



CV-2021-945
7/1/21

IN THE DISTRICT COURT OF OKLAHOMA COUNTY

STATE OF OKLAHOMA

WESTERN HEIGHTS INDEPENDENT)
SCHOOL DISTRICT NO I-41 OF)
OKLAHOMA COUNTY and MANNIX BARNES,)
Superintendent,)

Petitioners,)

vs.)

THE STATE OF OKLAHOMA ex rel.)
OKLAHOMA STATE DEPARTMENT OF)
EDUCATION, OKLAHOMA STATE BOARD)
OF EDUCATION, and JOY HOFMEISTER,)
State Superintendent of Public Instruction,)

Respondents.)

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

APR 22 2021

RICH WARREN
COURT CLERK

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Case No. CV-2021-945

PETITION

COMES NOW the Board of Education for the Western Heights Independent School District No. I-41 of Oklahoma County (hereinafter "Western Heights" and the "District"), and Mannix Barnes, Superintendent of Western Heights (hereinafter the "Superintendent"), by and through their attorney of record, Jerry L. Colclazier of Colclazier and Associates, and for their causes of action against the State of Oklahoma *ex rel.* Oklahoma State Department of Education, Oklahoma State Board of Education, and Joy Hofmeister, State Superintendent of Public Instruction for the State of Oklahoma, alleges and states as follows:

THE PARTIES

1. Western Heights is an Oklahoma independent public school district operating

in Oklahoma County, State of Oklahoma. Western Heights operates one high school, one ninth grade center, one middle school, one intermediate center, four elementary schools, and one multi-cultural Heritage Center (dual language learner center).

2. Mannix Barnes is the Superintendent for Western Heights, the chief executive officer for the District, licensed to act in that capacity by the Department.

3. The Respondent State of Oklahoma *ex rel.* Oklahoma State Department of Education (hereinafter referred to as the "Department") is a governmental division of the state charged with supervising public schools in Oklahoma.

4. The Respondent Oklahoma State Board of Education (hereinafter referred to as the "State Board") is the governing board of the public school system appointed by the Governor, charged, *inter alia*, with supervising the State Superintendent of Public Instruction, as well as adopting policies and procedures for the operation of the Department.

5. The Respondent Joy Hofmeister, State Superintendent of Public Instruction for the state of Oklahoma (hereinafter referred to as "Hofmeister") is the elected, chief executive officer of the Board and the Department.

FACTUAL ALLEGATIONS

6. The Department, Board and Hofmeister (hereinafter collectively referred to as "Respondents") are charged with the supervision of public schools in Oklahoma.

7. The State Superintendent, Department and the State Board have an extensive history of retaliating against, and selectively prosecuting, Western Heights for

publicly criticizing the actions of Respondents and their inability to provide a quality public school system in Oklahoma. Over the years, this retaliation included repeatedly placing the District on School Improvement Lists (“SIL”), and subjecting the District to numerous audits, desktop audits, and compliance audits not required of other districts, the result of which could result in decreased funding to the District and even in revoking its accreditation.

8. In August, 2005, the Department placed the District on the SIL which subjected the District to a variety of potential sanctions. Western Heights argued that the Department’s decision was arbitrary and capricious, and appealed in District Court (CJ-2005-9901). The Department asserted that the decision was valid, and that the denial of the administrative appeal before an appeal committee, who met in secret session, with no agenda filed or minutes, notes, or recordings kept, where Western Heights was barred from attending, was also valid. In that case, the Department argued that the Administrative Procedures Act, Title 75 O.S. §250 *et seq.*, did not apply to the Department. **The Court of Civil Appeals disagreed and determined that school districts were entitled to the full panoply of rights, including notice and a fair hearing before adverse actions could be taken.**

9. The following year in 2006, Western Heights was again placed on the SIL, as a prelude to sanctions. After yet another lawsuit (CJ-2007-9884), and a Court ordered, full and fair hearing by the Department’s own Administrative Law Judge (“ALJ”), the ALJ agreed with Western Heights and reversed the Department’s decision, **finding the actions of the Department to be “arbitrary and capricious”.** **The ALJ found that the District**

had been selectively prosecuted by the Department, in that the Department wholly failed to fairly apply the same federal rules to Western Heights, as compared to its application to other school districts, held that the Department based its decisions on unreliable and invalid data, and **ordered that Western Heights be restored to good standing and removed from all school improvement lists**. That determination was substantially affirmed on appeal.

