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**United States District Court**

**District of Oregon**

**Portland Division**

**Alexandra Helene Morrison**, by and through  
her Guardian *ad litem* and father,  
David Mark Morrison, and  
**David Mark Morrison**, individually,

v.

**Portland Public Schools,**

Defendant.

Civil Action No.

**Memorandum in Support of  
Preliminary Injunction Motion**

Alexandra Helen Morrison and David Mark Morrison offer the following Memorandum in support of their Motion for Preliminary Injunction as their fundamental rights are violated by Portland Public Schools' policy of educating via the internet by use of WI-FI.

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## **Introduction**

This case will establish that a child's fundamental rights and liberties to a life and health free from ill health and disease, and a parent's fundamental rights and liberties to the care and control of his child's health and continuing well-being are violated by Portland Public Schools' policy of educating via the internet by way of WI-FI and must be permanently enjoined as it is not narrowly tailored to a compelling governmental interest.

## **Facts**

After deciding against installing any cell mast technology on its buildings (see Correspondence, Patrick Wolfe, Portland Public Schools' Health and Safety Manager, July 15, 2010, Abrell Dec., Ex. B), Portland Public Schools nevertheless chose to install non-ionizing pulsed radiation WI-FI routers inside their schools, 'when a classroom of computers could exceed the power from an ordinary mobile phone transmitter.' Trower Dec. ¶ 61.

## **Argument**

The proper legal standard for preliminary injunctive relief requires a party to demonstrate that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 129 S Ct 365, 172 L Ed 249 (2008).

As seen next, Plaintiffs meet these requirements, so preliminary injunctive relief should be granted.

### **I. Likelihood of success on the merits.**

Plaintiffs are likely to succeed on the merits because Portland Public Schools' policy of educating via the internet by way of WI-FI limits, burdens, and takes Alexandra and David Morrison's Fundamental Rights and is not narrowly tailored to a compelling interest.

Further, the preamble to The Bill of Rights provides:

in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: and as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution. *The Preamble to The Bill of Rights: A Transcription*, *The U.S. National Archives & Records Administration*, www.archives.gov (2010).

Portland Public Schools' policy fails to ensure the public confidence nor the beneficent ends of school children, because it fails to protect them from adverse health effects and because it interferes with parents' rights to the care and control of their children's health and continued well-being.

**(a) Alexandra Morrison has a fundamental right to life, liberty, and health.**

In 1776, the United States Declaration of Independence declared that all men are endowed with certain inalienable rights, and that 'among these are *life, liberty*, and the pursuit of happiness.'

The Fourteenth Amendment provides that no State 'deprive any person of *life, liberty*, or property, without due process of law.'

Children have the fundamental right to be free from communicable disease, *ill health*, and death. *People v. Pierson*, 176 NY 201, 68 NE 243 (1903).

**(b) Alexandra Morrison has a fundamental right to procreation.**

The Supreme Court has legally recognized some fundamental rights not specifically enumerated in the Constitution, including the right to procreation. The Supreme Court established a broader view of privacy in *Eisenstaedt v. Baird*, 405 US 438, 454 (1972), finding that the right to privacy belongs to the individual person, and prevents government interference with 'matters so fundamentally affecting a person as the decision whether to bear or beget a child.'

**(c) David Morrison has a fundamental right to the care and control of his child's health and continued well-being.**

Parental interest in the health and continued well-being of a child is a Fourteenth Amendment constitutionally protected right.

In 1923, the Supreme Court of the United States first recognized family autonomy and the right of parents to control the upbringing of their children. The Court explained,

privileges long recognized at common law are essential to the orderly pursuit of happiness by free men. [And] \* \* \* *the established doctrine is that this liberty may not be interfered with, under the guise of protecting the public interest,* [nor] by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the State to effect. [Where] determination by the Legislature of what constitutes proper exercise of \* \* \* Power is not final or conclusive but is subject to supervision by the courts. (Italics added) *Meyer v. Nebraska*, 262 US 390, 25 (1923).

In 1925, the Supreme Court in *Pierce v. Society of the Sisters, et al.*, 268 US 519, 10 (1925), an Oregon case, stated that ‘a child is no mere creature of the State’ and that the parent has the high duty to care for and nurture his child *that cannot be interfered with*.

In 1944, the Supreme Court recognized the custody, care, and nurture of the child reside first in the parents and that this was a private realm of family life the State cannot enter:

*it is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the State can neither supply nor hinder. And it is in recognition of this that these decisions have respected the private realm of family life which the State cannot enter.* (Italics added) *Prince v. Massachusetts*, 321 US 158, 15 (1944).

‘[T]he history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. *This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.*’ (Italics added). *Wisconsin v. Yoder*, 406 US 20, 46 (1972).

In 1983, ‘the Court has found that the relationship of love and duty in recognized family unit is an interest in liberty entitled to Constitutional protection \* \* \*.’ *Lehr v. Robertson*, 463 US 248 (1983). In 2000, the Supreme Court held:

In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the *fundamental right of parents to make decisions concerning the care, custody, and control of their children.* (Italics added) *Troxel v. Granvill*, 530 US 57, 66 (2000).

Further in *Troxel* is established the precedent that a parent's decisions are *presumed* to be in the best interest of the child as 'natural bonds of affection lead parents to act in the best interests of their children.' *Troxel v. Granville*, 530 US 57, 87 (2000), *Parham v. J.R.*, 442 US 584, 602 (1979). Thus, shifting the burden to Portland Public Schools to prove it is safe, which it cannot do.

Thus, we return to the originating case, *Meyer*, where interference with parental rights with respect to the health and continued well-being of their child is a constitutionally protected right within the upbringing of a child.

**(d) Portland Public Schools has a higher duty than even parents.**

Notwithstanding the high duty of parents to their children's health and continued well-being, Portland Public Schools has an even higher duty than parents while standing in the stead of the parents via compulsory education. This includes providing an environment to learn, play, develop and thrive that does not 'expos \* \* \* the child to \* \* \* ill health or death.' *People v. Pierson*, 176 NY 201, 68 NE 243 (1903).

*Prince v. Massachusetts*, is an opposite case of the ability of the State to infringe, even revoke, rights of parental interest when the health or freedom of the child is at issue. Further embedded in *Prince* is the delineation that even in pursuit of the parent's high right to practice freedom of religion, the right of a child is above the exercise of religion. This time the child is protected by the State, not the parent, when that protection is from exposure to communicable disease, or *ill health*. *Prince v. Massachusetts*, 321 US 158, Pp. 16 (1944), quoting *People v. Pierson*, 176 NY 201, 68 NE 243 (1903).

The high duty to children's health extends through to the State and its bodies, including Portland Public Schools, broadly creating a doctrine that activities generally accepted as safe for adults are not synonymous with those of children:

*The State's authority over children's activities is broader than other like actions of adults \* \* \* a democratic society rests, for its continuance, upon the healthy, well rounded growth of young people into full maturity as citizens, with all that implies. It may secure this against impeding restraints and dangers within a broad range of selection.* (Italics added) *Prince v. Massachusetts*, 321 US 158, at 16 (1944).

