special education and canceling of school sanctioned extra-curricular activities.

19. Two presenters from the Office of Public Health addressed the proposed resolution and the public health data that supported the need for the resolution.

20. Following the presentations, there was comment by Board members.

21. Following the comment by Board members, there was comment by members of the public.

22. Throughout the meeting, I maintained a list of people who indicated that they wanted to comment publicly on the proposed resolution. (Attached hereto as Exhibit "B" is a list of those individuals).

23. Among those who spoke publicly at the meeting were two of the three Petitioners in this action. (See Exhibit "B"). The third Petitioner provided his comments to the Board via letter. (Attached hereto as Exhibit "C" is a letter dated November 12, 2020 from John Mark Niehls).

24. After hours of public comment, there was a period of 10-15 minutes where no one indicated via the chat feature that they wish to speak publicly.

25. I actually read the last public comment out loud because the author did not feel comfortable and asked me to do so.

26. After I read the last comment, the public comment portion of the special meeting closed. I again stated that if anyone had thoughts they would like to share with the Board on this subject by email, we invited them to do so. I reiterated the email address of publichealth@montcopa.org. A large number of emails were subsequently received at this address and forwarded to the Board for the members' consideration.

27. The Board indicated it would recess without a vote and determined that the meeting would continue the next day at noon. That determination was publicly announced there and then at the November 12, 2020 meeting.

28. In addition, notice of the resumption of the special meeting was also posted on the Board of Health's website via its Twitter Feed that appears on the website's landing page. (A

screen shot of the Twitter Feed appearing on the Board of Health's website is attached hereto as Exhibit "D").

29. At approximately 6:00 p.m., the Board convened by Zoom for an information gathering session relative to the proposed resolution. In addition to the Board, in attendance were: Commissioner Val Arkoosh, Solicitor Josh Stein, me and Michelle Masters, Janet Panning and Toyca Williams from the Health Department.

30. At that information session, Commissioner Arkoosh and Michelle Masters spoke about the public health reasons for passing the proposed resolution. Members of the Board asked questions about how other counties in the Commonwealth were handling the issue at hand. There were also questions regarding whether the Commonwealth was considering action that might impact, or even moot, the proposed resolution. No deliberation of the resolution occurred during this information session. No vote was taken; no position expressed by Board members.

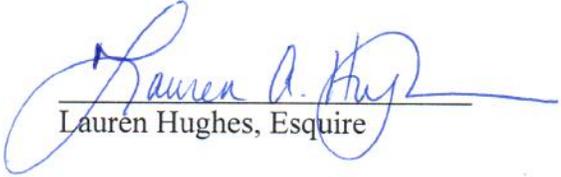
31. Because there seemed to be some confusion on the part of the public that the proposed resolution was too open-ended, the Solicitor suggested the removal of the language "with the potential for expansion beyond this date" from the proposed resolution such that, if there was a need to expand virtual education beyond the two week period, there would be another special meeting and a further opportunity for public comment on that specific issue.

32. The special meeting resumed the next day at noon. The public participated by Facebook Live. While this technology did not permit members of the public to speak, it allowed more than 500 people to view the meeting.

33. At the continuation of the special meeting, the Board passed the following resolution:

All schools, both public and private in Montgomery County are required to support virtual education only, for the period of November 23 through December 6, 2020. This requirement includes virtual education only for special education and canceling of school sanctioned extra-curricular activities.

I verify that the statements made herein are true and correct, based upon my knowledge, information and belief. I understand that the statements made herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to sworn falsification to authorities.