10. In 2013, the District learned that the Department, since 1992, had shorted Western Heights on its statutorily mandated funding in the minimum amount of fifteen million dollars (\$15,000,000.00). In December, 2014, then State Superintendent Janet Barresi admitted to substantial mistakes in the Department's funding of local school districts, including Western Heights. In 2016, Western Heights filed an original action in the Supreme Court (case no.114,865) *Motion for Writ of Mandamus*, which was referred to the District Court. Western Heights was required to file yet another lawsuit (CJ-2016-4826) pointing out the arbitrary and capricious treatment of the District by the Department, and requesting recovery of the misapplied¹ funds. After a successful mediation, the case was settled. However, the State Board reneged on the settlement and Western Heights has been forced to continue litigating to recover funding which the Department and the State admits is due and owing.

11. In 2019, State Auditor and Inspector Cindy Byrd conducted a formal state audit and determined that Western Heights had been shorted approximately \$7,300,000.00 in mandated state funding by the Respondents from 2004 to 2014. Hofmeister and the

¹ In the April 9th meeting of the State Board, Member Estrella specifically referred to this now admitted error.

State Board have refused to correct that now proven “mistake”. That lawsuit is ongoing.

12. Western Heights has been an accredited school district in Oklahoma since 1959. **In 2019, the District was accredited with no deficiencies.** With respect to last year, on March 23, 2020, the Department notified the District, and all the other districts in the state, that accreditation audits would cease until further notice, due to the pandemic. On April 1, 2020, the Department waived accreditation entirely for all state school districts.

13. On March 25, 2021, the State Board met (virtually) in a special meeting. The agenda for the meeting provided as follows:

“Discussion and possible action to resolve into Executive Session pursuant to 25 O.S. §§ 307 (B) (4) and (7) to discuss confidential communications with legal counsel concerning a pending investigation, claim, or action, **concerning Western Heights Public Schools** when advised by legal counsel that disclosure of any additional information could seriously impair the ability to process or conduct the pending investigation and/or claim in the public interest - 25 O.S. §§ 307(B)(4) and (7).

1. Vote to Convene in Executive Session
2. Vote to Acknowledge Return to Open Session
3. Discussion and possible action regarding the matters discuss in Executive Session.”

(Exhibit “1, attached hereto). Western Heights was provided no notice that the District was on the State Board agenda.

14. At the March 25th meeting, the State Board voted to go into executive session to conduct that part of the meeting in secret. After a three hour plus executive session, a motion was made, seconded, and passed unanimously, **that “the District has failed to comply with Oklahoma laws and regulations”**. (Exhibit “2”, March 30, 2021, Letter from State Board Attorney).

15. On March 30, 2021, the District was first officially notified by letter of certain

general allegations against the District. (Exhibit "2"). The allegations were stated as follows:

- “1. Failure to provide in-person instructional services to students since March 2021;
2. Determination in the Spring of 2020 to discontinue provision of nutritional services to students as provided and represented to OSDE and the community in the District’s child nutrition program participation;
3. FY 2019 audit report reflecting violations of state law, including 62 O.S. §430.1, as a result of suing 2018 bond election proceeds for the purposes of constructing and repairing facilities to repay 2009 Lease-Purchase Financing and 2013 Lease-Purchase Financing;
4. District School Board member consuming alcohol while conducting official District business in a public meeting of the District’s school board in June 2020;
5. Majority of school sites in the District are federally designated as in need of increased student support and school improvement;
6. A significant loss of student enrollment (3365 to 2597) in the last year;
7. A loss of more than 100 District personnel in the last two years;
8. Disharmony in the school environment and community (Oklahoma Administrative Code 210:35-3-48), including an apparent lack of willingness to respond to concerns to the parents and the community (OAC 210:35-3-21).”

In that same letter, the State Board referred to the secret meeting of March 25, 2021, and referred to the findings and conclusions reached therein, to wit... **“its determination that the District has failed to comply with Oklahoma laws and regulations”**. It is a *per se* denial of due process, a violation of the Administrative Procedures Act, as well as a general failure of fair treatment and procedures to notify the District of unproven allegations *and* to determine that the District was guilty of those same allegations, in the same

communication.

16. The Respondents conducted no investigation of the allegations before reaching its determination that Western Heights had violated “Oklahoma laws and regulations”, and wholly failed to even request Western Heights’ response and defenses. This lack of investigation was specifically referred to following the secret session on March 25, 2021, by State Board Member Estela Hernandez, who correctly pointed out that an investigation of the allegations, including Western Heights’ response, must be conducted prior to any action on the District’s accreditation, that investigation had not been done, and in her opinion, the Department had violated state law (Title 70 O.S. §3-104.4, a/k/a Section 35 of the School Law Book, published by the Department).