Portland Public Schools has the high duty to protect its schoolchildren from genotoxins (see Carpenter ¶ 8; Trower ¶ 67), carcinogens, and neurotoxins (see Carpenter Dec. ¶ 12) such as WI-FI.

**(e) Portland Public School's policy takes, limits, and burdens Alexandra and David Morrison's fundamental rights.**

**i. Electro-magnetic radiation.**

At one end of the electromagnetic spectrum you have the very short waves, namely gamma rays and x-rays, and at the other end of the spectrum you have the very long ways, namely radio, TV and waves from overhead power cables. All of these waves have the same properties, in that they all behave the same. They can all be reflected, refracted, absorbed by the human body, and they all travel at the same speed, which is the speed of light. The electromagnetic spectrum is ordered so that at the short wave end you have the gamma rays, x-rays, ultra-violet, visible light, infra red, microwaves, radar, TV and radio in that order. Trower Dec. ¶ 20 (para.).

The ultra-violet and above are known as ionizing waves and there is no argument as to the damage they can cause when entering the body. Below ultraviolet is said to be non-ionizing and this is where arguments occur between scientists as to whether damage can occur inside the human body through exposure to these waves. The microwaves used in Portland Public Schools' WI-FI system are in the non-ionizing section of the electromagnetic spectrum. Trower Dec. ¶ 20 (para.).

The digital wireless signals in used in WI-FI are pulsed, ultra high frequency signals, emitted in bursts, at regular intervals, in very rapid succession. Imposed on these pulsed, ultra high frequency microwaves are extremely low frequency (ELF) modulations of the radio frequency (RF)

carrier waves. Carrier waves transport data and are also referred to as information carrying radio waves (ICRW). This man-made and very complex radio frequency electromagnetic radiation product cannot be compared to the naturally occurring and biologically compatible radiation of our environment where electromagnetic frequencies (EMF) are billions of times higher than EMF levels from which all life evolved. Bennett Dec. ¶ 15 (para.); see also H.E.S.E., Electromagnetic fields from non-ionizing electromagnetic radiation: discussion, <http://www.hese-project.org/hese-uk/en/niemr/index.php> ('Electromagnetic fields (EMF) from man-made NIEMR [non-ionizing electromagnetic radiation] are phenomenally in excess of that in the natural environment; it may be called 'low level' but it is perhaps  $10^{13}$  higher than nature.').

**ii. Children are electrical beings.**

Children, teachers, and staff are very precise, as well as intricate, electrical beings that operate at 7.8 Hz and 25 to 100 mV. Bennett Dec. ¶ 9(c). Portland Public Schools WI-FI installation, which is a 2.5 GHz to 5 GHz frequency or between 2.4 and 5.8 billion Hz. See, Bennett Dec. ¶ 10; Trower Dec. ¶ 14.

Children at the Mount Tabor Middle School are subject to multiple WI-FI transmitters and rooms full of students transmitting numerous laptop or other wireless signals. See Mount Tabor Middle School WI-FI Floor Plan, Complaint, Ex. A; Bennett Dec. ¶ 11; Trower ¶ 78. Each child has different DNA, hydration, toxicity, nutrition, lifestyle, etc., with the point being every one of them is a different electrical device in the WI-FI application. Bennett Dec. ¶ 12. WI-FI is interacting with each of them differently and as it goes through walls, it is going through these children, as well as teachers and staff. *Id.*

EMFs will interact differently with all material depending on that material's emissivity. Emissivity is a materials ability to absorb or emit wavelengths of radiation. The more absorbent the material, the higher the emissivity. Reflective materials will reflect the EMF radiation and it may hit absorbent material with the reflected angle. The children, and other absorbent material will be interacting with the frequencies. The EMFs are ultimately absorbed by children's body tissue, which is one of several substances that absorbs the radiation. Bennett Dec. ¶ 12. (para).

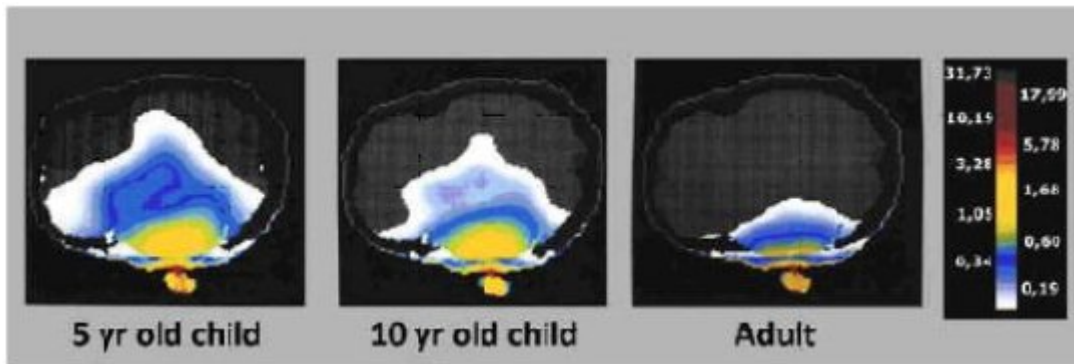
**iii. Children are more vulnerable than adults.**

Children are not small adults. Trower Dec. ¶ 64. It is commonly established that pregnant women and children are afforded special regard with respect to their special sensitivities to unknown actors/agents upon their health. Title 45, Public Welfare, Subtitle A, Department of Health and Human Resources, Part 46, Protection of Human Subjects. Children, by Interior Department definition, are not considered part of the general population and are routinely afforded special consideration because of their unique health vulnerabilities (i.e., rapidly developing bodies). Title 45, part 46, Subpart D, Additional Protections for Children Involved As Subjects for Research.

The Presidential Cancer Panel found that children ‘are at special risk due to their smaller body mass and rapid physical development, both of which magnify their vulnerability to known carcinogens, including radiation.’ Carpenter Dec. ¶ 15.

Children are more vulnerable to RF fields because of the susceptibility of their developing nervous systems. Carpenter Dec. ¶ 15; see also Trower Dec. ¶ 64. Growth and development of the central nervous system is still occurring well into the teenage years so that neurological changes may be of great importance to normal development, cognition, learning, and behavior. Carpenter Dec. ¶ 17. Likewise, a child’s immune system, which fights off damage, takes 18 years to develop. Trower Dec. ¶ 64.

Children are more vulnerable to microwaves because they do not have our immune systems, they are not developed; their skulls are thin and their bones are soft *allowing the microwaves to penetrate very easily*; and, they act like antennas and absorb more radiation than adults because they are smaller, they are nearer the wavelength. See Trower Dec. ¶ 63. The following shows how the thickness of a child’s skull allows electromagnetic radiation (from a cell phone) to penetrate far deeper than adults.