Lauren Hughes, Esquire

Dated: November 19, 2020

EXHIBIT A

MONTGOMERY COUNTY COMMISSIONERS

October 1, 2020

On motion of Chair Arkoosh, seconded by Vice Chair Lawrence, it was adopted that:

BACKGROUND

1. On March 8, 2020, the Montgomery County Commissioners declared a disaster emergency in Montgomery County because of a widespread outbreak of Corona Virus (COVID-19) that overwhelmed first responders, healthcare providers and businesses within Montgomery County.
2. On April 16, 2020, the Commissioners declared that the disaster emergency continued from April 22, 2020 through June 21, 2020.
3. On June 22, 2020, the Commissioners declared that the disaster emergency continued from June 22, 2020 through August 21, 2020.
4. On August 13, 2020, the Commissioners declared that the disaster emergency continued from August 22, 2020 through October 6th, 2020.
5. The medical emergency from COVID-19 continues to endanger the health, safety and welfare of a substantial number of persons and businesses in Montgomery County.
6. Emergency management measures are required to reduce the severity of this disaster and to protect the health, safety and welfare of affected residents in Montgomery County.

NOW, THEREFORE, we the undersigned Commissioners of Montgomery County, pursuant to the provisions of Section 7501 of the Pennsylvania Emergency Management Services Code, as amended (35 Pa.C.S.A. 7101 et. seq) do hereby declare the existence of a disaster emergency in Montgomery County.

FURTHER, we direct the Montgomery County Office of Public Health and the Montgomery County Department of Public Safety to coordinate the activities of the emergency response; to take all appropriate action needed to alleviate the effects of this disaster; to aid in the restoration of essential public services; and to take any other emergency response action deemed necessary to respond to this disaster emergency.

This Declaration shall take effect October 7, 2020 and last for a period of 60 days.

I, the undersigned, Chief Clerk of the County of Montgomery (the "County"), certify that the foregoing is a true and correct copy of a Resolution duly enacted by majority vote of the entire Board of County Commissioners at a meeting duly convened and held according to law on October 1, 2020; that said Resolution has been duly recorded in the minutes of said Board; and that said Resolution remains in full force and effect, unaltered and unamended, as of the date of this Certificate.

IN WITNESS WHEREOF, I affix my hand and the seal of the County, this 19th day of November, 2020.



Lee Soltysiak
Chief Clerk/Chief Operating Officer

(SEAL)

EXHIBIT B

**BOARD OF HEALTH
SPECIAL MEETING
THURSDAY NOVEMBER 12-13, 2020**

PUBLIC COMMENT

Below is a list of meeting attendees that requested to make public comment in the chat sections of the Zoom platform. Some of the below attendees were either no longer on the Zoom meeting or no longer wanted to speak when their name was called.

- Sean Rose
- Michael Napolitan
- Lisa Barry
- Jaclyn Mason
- Kaitlin Derstine
- Barbara Russell
- Gregg Schultz
- Karin Schweiger
- Al Belmondo
- Liz Weir
- Lisa Burns
- John Wiles (Coventry Christian Schools)
- Denise Judge (Principal)
- Lesli Nichols
- Mary McKenzie
- Gina Kirwin
- Kim Koop
- Catherine Clauhs
- Bridget Tigue
- Michael Lennon
- Christine Pagan
- Elizabeth Cisar
- Dr. Jim Thomas
- Theresa Healy
- Eileen Fagan
- Philip Wydro
- Brian Halak
- Shoshanah Murray
- Sarah Palmer
- Dana Vesey
- Kristen Murphy
- Dr. Sharon Still
- Colleen Zasowski
- Shira Levy

- Allie Croce
- Susan Caler
- JJ Landy
- Paige Meizlik
- Debra Grace
- Diana Ziegler
- Sister Mary Chapman
- Owen Wilcox
- Colleen Leader
- Liz Weir
- Thom Halstead
- Matthew Philbrick
- Heidi Slattery
- Lou Harrison
- Barbara Roque
- Melissa Hoerdemann
- Bryan Armentrout
- Natalie MacNamara
- Brian Shapella
- Dana Martin
- Lisa Prosnitz
- Jennifer Fedorchak
- Danielle Otero
- Gina Stover
- Issac Kessler
- Julie Potson
- Tonya Schreiber
- Judy Lofton – Pres. Perkiomen Valley SD
- Anonymous Comment read by Solicitor Lauren A. Hughes

EXHIBIT C



Thursday, November 12th, 2020

Board of Health
Montgomery County Office of Public Health
1430 DeKalb Street
Health Department
Norristown, PA 19401

Re: Board of Health Special Meeting Agenda

Dear Mr. Laign, Dr. Jeyaraj, Mr. Kratz, Dr. Wadsworth, and Dr. Trichtinger,

Thank you for your service to our community on the Board of Health (BOH). Serving the public in this way is a virtuous and noble act, especially in the strenuous time that the community is currently enduring.

