

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN MARK NIEHLS, et al,

Plaintiffs,

v.

MONTGOMERY COUNTY OFFICE OF  
PUBLIC HEALTH, et al,

Defendants.

CIVIL ACTION  
NO. 20-5855

**ORDER**

**AND NOW**, this 25<sup>th</sup> day of November, 2020, upon review of Plaintiffs' Motion for Temporary Restraining Order and opposition thereto, as well as after oral argument on the issue, it is hereby **ORDERED** as follows:

1. Plaintiffs' Motion for Temporary Restraining Order is **DENIED**;<sup>1</sup> and

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<sup>1</sup> A temporary restraining order and preliminary injunction are appropriate where the movant demonstrates:

(1) that they are reasonably likely to prevail eventually in the litigation and (2) that they are likely to suffer irreparable injury without relief. If these two threshold showings are made the District Court then considers, to the extent relevant, (3) whether an injunction would harm the [defendants] more than denying relief would harm the [plaintiff] and (4) whether granting relief would serve the public interest.

*K.A. ex rel. Ayers v. Pocono Mountain Sch. Dist.*, 710 F. 3d 99, 105 (3d Cir. 2013) (preliminary injunction); *Lozano v. City of Hazleton*, 459 F. Supp. 2d 332, 335 (M.D. Pa. 2006) (citing *Bieros v. Nicola*, 857 F.Supp. 445, 446 (E.D.Pa.1994)) (same factors for temporary restraining order).

In the instant matter, Plaintiffs' Motion for Temporary Restraining Order is denied because Plaintiffs cannot show that they will suffer irreparable harm in the absence of a restraining order. Plaintiffs are challenging an order of the Montgomery County Office of Public Health and Montgomery County Board of Health requiring all Montgomery County schools to support virtual education only from November 23, 2020, to December 6, 2020. As of the date of this Order, Plaintiffs are challenging an order that affects eleven calendar days, and fewer educational days. I find that Plaintiffs cannot show irreparable harm caused when the order at issue is for a finite period that is clearly less than eight (8) days.

If Defendants should extend this order and require schools to be closed for a longer period, the situation and facts would be different, and the Court would have to reconsider the issues raised. However, at this

2. A telephone status conference shall be held on December 3, 2020, at 10:30 a.m. Counsel for Plaintiff shall provide a conference number that all parties can dial into at the time of the call.

**BY THE COURT:**

/s/ Jeffrey L. Schmehl  
Jeffrey L. Schmehl, J.

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time, Plaintiffs cannot show that they are likely to suffer irreparable harm without entry of a restraining order.

I further note that some of the arguments raised by Plaintiffs in oral argument today would implicate the rights of particular schools located in Montgomery County, not the rights of the current Plaintiffs. These arguments would have to be addressed by the Court in the future if the Complaint is amended to include schools in Montgomery County as Plaintiffs.