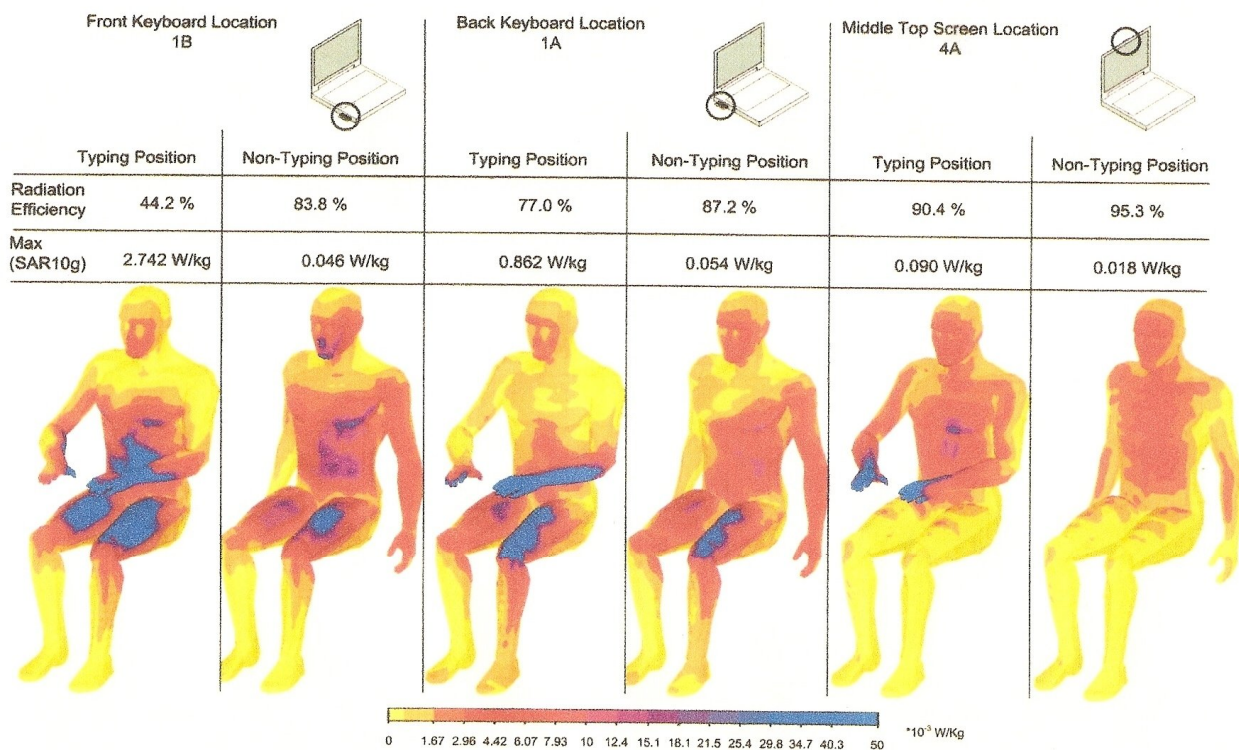
Estimation on the absorption of electromagnetic radiation from a cell phone based on age (Frequency GSM 900 MHz) (Color scale shows the Specific Absorption Rate in W/kg). *Children's heads and brains are not miniature adult heads. Their skulls are thinner, the proportion of water is higher, myelin (thought to be like wire insulation for neurons) is still developing, etc. As a result, \* \* \* radiation from a cell phone or PDA penetrates a far larger proportion of the brain.* Gandhi *et al.*, IEEE Transactions on Microwave Theory and Techniques (1996). Quoted from Morgan *et al.*, *Cellphones and Brain Tumors – 15 Reasons for Concern*, at 25 (2009).

The problem with young girls is that microwaves can damage the genetic structure in their ovaries. Girls are born with all of the eggs they need in their ovaries at birth. Because microwaves are genotoxic (some experiments that can be linked to children found low level mobile telephony radiation disrupts the bio-chemistry of follicle cells in a mammalian egg chamber), there is a possibility that the microwaves can affect the genetic structure within the eggs. The problem here is that the mitochondrial DNA, the genes inside the ovaries, is irreparable. So if you have a little girl who damages, through this mechanism, the genetic structure in one of her eggs and she has a daughter, that daughter will carry that genetic problem, because it is irreparable. And her daughter will carry that genetic problem, and every female *forever*, in that line, will carry that problem in perpetuity, because it is irreparable. Trower ¶ 67 (para.).

The exposure of *children* to RF has not been studied extensively, although one study from Sweden reports that regular use of a cell phone by children increases risk of development of brain cancer by a factor five times greater than that observed in adults. Carpenter Dec. ¶ 16.

**i. WI-FI causes adverse health effects.**

Like second-hand smoke, EMF is a complex mixture, where different frequencies, intensities, durations of exposure(s), modulation, waveform and other factors are known to produce variable effects. Carpenter Dec. ¶ 12. *Many years of scientific study has produced substantial evidence that EMF may be considered both carcinogenic and neurotoxic. Id.*



**Figure 22. The absorption of electromagnetic energy in human tissue: the resulting antenna radiation efficiencies and SARs in the operator’s body at 2.44 GHz for different inverted-F antenna (IFA) element locations.**

Guterman J., *Wrapped Microstrip Antennas for Laptops*, IEEE Antennas and Propagation Magazine, Vol 51, No 4, at 35, August 2009; available at [http://ieeexplore.ieee.org/xpl/freeabs\\_all.jsp?arnumber=5338680](http://ieeexplore.ieee.org/xpl/freeabs_all.jsp?arnumber=5338680) (‘the entire laptop’s structure participates in the radiation mechanism, and the human being belongs to the near-field zone of such a defined antenna-plus-laptop radiator. \* \* \* In all the analyzed scenarios \* \* \* , the human tissue partially reflected and partially absorbed the incident electromagnetic waves.’)

As seen in the foregoing, a laptop transmitting radiofrequencies causes a heating effect on the user. As well, a variety of bioeffects and adverse health effects occur at energy levels that do not cause any measurable rise in local temperature. Carpenter Dec. ¶ 7; Trower Dec. ¶ 85.

Adverse health effects from this long-term low level electromagnetic radiation include: arrhythmia, heart attack, cell death, diseases of the blood, interference to bone marrow, brain tumors, altered calcium level in cells, reduction in night-time melatonin, suppression of the immune system, arthritis, rheumatism, skin problem, lymphatic diseases, vaginal discharge, vascular system disease, tinnitus, leukemia, childhood cancer, sleep problems, mental problems involving depression, irritability, memory loss, difficulty in concentrating, headache, dizziness and fatigue, suicidal tendencies, miscarriage and infertility. Trower Dec. ¶ 21.

Other health endpoints that have been reported to be associated with ELF and/or RF include childhood leukemia, adult brain tumors, childhood brain tumors, genotoxic effects (DNA damage and micronucleation), neurological effects and neurodegenerative disease (like ALS and Alzheimer's), immune system dysregulation, allergic and inflammatory responses, breast cancer in men and women, miscarriage and some cardiovascular effects. Carpenter Dec. ¶ 8.

