



The

Challenge



November 2002

Lincoln County closures challenged

Lincoln County citizens have filed a lawsuit against the WV Board of Education, challenging the plan to consolidate the county's four high schools into one.

The lawsuit was filed on November 8, in Kanawha County Circuit Court, by Alum Creek attorney Betty C. Gregory, on behalf of two community groups—the Committee to Stop Discrimination Against Rural Children and Save Harts High — and several parents and students.

The lawsuit alleges that a plan to close Duval, Harts, Guyan Valley and Hamlin high schools, and place those students in a new \$30 million consolidated school, violates various provisions of the *W.Va. Constitution*, the *W.Va. Code* and the *W.Va. Code of State Rules*.

"This is a classic case of government out of control, just as it was in George Orwell's *Animal Farm*," the complaint filed in the lawsuit begins. "Members of the state school board and their representatives in Lincoln County are violating the *W.Va. State Code*, the *W.Va. Constitution* and the state board's own regulations, by taking over Lincoln County Schools to force school closings and consolidations on county residents."

The lawsuit maintains that in 2000, the State BOE seized control of the school system for inappropriate reasons. In support of that allegation, the complaint cites a recently published quote from State Superintendent Stewart who said consolidating schools in Lincoln County was, "the reason we intervened and took that district over ... those people will not help themselves." When he made that statement, Stewart also referred to the failure of proposed bond levies in the county.

Architectural plans for the new \$30 million school have already been set in motion and contracts will soon be awarded.

The state plans to close the Lincoln County schools without following the legislatively mandated guidelines found in *W.Va. Code* §18-5-13a. That statute sets forth an elaborate procedure which must be followed before a West Virginia school is closed.

The lawsuit also questions the imposition of excessively long bus rides upon the county's students and points to the potential destruction of communities which often accompany a school closure.

The complaint alleges that the county's Comprehensive Educational Facilities Plan was

See LINCOLN Page 3

Challenge grows again...



Challenge WV has chartered another Chapter in West Virginia. The Morgan County Chapter increases Challenge's presence to 17 counties. Above, Challenge Statewide Director Linda Martin presents the Charter to the members of the Morgan County Chapter.

This 'n that from around the state

- On Saturday, February 22, 2003, the Logan County Board of Education will hold an election on the issue of a bond levy. The LCBOE plans to issue \$6.5 million in bonds to be re-paid over a period of 15 years. The proceeds will be used in several schools around the county, but the largest portion - \$5.5 million - will be used to match a \$14 million grant from the WV School Building Authority for the construction of a new high school in Chapmanville. The new school will purportedly house students from both Chapmanville High School and Harts High School in Lincoln County. It is not clear exactly how the Lincoln County high schools closure lawsuit will affect Logan County's plans. The remaining \$1 million will be used to install air conditioning systems in schools which currently have only window air conditioners, construct four grade school computer labs and make improvements to three sports facilities in the county.

- Voters in Kanawha County surprised school officials on November 5, when they rejected the county's excess school levy. Only 44 percent of Kanawha County voters voted for the levy. An excess levy must have 60 percent of the vote in order to pass. This is the first excess school levy defeat by Kanawha County voters since 1993. In that year voters defeated the first proposed levy, but later passed a revised proposal. The excess levy in Kanawha County has been in effect since 1937. The proposed levy would have increased the maximum revenue to the school system from \$38 million to \$44 million. The levy



accounts for about 20 percent of Kanawha County Schools' annual funding. Superintendent of Schools Ron Duerring said drastic cuts will have to be made if another levy does not pass. Officials have speculated increases in property taxes in Kanawha County due to property reappraisals contributed significantly to the excess levy's defeat.

- In Putnam County, voters defeated a \$20 million bond levy. The unofficial vote total was 8,066 against and 7,016 for. Like excess levies, a bond levy needs 60 percent of the vote in order to pass. The amount of this bond was much less than one that was defeated two years ago. A bond levy has not passed in Putnam County since 1976. Putnam County Superintendent Sam Sentelle said he believed the bond levy didn't pass because, "There are groups of people who are unaware of what's at stake." Putnam school officials estimate county schools are in need of \$90 million worth of renovations.

- The Boone County Board of Education is moving forward with its plan to consolidate grade schools in the county. On

September 27, the board presented to the WV Board of Education and the School Building Authority, changes to its Comprehensive Educational Facilities Plan. The revised plan has been okayed by both bodies. The CEFPA amendments include the closure of Nellis and Sylvester elementary schools and the reconfiguration of Sherman Junior High School into a middle school. The BCBOE has already scheduled two closure hearings. The first is scheduled for December 9, at and for Sylvester Elementary School. The second hearing is set for December 12, at and for Nellis Elementary School.