Yesterday evening, it was reported that the Board of Health is scheduled to hold a special meeting today where a vote will be held on whether or not to recommend schools move to virtual learning. The purpose of this letter is to ask that the board either vote down this proposal or at least delay the vote until supporting evidence can be shared with the stakeholders who would be most affected by such a decision.

As you make your consideration, please consider the following:

- There has been no evidence that school attendance is driving Covid-19 outbreaks. In fact, several studies show that positivity rates are much lower in K-12 schools than in the general public.
- Montgomery County's own data shows that there has been little to no spread within the schools.
- There are significant consequences to shutting down schools and preventing others from opening as planned. These include health, educational, social and economic consequences.
- Not all schools are the same.

Over the past few weeks our county, similar to the rest of the world, has seen a surge in Covid-19 cases. However, there has not been any evidence that these surges are related to school attendance. In fact, all available evidence indicates that K-12 schools are not a factor in the increasing number of cases. Indeed, schools across much of the world have been open since July, August, and September. The low positivity rates hold true for both staff and students within those schools. Researcher Enric Alvarez, who has been studying the impact of school attendance on Covid outbreaks said, "What we found is that the school [being opened] makes absolutely no difference."¹ Another researcher, Dr. Randa Grob-Zakhary, who studied the impact of school reopening across 191 countries put it this way, "It's not that closing schools leads to a decrease in cases, or that

¹ Kamenetz, Anya. "Are The Risks Of Reopening Schools Exaggerated?" NPR, October 21, 2020.
<https://www.npr.org/2020/10/21/925794511/were-the-risks-of-reopening-schools-exaggerated>

opening schools leads to a surge in cases.”¹ To put it more simply: schools are not a significant cause of outbreaks. Another recent study, out of Yale University, on childcare workers showed no difference between workers who stopped working versus those who kept working.²

The data here in Montgomery County does not support the decision to shut down the schools. At the school where I serve as Headmaster, we opened for in-person summer programs and child care on Monday, June 8th. Subsequently, we opened our Fall 2020 Academic Year on Tuesday, September 8th (5-days, in-person). Over the past five months we have had hundreds of students and dozens of staff members on our campus. Until Monday of this week, our school had not seen a single case of the virus among our staff and students. This week one of our students tested positive for Covid-19. In that case, it is believed the student contracted the virus from an infected parent. In my communications with the Montgomery County Office of Public Health about our positive case, I was told that “we are seeing almost no transmission in the schools. Almost all of the cases we have seen are from transmission happening outside of the school.” This comment was relayed to me by your staff. If the county’s own data shows that transmission in schools is not an issue, then why recommend schools to shut down?

The impact of shutting down schools, and preventing others from opening, is massive and comes with its own costs. For example, pediatrician Dr. Dooley recently said:

"As a pediatrician, I am really seeing the negative impacts of these school closures on children," Dr. Danielle Dooley, a medical director at Children's National Hospital in Washington, D.C., told NPR. She ticked off mental health problems, hunger, obesity due to inactivity, missing routine medical care and the risk of child abuse — on top of the loss of education. "Going to school is really vital for children. They get their meals in school, their physical activity, their health care, their education, of course."³

A new study out of England shows that there “has been a ‘shocking’ decline in primary school pupils’ levels of attainment in England after lockdown...”⁴ When students are forced to learn at home that move comes with a wide range of obstacles to success. We are seeing very real emotional damage being caused to our children as a result of stripping away their normalcy, their friends, and their proper development. This, of course, doesn’t begin to consider the impact to families across our region. Simply put, when kids can’t go to school parents can’t go to work. If the BOH votes to shut the schools down, and for some prevent them from opening, you risk additional consequences that many in our communities simply cannot afford or bear. Has the BOH considered the far reaching impact of a decision like the one it is considering?