There is suggestive to strongly suggestive evidence that RF exposures may cause changes in cell membrane function, cell communication, metabolism, activation of proto-oncogenes and can trigger the production of stress proteins at exposure levels below current regulatory limits. Carpenter Dec. ¶ 10. Resulting effects can include DNA breaks and chromosome aberrations, cell death including death of brain neurons, increased free radical production, activation of the endogenous opioid system, cell stress and premature aging, changes in brain function including memory loss, retarded learning, performance impairment in children, headaches and fatigue, sleep disorders, neurodegenerative conditions, changes in immune function (allergic and inflammatory responses), reduction in melatonin secretion and cancers. *Id.*

The Seletun Panel (February, 2011), consisting of international scientists and experts, including Lloyd Morgan, recommends wired internet access in schools, and *strongly recommends* that schools do not install wireless internet connections that create *pervasive and prolonged* EMF exposures for children. [http://www.sagereports.com/smart-meter-](http://www.sagereports.com/smart-meter)

rf/docs/Fragopoulou\_et\_al\_2010b.pdf. The Panel was led by Professor Olle Johansson, Ph.D. (Associate Professor, The Experimental Dermatology Unit, Department of Neuroscience, Karolinska Institute, Stockholm, Sweden) who submitted an open letter to Canada's Greater Victoria School District stating further explaining his concern that, 'WI-FI routers can not be regarded as safe in schools, but must be deemed *highly hazardous and unsafe for the children* as well as for the staff.' See <http://www.heartmdinstitute.com/wireless-safety/why-get-wired-schools>.

According to the Journal of the American Medical Association (*JAMA* 2011; 305(8); 808-813; available at <http://jama.ama-assn.org/content/305/8/808>), a United States Government funded team of researchers led by the director of the National Institute of Drug Abuse, Psychiatrist Nora D. Volkow, unsettled many people this year (February, 2011) when it reported that using a cell phone could alter brain activity, and do so at non-thermal levels of microwave radiation, levels which have long been argued by industry and regulatory bodies that they do not have enough intensity to create biological effects. The study reported two important findings. First, exposed radiation from a cell phone for 50 minutes increased significantly affected brain function and metabolism of glucose, the brain's main fuel. Second, a significant linear correlation was observed between enhanced neural metabolic rate and the estimated rate of radiofrequency energy absorption expected in brain regions. The results point to the conclusion that cell phones [and similar devices such as WI-FI] are affecting brain function, and specific effects may depend on the regions of the brain affected. See, Editorial by Henry Lai, Ph.D., and Lennart Hardell, M.D., Ph.D., *Id.* Dr. Ronal B. Herberman, M.D., chair of the Environmental Health Trust's Board and renowned cancer biologist and physician, indicated that 'even short-term exposure to nerve cells from cell phones can increase glucose in the brain.' Press Release: Environmental Health Trust Experts Warn That Cell Phone Radiation Excites the

Brain of Healthy Adults, <http://www.environmentalhealthtrust.org/content/press-release-environmental-health-trust-experts-warn-cell-phone-radiation-excites-brain-hea>. Dr. Heberman further noted, this results in adverse health effects because, ‘increased glucose also occurs with infections and other inflammatory processes, and leads to the production of potentially damaging reactive oxygen radicals that can alter the ways that cells and genes work.’

New research from China, by Duan Y, *et al.*, *Correlation between cellular phone use and epithelial parotid gland malignancies*, Int J Oral Maxofacial Surgery (2010), doi:10.1016/j.ijom.2011.03.007, [www.avaate.org/IMG/pdf/parotidas\\_cancer\\_estudio\\_chino.pdf](http://www.avaate.org/IMG/pdf/parotidas_cancer_estudio_chino.pdf), showed a dose-response relationship between cell phone use and parotid gland tumors, and as much as a 3,000 percent increased risk of parotid gland tumors with greater than 2.5 hours of cell phone use per day. According to Lloyd Morgan, ‘The magnitude of the risk of parotid gland tumors found in the Duan Y, *et al.* study on the risk of parotid gland cancer from cellphone use were of the same magnitude as the risk of lung cancer from smoking.’ Morgan ¶ 11.

In April 2011, the Russian National Committee on Non-Ionizing Radiation Protection (RNCNIRP) found:

Prevention childhood and juvenile diseases from exposure to EMF sources is of paramount social and economic importance. \* \* \* This problem has been already recognized by the international community: in May 2011, the World Health Organization (WHO) will be organizing the Second International Conference: “Non-ionizing Radiation and Children’s Health” dedicated to health protection of children exposed to EMF sources of various frequency ranges. It is the WHO’s opinion that a “child is more vulnerable to environmental factors.” \* \* \*

Human brain and the nervous system tissues directly perceive EMF and react irrespective of its intensity, and in certain cases it depends on EMF modulation. \* \* \* Analysis of scientific peer-reviewed national and international publications as well as analysis of actual population exposure to EMF have allowed the RNCNIRP to formulate 10 postulates. \* \* \*

1. For the first time in human evolution, the brain is daily exposed to modulated EMF at all developmental stages.

2. Absorption of EMF in a child's brain is greater than in adult phone users; larger brain areas including those responsible for intellectual development are exposed in a child's brain.

3. A child's brain is undergoing development and its intellectual development are exposed in a child's brain. \* \* \*

5. A child, due to its perception features, is unable to recognize the mobile phone as the source of harmful EMF exposure. \* \* \*

9. The Specific Absorption Rate (SAR) used for declaration of a mobile phone safety, equal to 2 W/kg averaged over ten grams of brain tissue, in the opinion of the RNCNIRP, cannot be viewed as sufficiently scientifically grounded in this case, and its use does not guarantee protection of children and juvenile health.

10. Global changes in the electromagnetic background caused by the development of modern mobile technologies, is an evolutionary factor requiring adaptation of children and adolescents to this harmful environmental factor. \* \* \*

It is reasonable to set limits on mobile telecommunications use by children and adolescents, including ban on all types of advertisement of mobile telecommunications for children (teenagers) and with their participation. \* \* \*

Better safety criteria for children and teenagers are required *in the nearest term*. Features of the developing organism should be taken into account, as well as the significance of bioelectric process for human life and activities, present and future conditions of EMF, prospects of technological and technical development should be addressed in a document of legal status. (Italics added). RNCNIRP, *Electromagnetic Fields From Mobile Phones: Health Effects on Children and Teenagers*, (Italics added) April 2011, [www.scribd.com/doc/55420788/Electromagnetic-Fields-from-Mobile-Phones-Health-Effect-on-Children-and-Teenagers](http://www.scribd.com/doc/55420788/Electromagnetic-Fields-from-Mobile-Phones-Health-Effect-on-Children-and-Teenagers).

On May 6, 2011, the European Parliament was presented with a report recommending that wireless networks and mobile phones be totally banned from schools on health grounds. Council of Europe, *The potential dangers of electromagnetic fields and their effect on the environment*, Parliamentary Assembly, Committee on the Environment, Agriculture and Local and Regional Affairs, [assembly.coe.int/documents/workingdocs/doc11/edoc12608.pdf](http://assembly.coe.int/documents/workingdocs/doc11/edoc12608.pdf). It highlights that young people are most at risk. *Id* at 2. It requires that we take all reasonable measures to reduce exposure to electromagnetic fields on 'as low as reasonably achievable' (ALARA) (*Id.*) principles, especially to radio frequencies from mobile phones, and particularly the exposure to

children and young people who seem to be at most long-term risk from head tumors. It asked education and health authorities to develop information campaigns ‘aimed at teachers, parents and children to alert them to the specific risks of early, ill-considered and prolonged use of mobiles and other devices emitting microwaves.’ *Id* at 3. Also, that Governments ‘*ban all mobile phones, DECT phones or WI-FI or WLAN systems from classrooms and schools*, as advocated by some regional authorities, medical associations and civil society organizations.’ (Italics added) *Id*.