- The WV Supreme Court of Appeals has upheld the closure of Union Junior High School in Marshall County. During the school closure process for Union Junior High, the WV Legislature amended the statute governing school closure proceedings. The issues in the case turned on the question of whether a bill becomes law when it is passed, or when it is approved by the governor, in the context of when two-thirds of the Legislature votes to make the bill in effect from passage. The court ruled a bill is in effect from the date of passage, regardless of the date on which the governor approves the bill, except in the case of a veto. The court also ruled the Marshall County BOE complied with the applicable statutes when closing the school.

- The State Board of Education is considering a uniform grading scale for all high schools — 93-100 A; 85-92 B; 75-84 C; 65-74 D; <64 F.

Flood cleanup embarrasses State DOE

The aftermath of the July 2001 floods in Wyoming and McDowell Counties has become a real debacle for the WV Department of Education.

In addition to an internal investigation being conducted by the department's legal counsel, the WV Legislature's Commission on Special Investigations and the U.S. Attorney for the Southern District of West Virginia are investigating the department's purchasing practices.

State Assistant Superintendent of Schools G. A. McClung has resigned his position amid allegations he used the opportunity presented by the flooding to steer contracts to companies owned by, and associated with, his longtime friend, Phillip "Pork Chop" Booth.

McClung's resignation was demanded by State Superintendent of Schools Dr. David Stewart.

McClung served as interim Superintendent of schools in McDowell County between the time of the state takeover and the appointment of current McDowell Superintendent Dr. Mark Manchin.

While state officials have known about the problems since

the fall of 2001, no action was taken until articles were published in *The Charleston Gazette*, by reporters Eric Eyre and Scott Finn.

Booth's company, National Equity, had never sold school furniture to West Virginia schools prior to the flooding, but, McClung selected the company and purchased more than \$2.3 million worth of furniture from it.

An analysis by state officials found National Equity was paid more than four times that which the furniture was worth.

Officials associated with the flood cleanup say McClung directed the replacement of much furniture and other fixtures which weren't even damaged by the flood water.

At Wyoming East High School, 400 seats in that school's newly-built auditorium were replaced while only 50 of the seats were actually touched by water.

At Mullens Middle School, everything in the kitchen and cafeteria was thrown out and replaced, even though only one inch of water actually entered the area. FEMA officials said many of the metal items could be disinfected and re-used.

At Kimball Elementary School, two truckloads of classroom furniture were delivered in excess of what school officials needed. A total of 134 elevated wall lockers were replaced, even though flood water never touched them.

McClung and the Department of Education's Facilities Director Bill Elswick also arranged for \$11 million in flood repair contracts to go to Agsten Construction Co. At the time of the contract awards, Agsten was a partner in National Equity.

Elswick also admitted he solicited a job for his son with Agsten. According to published reports, Elswick's son was paid to act as a courier for the company.

As a result of the problems, the state has failed to reimburse McDowell County and Wyoming County for expenses which they incurred in the flood cleanup. McDowell County ended the year with a deficit of \$700,000 and Wyoming County is in the red by \$600,000.

There is no word on a timeline for the investigations.

Lincoln

promulgated without regard to proper procedure. According to the complaint, the committee which wrote the CEFP was composed primarily of school employees who passed the plan under duress from their superiors.

The lack of community support for the proposed closures is also cited. "The majority of Lincoln County citizens do not want to close and consolidate the four high schools into one school," the complaint states.

The plaintiffs ask the State BOE be enjoined from closing any of the schools without following the proper statutory and regulatory procedures. The complaint also requests an injunction preventing the construction of the new \$30 million high school.

The state has embarked upon a similar course of school closures in McDowell County. Those plans are also being challenged in Kanawha County Circuit Court. WV University Law Professor Bob Bastress has filed the suit on behalf

of the mayor of the Town of War, several community groups and many individuals.

In Mingo County, which is also under state control, the state plans to consolidate the county's five high schools into two.

When the state seized control of Logan County schools in the early 1990's, that county had more than 30 schools. Today, there are less than 20.

An answer to the Lincoln County complaint has not yet been filed by state officials. State officials have made no public comments on the suit.

The Challenge

The Challenge is published monthly by Challenge West Virginia, a statewide organization committed to maintaining and improving small community schools.

Challenge West Virginia's goal is to reform education in West Virginia so that citizens have a voice in policy decisions and every child has the opportunity to receive a first-class education and the promise of a bright future.



Challenge West Virginia

A program of Covenant House, Charleston, WV

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