² “Child care not associated with spread of COVID-19, Yale study finds” YaleNews, October 16, 2020.

<https://news.yale.edu/2020/10/16/child-care-not-associated-spread-covid-19-yale-study-finds>

³ Kamenetz, Anya. “Are The Risks Of Reopening Schools Exaggerated?” NPR, October 21, 2020.

<https://www.npr.org/2020/10/21/925794511/were-the-risks-of-reopening-schools-exaggerated>

⁴ Weale, Sally. “England: ‘shocking’ decline in primary pupils’ attainment after lockdown” The Guardian. November 11, 2020.

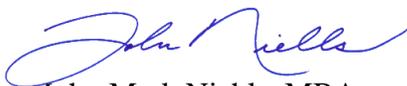
<https://www.theguardian.com/education/2020/nov/11/england-shocking-decline-in-primary-pupils-attainment-after-lockdown>

The decision being considered, to shut down all schools in the county, appears to be a one-size fits all decision that is not supported by the track record of particular schools. Schools have not all implemented the same protocol, and not all students and families practice social distancing and mask-wearing with the same consistency. So, why is the county considering a blanket shut down of all schools? At Coventry Christian Schools, for example, we have had a single case of Covid among our students and staff. This would not necessitate a shutdown according to the current guidance from either the County or the State. If there are schools with significant outbreaks, why not address them individually while allowing the schools without large outbreaks to continue operating? Montgomery County is a very diverse place, and what is appropriate in Lower Pottsgrove (135 cases, 0 deaths) is different than what is appropriate in Lower Merion (1,101 cases, 85 deaths).

This letter is being written under the assumption that the reporting from KYW, that the BOH is considering a recommendation to move all schools to virtual, is correct. If that reporting is incorrect, the questions and arguments against such a decision are still valid for consideration but would have no bearing on your meeting today. If, however, that reporting is correct it is incumbent upon the Montgomery County Health Department to release all of its data on Covid-19 in Montgomery County schools, and then give the public time to comment, prior to making a final recommendation. As an addendum to this letter, I am attaching the open letter published today by the Bucks County Health Department where they cite their data and their recommendation that “The Bucks County Department of Health unconditionally recommends not to change the model of instruction for your school districts to virtual at this time.”⁵

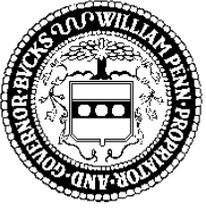
Thank you for your time and for your service to our community. If I can be of any service to you in your work, please do not hesitate to contact me at your convenience.

Sincerely,



John Mark Niehls, MBA
Head of School

⁵ Damsker MD, MPH, David C. Letter to Colleagues. 11/11/2020



COUNTY OF BUCKS

DEPARTMENT OF HEALTH

Neshaminy Manor Center, 1282 Almshouse Road, Doylestown, PA 18901 - 215-345-3318
FIELD OFFICES

Bucks County Government Services Center, 7321 New Falls Road, Levittown, PA 19055 – 267-580-3510
Bucks County Government Services Center, 261 California Road, Suite #2, Quakertown, PA 18951 – 215-529-7000

County Commissioners

DIANE M. ELLIS-MARSEGLIA, LCSW, Chair
ROBERT J. HARVIE JR., Vice-Chair
GENE DIGIROLAMO, Commissioner

Director

DAVID C. DAMSKER, M.D., M.P.H.