On May 31, 2011, an international panel of World Health Organization experts found that cell phones may cause cancer. A team of 31 scientists from 14 countries, including the United States, made the decision after reviewing peer-reviewed studies on cell phone safety. World Health Organization, *IARC Classifies Radiofrequency Electromagnetic Fields as Possibly Carcinogenic to Humans*, International Agency for Research on Cancer, [www.iarc.fr/en/media-centre/pr/2011/pdfs/pr208\\_E.pdf](http://www.iarc.fr/en/media-centre/pr/2011/pdfs/pr208_E.pdf), May 31, 2011. The team found enough evidence to categorize personal exposure as ‘possibly carcinogenic,’<sup>1</sup> a finding that differs from the WHO’s earlier conclusion that there were no cancer risks. The rating is the third highest, falling below ‘carcinogenic’ (including cigarettes), and ‘possibly carcinogenic.’ See, Agents Classified by the IARC Monographs, Volumes 1-100, [monographs.iarc.fr/ENG/Classification/ClassificationsAlphaOrder.pdf](http://monographs.iarc.fr/ENG/Classification/ClassificationsAlphaOrder.pdf). The agency now lists mobile phone use in the same ‘carcinogenic hazard’ category as lead, the pesticide DDT, engine exhaust, creosote, and chloroform. *Id*. What they found was evidence of increase in glioma, a rare but often deadly form of brain tumor, and acoustic neuroma

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<sup>1</sup>‘Group 2B: The agent is possibly carcinogenic to humans.

This category is used for agents for which there is limited evidence of carcinogenicity in human and less than sufficient evidence of carcinogenicity in experimental animals. It may also be used when there is inadequate evidence of carcinogenicity in humans but there is sufficient evidence of carcinogenicity in experimental animals. \* \* \* An agent may be classified in this category solely on the basis of strong evidence from mechanistic and other relevant data.’ World Health Organization, *IARC Classifies Radiofrequency Electromagnetic Fields as Possibly Carcinogenic to Humans*, International Agency for Research on Cancer, at 5, [www.iarc.fr/en/media-centre/pr/2011/pdfs/pr208\\_E.pdf](http://www.iarc.fr/en/media-centre/pr/2011/pdfs/pr208_E.pdf), May 31, 2011.

brain cancer for mobile phone users. See World Health Organization, *IARC Classifies Radiofrequency Electromagnetic Fields as Possibly Carcinogenic to Humans*, International Agency for Research on Cancer, at 2, [www.iarc.fr/en/media-centre/pr/2011/pdfs/pr208\\_E.pdf](http://www.iarc.fr/en/media-centre/pr/2011/pdfs/pr208_E.pdf), May 31, 2011.

On the same day of the IARC's reclassification, the Supreme Court asked the United States Solicitor General to file a brief on whether the Supreme Court should review the Third Circuit's dismissal of class action (holding it was preempted by federal law) brought by mobile device users who accused several companies in the cellphone market of conspiring to market cellphones without adequate warnings or headsets. [www.supremecourt.gov/orders/courorders/053111zor.pdf](http://www.supremecourt.gov/orders/courorders/053111zor.pdf); see also *Farina v. Nokia* discussion below; see also, <http://www.abajournal.com/news/article/supreme-court-seeks-us-vies-on-cell-phone-suit-as-who-announces-cancer-dan/>. At issue in the Supreme Court case is whether the state law claims are pre-empted because they frustrate federal regulations. The Supreme Court's action speaks for itself given the Third Circuit's dismissal.

The Physicians and Scientists for Responsible Application of Science and Technology recently conducted research that concluded, 'A considerable body of evidence proves, *beyond reasonable doubt*, that microwave radiation from mobile phones and cordless phones cause a significantly increased risk for brain tumours. \* \* \* In addition, increasing evidence is indicating that it causes disturbed brain function, damage to the genes and other disturbances.' (Italics added) [www.psrast.org/mobileng/mobilstarteng.htm](http://www.psrast.org/mobileng/mobilstarteng.htm), June 4, 2011.

In summary, many bioeffects and adverse health effects occur at far lower levels of radiofrequency exposure where no measured heating occurs. Bennett Dec. ¶ 15; Carpenter Dec. ¶ 21; Morgan Dec. ¶ 10; Trower Dec. ¶ 85. Because Portland Public Schools' use of WI-FI is causing and will continue to cause Alexandra Morrison (and other students, and school faculty and staff) adverse health effects, it burdens, limits, and takes of her and her father's

fundamental rights and should be discontinued immediately. See, Bennett Dec. ¶ 16, Carpenter Dec. ¶ 22; Morgan Dec. ¶ 13; Trower Dec. ¶86.

**ii. Children are captive.**

When WI-FI is installed in a school, children and their parents have no choice but to allow the school to expose themselves/their children, their exposure is involuntary. See Carpenter Dec. ¶ 17-18.

Further in *Meyer*, is enumerated conditions under which is the power of the State to ‘compel’ attendance. This power, however, is limited by ‘matters \* \* \* within the present controversy’ (*Meyers* at 24) that are indicative of an ‘emergency’ with respect to protection of a child’s health. *Meyers* at 25. Because there is, at a minimum, a well-known controversy, a parent’s normative experience and knowledge is sufficient to suborn the State’s limitation, which underpins a standard of actions that affect the child under its statutory authority that must ‘not [be] injurious to the *health* \* \* \* of the ordinary child.’ (Italics added) *Meyer v. Nebraska*, 262 US 390, 24-25 (1923).

Based upon are review of the Mount Tabor WI-FI Floor Plan, a given child is subject to signals from multiple WI-FI transmitters and rooms full of students transmitting numerous laptop or other wireless signals. Bennett Dec. ¶ 11; Carpenter Dec. ¶ 18. Under this compulsion, children attending Portland Public Schools will be exposed to as much as 30-40 hours per week of constant digitally encoded pulsed WI-FI signals from each wireless device in the child’s vicinity (Carpenter Dec. ¶ 18), making the cumulative exposure over a child’s lifetime successively higher. Trower Dec. ¶ 78. There is a major difference between an exposure that an individual chooses to accept and one that is forced on an individual who can do nothing about it, especially a child. Carpenter Dec. ¶ 18.

Because her exposure to WI-FI is compulsory and involuntary, Alexandra Morrison’s fundamental right of liberty is violated.

**iii. WI-FI is an experiment.**

WI-FI is an experiment by the United States and the WHO in violation of domestic and international law.

In 2008, the European Parliament wrote to its 27 countries urging them to ignore WHO guidelines and set exposure limits at lower levels. Ries, *European Parliament 2004-2009 Commission on the Environment. Public Health and Food Safety*, 2008/2211/INI (translation by [www.nexyt-up.org](http://www.nexyt-up.org)), Editor: Frederique Ries (2008). In response, the WHO (which only began studying microwave radiation effects on children in 2009) stated they will not comment on microwave radiation effects on people until 2015, when it will be able to establish effects on human beings. 'They are watching people to see how many will become sick. We are being experimented upon.' Trower Dec. ¶ 74.

