

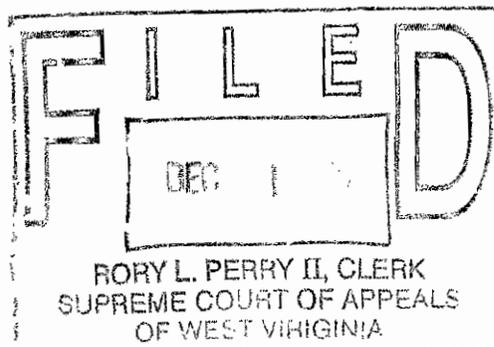
SUPREME COURT OF APPEALS OF WEST VIRGINIA

BOARD OF EDUCATION OF THE
COUNTY OF PUTNAM,

Petitioner,

vs.

The Honorable J.D. BEANE, C.E.M., a minor
The Honorable LESLIE L. MAZE, in her
Capacity as Special Prosecuting Attorney of
Wood County, West Virginia, SUSAN D.
SIMMONS, in her capacity as Guardian Ad Litem,
And WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,



Respondents.

RESPONSE TO PETITION FOR A WRIT OF PROHIBITION

This day comes Leslie L. Maze, Special Prosecuting Attorney, and counsel for the Respondent, West Virginia Department of Health and Human Resources, and responds to the Petition for a Writ of Prohibition as follows:

1. The Respondent acknowledges the allegations contained within Paragraphs 1, 2, 3, 4, 5, 6 and 7 of said Petition.
2. The Respondent denies the allegations contained within Paragraphs 8, 9 and 10 of said Petition.

The Respondent further submits in response thereto the following:

1. The Board of Education of Putnam County is not a named party to the underlying proceeding, specifically Wood County Circuit Court Civil Action Number 96-JA-6, because the underlying proceeding is an abuse and neglect proceeding, involving the minor child, C.E.M. The Wood County Circuit Court has jurisdiction over said minor child, who is a student in Putnam County Schools and has been a student there for his

entire education. C.E.M. was born May 29, 1995, and is currently thirteen (13) years old.

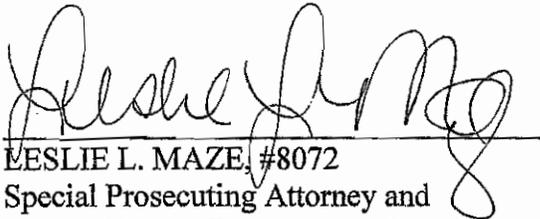
2. The Board of Education for Putnam County, for the duration of the education of C.E.M., has provided C.E.M. with a fulltime nurse for the hours that he is in attendance at school until this school year. The Board of Education for Putnam County provided said fulltime nurse at their own expense.
3. Beginning in the 2008-2009 school year, the Board of Education for Putnam County determined that a fulltime nurse would not be provided to C.E.M., although C.E.M.'s medical condition has not improved. In addition, there is not even a fulltime nurse at the school which C.E.M. attends. The severity of C.E.M.'s medical condition is reflected in the attached letter written by his physician, Pamela S. Stallo, M.D., attached hereto as Respondent's Exhibit 1.
4. The Petitioner is correct that no party on behalf of C.E.M. has invoked the administrative procedure to resolve the dispute regarding the provision of a fulltime nurse. However, the decision of the Board of Education of Putnam County to eliminate the fulltime nurse for C.E.M. was made independently, and no meeting of the Individualized Education Program (IEP) team has been held since said decision. An IEP is held one time per school year per student, and it is the understanding of the Respondent that C.E.M. will not have an IEP meeting until spring of 2009. An extensive period of time will pass without the necessary medical attention for C.E.M. before his next scheduled IEP.
5. The Wood County Circuit Court, in Civil Action 96-JA-6, is responsible for ensuring the care, safety and welfare of C.E.M.. The Wood County Circuit Court has jurisdiction

over C.E.M. and all matters pertaining to his health, safety and welfare, pursuant to the provisions of Chapter 49 of the West Virginia Code, and properly entered the Order requiring the Board of Education of Putnam County to provide C.E.M. with a fulltime nurse for the care of C.E.M.

6. The Circuit Court of Wood County is merely taking action to protect the best interests of the minor child, C.E.M., when the failure of the Board of Education of Putnam County to provide C.E.M. with a fulltime nurse could be fatal to C.E.M., given his extensive medical conditions.

WHEREFORE, the Respondents respectfully request the Honorable Court deny the Petitioner's Petition for a Writ of Prohibition.

Respectfully Submitted,



LESLIE L. MAZE, #8072
Special Prosecuting Attorney and
Counsel for the Department of
Health and Human Resources
P.O. Box 387
Elizabeth, WV 26143
(304) 275-8901

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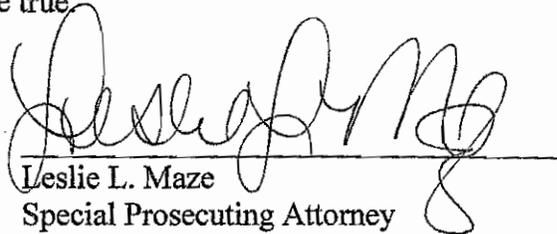
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VERIFICATION

I, Leslie L. Maze, Special Prosecuting Attorney, do hereby affirm that the allegations and responses contained within the foregoing Response to Petition for a Writ of Prohibition are true insofar as they are based upon personal knowledge or insofar as they are based upon information that I believe them to be true.

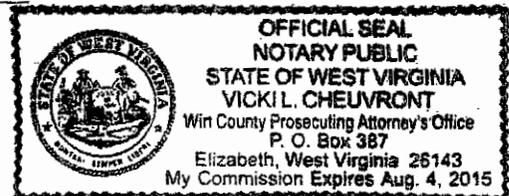

Leslie L. Maze
Special Prosecuting Attorney

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

The foregoing instrument was acknowledged before me by Leslie L. Maze on this
26th day of November, 2008.


NOTARY PUBLIC

My commission expires: August 4, 2015



SUPREME COURT OF APPEALS OF WEST VIRGINIA

BOARD OF EDUCATION OF THE
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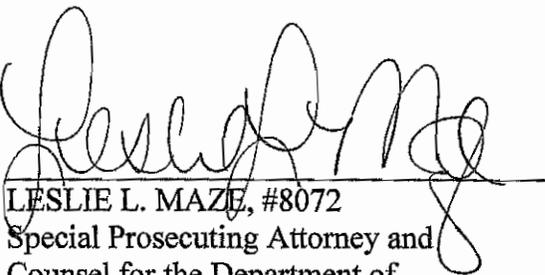
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CERTIFICATE OF SERVICE

I, Leslie L. Maze, Special Prosecuting Attorney, do hereby certify that I served the foregoing Response to Petition for a Writ of Prohibition upon the Petitioner, Board of Education of Putnam County, by mailing a true and exact copy thereof to its counsel, Gregory W. Bailey, at his address of Bowles, Rice, McDavid, Graff & Love, 7000 Hampton Center, Suite K, Morgantown, West Virginia, 26505 on this 26th day of November, 2008.



LESLIE L. MAZE, #8072
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