Dear Colleagues,

11/11/2020

The Bucks County Department of Health (BCDOH), the PA Department of Health (PADOH) and the Pennsylvania Department of Education (PDE) have released guidance for many issues over the past several months for schools. These are clearly recommendations, not requirements. As expected, each school district has thus far made the best decisions for their communities based on that guidance and other factors specific to the district. As you have seen this week, PDE and the CHOP Policy center in Philadelphia, have recently made the suggestion to move to all virtual learning now that transmission is labeled as “substantial.” **The Bucks County Department of Health unconditionally recommends not to change the model of instruction for your school districts to virtual at this time.**

To be sure, COVID-19 cases in our community are higher over the last few weeks, and have gotten to levels we haven’t seen in Bucks County since the pandemic began. However, we can say the following with confidence so far:

- There is no existing evidence, anywhere, indicating that in-person schooling contributes to spread in the community. Likewise, there is no evidence that closures alone will slow spread in the community.
- When a school’s health and safety plan is followed, we have not seen any evidence of in-school spread, either to other students or staff. This doesn’t mean it won’t ever happen. But it does mean that our school district health safety plans are extremely effective.
- More than 450 children and staff have been quarantined from close exposures to cases in school, with no positive cases resulting from those exposures.
- Cases brought to school have been traced to exposures outside of school, most commonly household contacts and social gatherings – situations where the involved cases were not masking appropriately. These exposures will continue to occur regardless of a school’s status.
- Almost 40% of our cases have occurred in students and staff that were in full virtual mode at the time of infection.
- We have had more than 1200 cases in Bucks County children with only mild disease so far; none have been hospitalized or severely ill. While it’s clearly not impossible to occur, the numbers indicate it’s very rare.

The current data indicates that, because of our strong school health and safety plans, children and teachers are safe in our schools, even when there are many cases in the community. All studies indicate that in-person learning is the best model for effective learning – our schools have proven to be a safe and structured environment where this can occur.

BCDOH has been your partner through this pandemic, since the earliest days, and we have done the work to gather what we hope has been helpful data and guidance for school districts to rely upon. We will continue to do our best to support your efforts to teach children in whatever model is chosen.

Thank you all for the hard work you have done, and we look forward to continue strengthening our relationships through the coming months.

David C. Damsker, MD, MPH
Director
Bucks County Health Department

EXHIBIT D

SERVICES ALERT MontcoPA Limited Service Schedule- Update
[Read On...](#)

Create an Account - Increase your productivity, customize your experience, and engage in information you care about. [Sign In](#)

MONTGOMERY COUNTY
PENNSYLVANIA

ADMINISTRATION DEPARTMENTS DOING BUSINESS PARKS, TRAILS, & HISTORIC SITES STAY INFORMED

Search calendar by:
Start date [] End date [] Search [] Show Past Events [] Select a Calendar []

Event Details [Return to Previous](#)

Montgomery County Board of Health Meeting

Thursday, November 12, 2020
There will be a Special Montgomery County Board of Health Meeting held virtually on Thursday, November 12, 2020 at 10am. To get the Zoom link, please confirm your participation by sending your name, phone number and e-mail address to Toyca Williams, twilliams@montcopa.org.

Date: November 12, 2020
Time: 10:00 AM - 11:00 AM
Location: Virtual - Zoom
Link: [Meeting Agenda](#)





Montgomery County Office of Public Health
@MontcoHealthPA



There will be a Special Montgomery County Board of Health Meeting held virtually on Thursday, November 12, 2020 at 10am.

To get the Zoom link, please confirm your participation by sending your name, phone number and e-mail address to Toyca Williams, twilliams@montcopa.org.

12:43 PM · Nov 10, 2020 · Twitter Web App

4 Retweets 2 Quote Tweets 5 Likes



Montgomery County Office of Public Health @MontcoH... · Nov 12



Replying to [@MontcoHealthPA](#)

Due to the anticipated high volume of people seeking to make public comment, a time limit of 2 minutes will be strictly enforced per speaker. Submit comments to publichealth@montcopa.org by 4pm today. These will be reflected in the final adopted Board Minutes of the meeting.

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