According to the underlying premise defined in the ten points of the Nuremberg Code, WI-FI is an experiment. The Nuremberg Code provides:

The voluntary consent of the human subject is absolutely essential. This means that the person involved should have legal capacity to give consent \* \* \* before the acceptance of an affirmative decision by the experimental subject there should be made known to him the nature, duration, and purpose of the experiment; the method and means by which it is to be conducted; all inconveniences and hazards reasonable to be expected; and the effects upon his health or person which may possibly come from his participation in the experiment.' <http://ohsr.od.nih.gov/guidelines/Nuremberg.html> (Reprinted from *Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council, Law No10, Vol 2*, at 181-182, ¶ 1, Washington D.C.; U.S. Gov. Printing Office (1949).

No experiment should be conducted where there is a priori reason to believe that death or disabling injury will occur; except, perhaps, in those experiments where the experimental physicians also serve as subjects. *Id.* ¶ 2

During the course of the experiment the human subject should be at liberty to bring the experiment to an end \* \* \*. *Id.* ¶ 9.

Because Alexandra and David Morrison have not provided consent nor are they at liberty to bring the experiment to an end, the WHO's experiment is in violation of international law.

Although the legal force of the document is not established in American jurisprudence, the Nuremberg Code and the related Declaration of Helsinki are the basis for the Code of Federal Regulations Title 45 Part 46.

Institutions, both private and State, are subject to regulation of Health and Human Services (HHS) under Federal Code of Regulations, Title 45, The Public Welfare, Part 46, Subpart A, sec. 46.101(a). Regulatory compliance under HHS defines 'research on human subjects' when undertaken by institutions, public or private, under HHS, Code of Federal Regulations, Title 45, The Public Welfare, Part 46, Subpart A, sec 46.103. Institutions, both private and Federal, are subject to definitions of actions deemed 'research,' under Title 45, The Public Welfare, Subpart A, 46.102(d), where,

*Research* means a systematic investigation, including \* \* \* evaluation, designed to \* \* \* contribute to generalizable knowledge. Activities which meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program which is considered research for other purposes.

The National Toxicology Program (NTP), headquartered at the National Institute of Health (NIH), Health and Human Services (HHS), states the need for evaluation and for the research contributive to generalizable knowledge about WI-FI, where

The weight of scientific evidence [is not conclusive]. The NTP is conducting studies on RF radiation in three phases \* \* \* [on young, old, pregnant female, and non-human test subjects] \* \* \* with anticipated completion in 2012 \* \* \* and will provide critical information regarding safety of exposure \* \* \*. NIH, NTP announcement at NIH.gov (2010).

'Research' undertaken without the intention of involving human subjects, but is later proposed to involve human subjects in the research, provides that the human subject research shall first be reviewed and approved by an Institutional Review Board under sec. 46.119.

Additional Protections for Children are required under statutory definitions in HHS, Title 45, The Public Welfare, Subpart D, titled Additional Protections for Children, 46.401-4, providing definitions and protections for children involved in research on the topic not

to involve greater than minimal risk, and specifically, but not limited to 46.408(c), requiring appropriate mechanisms for HHS regulatory compliance consistent with the mitigation of risk to subjects and considering their age, maturity, condition, etc., requiring said research to be of reasonable experiences inherent to actual and normative educative settings.

Because WI-FI is an ongoing experiment by the National Toxicology Program, and, upon information and belief, such research on children has not been approved by the Institutional Review Board nor has any consideration been given to the children's age or any attempt to mitigate the risks of this research, it is in violation of Title 45, The Public Welfare, Part 46, Subparts A and D.

WI-FI is illegal and should be removed from Portland Public Schools.

**iv. The mere existence of a *well-known* controversy violates David Morrison's fundamental right to the care and control of his child's health and continued well-being.**

If the Court finds WI-FI is violative of Alexandra Morrison's fundamental rights, David Morrison's fundamental rights are necessarily violated. However, even if the Court does not find a violation of Alexandra Morrison's rights, the mere existence of a well-known controversy regarding WI-FI safety violates David Morrison's fundamental parental right to the care and control of his child's health and continued well-being. Further, judicial notice establishes that a well-known controversy exists that any well-informed person can know about,

In sum, if, as the GAO report says, the print and the broadcast media had given widespread attention to the debate over safety, the manufacturers have included with their products the FDA update discussing concerns over it, a book had been published about cell phone safety, and lawsuits had been filed, a jury would be compelled to find that a reasonably well-informed consumer \* \* \* would have learned about the [safety] debate. *Sarah Dahlgren v. Audiovox Corporation, et. al.*, trial court opinion at 62-63 (2010), [www.sheller.com/uploads/dahlgren\\_decision.pdf](http://www.sheller.com/uploads/dahlgren_decision.pdf).

The well-known health controversy about the safety of cell phone use and the chronic exposure to RF irradiation has increased dramatically since *Dahlgren*.

State and Federal actions taken under State authority under the compulsory laws requiring a child to attend school presupposes a high duty (*Pierce*, 268 US 519, 10) to children's health as it extends through to the State and its bodies, including Portland Public Schools.

A parent, surrendering his child into the care and custody of the Portland Public School system has the Constitutionally protected right to the presumption (*Troxel*, 530 US 57, 87) that school policy has 'best ensured' (The Preamble to The Bill of Rights) his reasonable confidence to the care and nurture of his child.

In the case of a controversy, the State's duty has been made clear that the ultimate decision must 'not [be] injurious to the *health* \* \* \* of the ordinary child.' (Italics added) *Meyer v. Nebraska*, 262 US 390, 24 & 25 (1923).

David Morrison's has a fundamental right to choose, in light of a well-known controversy, what environmental toxins his child is exposed to, within reason. Limiting his daughter's exposure to WI-FI, which is genotoxic (Carpenter Dec. ¶ 8; Trower Dec. ¶ 67), carcinogenic and neurotoxic (Carpenter Dec. ¶ 12) experiment is well within reason.

**i. Alexandra and David Morrison's claims are not preempted.**

WI-FI is a *choice* unlike cell towers, which the State must respond to requests to 'place, construct, or modify.' See 47 USC § 332(c)(7)(B)(iii). This means Portland Public Schools is acting in a proprietary capacity rather than a regulatory capacity, and, therefore, its decision whether or not to use WI-FI is not preempted.

It is anticipated that Portland Public Schools will argue that a decision to remove WI-FI is preempted by the Telecommunications Act of 1996 (TCA) that provides:

No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's [Federal Communications Commission] regulations concerning such emissions. 47 USC § 332(c)(7)(B)(iv).

This issue was squarely addressed by the Second Circuit in *Sprint Spectrum L.P. v. Mill*, 283 F3d 404 (2002). In *Sprint v. Mills*, in September 1998, Sprint and the School District entered into a five-year lease agreement permitting Sprint to locate a cell site on the roof of the High School in exchange for rent of \$30,000.00 per year. One month later, Sprint and the School District agreed to incorporate in the lease an addendum dealing with density of radio emissions from the proposed antenna in terms of the number of microwaves (‘uw’) per square centimeter. In 2000, Sprint demanded to update the equipment on the transmitter as allowed by contract, because technological advances had made Sprint’s originally planned equipment obsolete. With the new technology, Sprint could not operate at the low radiofrequency emissions levels outlined in the addendum. Although Sprint guaranteed the School District that the new antenna would operate at levels below the maxima set by federal safety standards, the School District insisted that it would not allow construction unless Sprint operated at or below the levels set forth in the addendum, *which were 13,000 times below the federal maxima*. After applying a two-part test<sup>2</sup> (from *Cardinal Towing & Auto Repair, Inc. v. City of Bedford*, 180 F3d 686, 693 (5th Cir 1999)) to determine, under *Boston Harbor* [507 US 218, 113 S Ct 1190, 122 L Ed 2d 565 (1993)], the Second Circuit squarely evaluated preemption under the TCA. Notwithstanding the district court’s findings in heavy favor of preemption, the Second Circuit noted, in its point-by-point rebuttal, ‘we see nothing in the TCA to suggest that Congress meant to preempt a governmental entity’s conduct that does not amount to regulation; and the structure and language of the TCA suggest precisely the contrary intent.’

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<sup>2</sup> [I]n order to determine, under *Boston Harbor*, whether ‘a class of government interactions with the market [is] so narrowly focused, and so in keeping with the ordinary behavior of private parties, that a regulatory impulse can be safely ruled out,’ a court must consider (1) whether ‘the challenged action essentially reflect[s] the entity’s own interest in its efficient procurement of needed goods and services, as measured by comparison with the typical behavior of private parties in similar circumstances,’ and (2) whether the narrow scope of the challenged action defeat[s] an inference that its primary goal was to encourage a general policy rather than address a specific proprietary problem. *Sprint Spectrum L.P. v. Mills*, ¶ 101.

*Sprint Spectrum L.P. v. Mill*, 283 F3d 404, ¶ 102. ‘In sum, [the Second Circuit] conclude[d] that the Telecommunications Act does not preempt nonregulatory decisions of a local governmental entity or instrumentality acting in its proprietary capacity; that the School District acted in a proprietary capacity, not a regulatory capacity.’ *Id.* ¶ 109. In context of our case, the Second Circuit essentially addressed the issue on point, ‘The School District has the same right in its proprietary capacity as property owner to refuse to lease the High School roof for the construction of such a facility. Under *Boston Harbor*, such a refusal by the District would not have been preempted.’ *Id.* ¶ 106.

Even if removing WI-FI is considered a regulatory decision, WI-FI (an end-use indoor product) is not part of the infrastructure Congress intended<sup>3</sup> to roll out. To find as such, this Court would have to expand the holding in *Farina v. Nokia, Inc.*, 578 Supp 2d 740 (ED Pa 2008), which found cell phones were a facility<sup>4</sup> within the meaning of the TCA and Farina’s tort and consumer protection sounding claims preempted by the Federal Communication Commission’s (FCC) radiofrequency regulations. Because indoor end-use of WI-FI by a school is not part of the infrastructure Congress intended, the claims herein are not preempted. Fortunately, the Court need not address this issue as it is a proprietary decision.

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<sup>3</sup> The court had noted in *Sprint I (Sprint Spectrum L.P. v. Mills*, 65 F Supp 2d 148 (1999), that federal law expresses a strong interest in establishing national wireless communications service ‘for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communication,’ 65 F Supp 2d, 155 (quoting 47 USC § 151); that ‘[t]he Act is designed to provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technology and services to all Americans and by opening all telecommunications markets to competition,’ 65 F Supp 2d, 160-61 (internal quotation marks omitted); and that the Act “mandate[s] that aggrieved parties be granted relief on an expedited basis,” *id.*, 161.

<sup>4</sup> 47 USC § 332(c)(7)(B)(iv) provides, ‘No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission’s regulations concerning such emissions.’

Regarding current regulations<sup>5</sup>, there are no SAR values for children, pulsed frequencies, or long-term exposure<sup>6</sup>, and, therefore, there is no conflict preemption. This is because SAR values are based on a short-term (6-minute average) exposure to protect solely against heating a 6-foot, 200-pound adult male, not a child. Because SAR guidelines do not apply to children, a jury verdict in this case, unlike one in *Farina* ('Allowing juries to impose liability on

<sup>5</sup> In 1995 [through political compromise], the FCC adopted a maximum specific absorption rate (SAR) – which measures the amount of energy absorbed in human tissue – in ‘uncontrolled’ environments of .08 watts/kilogram (W/kg) as averaged over the whole body and a 1.6 W.kg spatial peak as averaged over any 1 gram of tissue, as measured for frequencies between 100 kHz and 6 GHz. See, *Farina* opinion at 19, <http://www.ca3.uscourts.gov/opinarch/084034p.pdf>.

<sup>6</sup> ‘The current federal guideline is base on short-term heating effect set at 6-minutes for those occupationally exposed and 30 minutes for public exposure. An FCC guideline based on a 30-minute exposure is unrealistic for exposure that is likely to be 24/7 for decades. However, *if this guideline is extrapolated for long-term exposure, the exposure limit decreases and approaches guidelines established by other countries* (Table 1) \* \* \*

Exposure Time	Time (hr)	Guideline (microW/cm <sup>2</sup> )	Comments
<b>30 minutes</b>	<b>0.5</b>	<b>1000</b>	<b>FCC guideline, public exposure</b>
60 minutes [casual computer use]	1	<b>500</b> =1000/2	extrapolation of FCC guideline for 1 hour exposure daily
daily computer use [6 hours/day]	6	<b>83</b> = 500/6	extrapolated FCC <i>daily</i> exposure limit
weekly computer use [6 hr/d x 5 d/week]	30 = 6 hr/d * 5d/wk	<b>16.7</b> = 500/30	extrapolated FCC <i>weekly</i> exposure limit
		<b>10</b>	<b>Russian guideline</b>
monthly computer use [as above for 4 weeks]	120 = 30 hr /wk x 4 wk	<b>4.17</b> = 500/120	extrapolated FCC <i>monthly</i> exposure limit
annual computer use [as above for 50 weeks]	1500 = 30 hr/wk x 50 wk	<b>0.33</b> = 500/1500	extrapolated FCC <i>annual</i> exposure limit
		<b>0.1</b>	<b>Salzburg guideline</b>
10-year computer use [as above for 10 years]	15000 =1500 hr/y x 10 yr	<b>0.03</b> = 500/15000	extrapolated FCC <i>10-year</i> exposure limit

According to Table 1, if the goal is to protect people who use a wireless computer daily for one year, their exposure should not exceed 0.33 microW/cm<sup>2</sup> (a value similar to the Salzburg guideline) and to protect them for 10 years their exposure should not exceed 0.03 microW/cm<sup>2</sup>. The FCC will tell you their guideline is not intended for long-term extrapolation in this manner. However, since the FCC doesn’t have a long-term guideline and since the extrapolated values fit the scientific data for long-term health effects the 0.33 microW/cm<sup>2</sup> and 0.03 microW/cm<sup>2</sup> guidelines are more appropriate to determine ‘relative safe’ exposure limits \* \* \*.’ Havas, M., Analysis of Health and Environmental Effects of Proposed San Francisco Earthlink Wi-Fi Network, Environmental & Recourses Studies, Trent University, at 4 (May 2007), [http://www.vws.org/documents/16DrMagdaHavas\\_WiFi51pgs\\_000.pdf](http://www.vws.org/documents/16DrMagdaHavas_WiFi51pgs_000.pdf).

cell phone companies for claims like Farina's would conflict with the FCC's regulations.' *Farina*, 64-65) cannot be considered to second guess the FCC's conclusion on how to balance its objectives as it has made no conclusions regarding safe exposure levels of non-ionizing radiation in children. Furthermore, 'Under the law, FDA does not review the safety of radiation-emitting consumer products such as mobile phones before marketing \* \* \*' (there is no premarket testing). FCC website as of October, 2010; see also, *Cell Phone Safety Bill LC 1273 Introduced by Oregon Senator Chip Shields February 3<sup>rd</sup> That Will Require Warning Labels on Cell Phones Sold in Oregon*, weepnews.blogspot.com/2011/02/scientists-recommend-new-exposure.html. Because there is no premarket testing nor any safe exposure levels for children, the burden shifts to Portland Public Schools to prove WI-FI is safe, which it cannot do.

For the foregoing reasons, the claims herein are not preempted.

**(f) Application of Strict Scrutiny: Portland Public School's policy is not narrowly tailored to a compelling interest.**

Alexandra and David Morrison prevail because a narrower way exists to carry out the school's interest in educating via the internet that is not violative of their fundamental rights.

The burdening and limiting of Alexandra Morrison's life, ability to procreate, health, well-being, and liberty and David Morrison's right to the health, care, nurture, and continuing well-being of his child violates fundamental rights and liberties and invokes strict scrutiny.

*Pierce*, 268 US 510 (1925), is a famous Oregon case that reiterated the high scrutiny standard for interfering with Fourteenth Amendment protected parental rights. The Supreme Court required that the State's compelling interest in compulsory education of every child must be met in a way *less intrusive* to parental rights (the right to send their children to a religious school so long as State standards are met).

Portland Public Schools' policy is not narrowly tailored because it could use a cabled system to educate via the internet. Cabled systems do not emit WI-FI and do not violate Alexandra and David Morrison's fundamental rights, are superior systems that are faster and more secure. See Bennett ¶ 14. Moreover, Portland Public Schools may not be required to rewire its schools as dLAN adaptors are available that transmit the internet signal by way of ordinary electrical wiring. Speaking from a principal who made the switch to a hard-wired system:

On educating myself through the information provided me, I immediately removed all wireless technology from our school and banned the use of cell phones within our building. It was not a major change to hard-wire all computers. In our older classes, every child has a laptop, which connects to the internet through one of several hard-wired internet connections. We have advanced technology without any of the dangers of wireless radio waves. Kristin Cassie, Principal, Roots and Wings Montessori Place, Surry, B.C., November 1, 2010, [www.wifiinschools.org.uk/resources/Letter+from+Principal.pdf](http://www.wifiinschools.org.uk/resources/Letter+from+Principal.pdf).

The school's *compelling* interest, and high duty, in protecting a child from engaging in activities that are 'not injurious to the health \* \* \* of the ordinary child' (*Meyer* at 25), outweighs the school's not so *important* interest of using WI-FI to educate via the internet. Moreover, the school's compelling interest in compulsory education (*Pierce* at 10) is met by using a cabled system while not increasing exposure. See Trower Dec. ¶ 83.

WI-FI is not mandatory in any sense, it is voluntary. It does not require city permits or meet signal coverage requirements. It is not an essential public safety service. It is a want, not a need. It is a proprietary choice.

Portland Public Schools' policy of using WI-FI to educate via the internet is not narrowly tailored and does not survive strict scrutiny.

**(g) The scope of the injunction is warranted and constitutional.**

The remedy sought is an injunction against Portland Public Schools' use of WI-FI in all of its schools. The scope of this remedy (as opposed to limiting the injunction to the Mount Tabor Middle School, where Alexandra Morrison attends) is warranted because of the public interest in protecting the health and well-being of children when they are in school.

Alternatively, the remedy sought is the enjoining Portland Public Schools' use of WI-FI at the Mount Tabor Middle School. However, this will lead to future litigation as Alexandra Morrison progresses through school.

**II. Irreparable Injury.**

Substantial, cumulative, and progressive exposure to WI-FI during her developmental growth stages while at school deprives and burdens Alexandra Morrison's rights to life, liberty, health and procreation guaranteed by the Fourteenth Amendment and causes irreparable harm as a direct result of Portland Public Schools' violations of her constitutional rights.

David Morrison's inability to care for and control his child's health and continuing well-being deprives him of rights and basic liberties guaranteed by the Fourteenth Amendment and causes irreparable harm as a direct result of Portland Public Schools' violations of his constitutional rights.

Alexandra and David Morrison's injuries will be redressed only if this Court declares Portland Public Schools' policy of educating via the internet by way of WI-FI unconstitutional and enjoins the use thereof.

**III. Equities tip in favor of injunction.**

Because of the superior performance (faster speed and increased security) of a cabled system (Bennett Dec ¶ 14), Portland Public Schools cannot argue any other reason for continuing its policy than cost.

To the extent there are costs of converting to a cabled internet, they are not significant and do not outweigh our children's right to life, liberty, and procreation *unfettered* by exposure to ill health, or a parent's right to the control of his child's health and continuing well-being.

Cost is *de minimus* in light of the potential costs of using this technology, including: (i) the costs of sheer human suffering as children and teachers, who are all guinea pigs for this technology, become ill or die; (ii) the costs of unnecessary illness; and (iii) the costs of the inevitable litigation that will come. Additionally, the staff and equipment required to manage wireless capacity and to monitor usage, puts the overall costs much higher. Bennett Dec. ¶ 14. Smart wireless devices associated with wireless networks can cause unexpected congestion, adding to the costs. *Id.* The demand from these devices will only increase and result in the need for more powerful transmitters. *Id.* Truly, the school will benefit the most from the injunction.

Additionally, Portland Public Schools' interest in educating via the internet will not be negatively affected by converting to a cabled system, but will, in fact, be enhanced as cabled systems deliver data faster, safer, and more sustainable, while providing economy and advancing technology in education. See Bennett Dec. ¶ 14. How often is an injunction a win-win?

#### **IV. Public Interest.**

Public interest is strongly furthered by an injunction. The most important asset of our nation must be our children. Providing our children an educational environment in which they can learn, play, develop and thrive is strongly in the public interest. Providing our children with an educational environment that is free from exposure to ill health and disease is strongly in the public interest. The public interest is also furthered by the scope of the injunction and should not be limited to Portland Public Schools' Mount Tabor Middle School.

## Conclusion

Portland Public Schools' policy of educating via the internet by using WI-FI is unconstitutional as it violates Alexandra and David Morrison's fundamental rights and liberties guaranteed by the Fifth and Fourteenth Amendments and is an ongoing experiment in violation of Title 45. All the required elements for preliminary injunctive relief are met. This Court should expeditiously grant the requested injunctive relief, assuring it is in place at the earliest possible time.

Respectfully submitted this 27<sup>th</sup> day of June, 2011,

*/s/ Shawn E. Abrell*

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