17. Western Heights responded to the State Board on April 5, 2021, and expressed concern that the State Board had already made a “determination that the District has failed to comply with Oklahoma laws and regulations”, that the actions by the State Board were threatening to the District and the Superintendent, that the State Board had violated the Open Meeting Act (the “Act”), Title 25 O.S. §301 *et seq.*, by meeting in executive session, that the District and Superintendent had not received full and fair notice of the allegations upon which the State Board’s actions were based, and that there had been no fair hearing or individual proceeding pursuant to the Oklahoma Administrative Procedures Act, Title 75 O.S. §250 *et seq.*, before the State Board reached its decisions. (Exhibit “3”, April 5, 2021 Letter).

18. In the District’s April 5, 2021 letter, the District also challenged the State Board’s legal power or authority to **order** the Western Heights Superintendent, or the

volunteer elected Board Chairman and Board Member to attend the April 9th State Board meeting for questioning or cross examination, especially without being provided additional notice of the allegations against them, as well as whether the State Board was alleging criminal acts. (Exhibit "3", April 5, 2021 Letter).

19. On April 6, 2021, the attorney for the Respondents wrote and essentially refused to provide any details, complaints, documents, or other information which would provide a better description of the allegations made against the District and the Superintendent, in advance of the April 9th Board meeting. (Exhibit "4", April 6, 2021 letter). Importantly, the Respondents maintained that not only the identity of complainants, *but also the content of the complaints*, were confidential and would not be disclosed. (Exhibit "4"). The Respondents admitted that the complaints were presented to the State Board in executive session, and would again be presented at the April 9th meeting. (Exhibit "4").

20. The Respondent's attorney admitted that "Oklahoma law requires the [Department] to investigate a complaint of failure to provide educational services or failure to comply with accreditation standards within thirty (30) days of receiving the complaint". However, based on the eight general factual findings in counsel's March 30, 2021, letter (Exhibit "2"), knowledge of the allegations date back to the "Spring of 2020" [12 months], the FY 2019 Audit published in February, 2020 [13 months], and a school board meeting in June, 2020 [9 months]. Western Heights was not notified of ANY investigation with regard to ANY of the eight general issues, nor were they contacted before the March 25, 2021, secret executive session, by ANY Department attorneys or employees² to determine

² On the afternoon of Tuesday, April 6, 2021, two weeks after the State Board issued its findings from the secret meeting, and just two days before the State Board meeting,

Western Heights' position, response, or answer to any of the issues. **To date, Western Heights has not been requested by any Department employee for their response to the complaints.**

21. On April 8, 2021, the District again requested full notice of the allegations against the District and the Superintendent, again asserted that the Respondents were without authority to compel volunteer Board members, or anyone else for that matter, to its meetings, and refuted the Respondent's "after-decision" attempts to start an investigation of the District. (Exhibit "5").

22. The Respondents have clearly indicated that the actions which have been taken, and could be taken in the future, could result in the loss of accreditation and funding of the District, as well as the revocation of the Superintendent's license. (Exhibits "2" and "4").

23. On April 9, 2021, the State Board met in open session. Prior to that meeting, Western Heights had not been provided any additional specificity regarding the allegations, nor had the District been provided copies on any written allegations, complaints, or other documentation. The State Board maintained that all of this documentation was privileged and or confidential. In the meeting, the attorney for the State Board proceeded to present a long list of complaints, allegations, many of which were not included in the eight general allegations in the Respondent's March 30, 2021, letter. The State Board was presented 112 separate documents, 1,251 pages, none of which were presented to Western Heights

Ryan Pieper, the head of Accreditation for the Department, contacted the Superintendent and requested a meeting to "go over the letter [Exhibit "2"]". When Western Heights' counsel could not meet (due to Court conflicts) until Friday, April 9th (the day of the State Board meeting), Mr. Pieper indicated he no longer wished to have a meeting.

prior to the meeting. (Exhibit "6"). It is believed, and therefore alleged, that the listed documents, and/or discussion regarding the content of those documents (Exhibit "6"), were presented to the State Board in the March 25, 2021, secret meeting. Further, the documents were not published on the Respondents' website until after the conclusion of the April 9, 2021, State Board meeting.

24. At the April 9, 2021, State Board meeting, no witnesses testified, and no documentary evidence was properly identified or admitted into evidence. Rather, the attorney for the State Board gave his "opinion" of the allegations against the District and the Superintendent, assuming without witnesses or proof that all of the complaints were true. The attorney did not limit his presentation to the eight general allegations of which the District had general notice. Indeed, numerous other false, unproven and unsubstantiated allegations were presented, and for which no notice of any kind was provided to Western Heights or the Superintendent before the meeting.

25. At the conclusion of the State Board meeting, without the testimony of even one sworn witness, or the identification or admission of any exhibits, the State Board voted to place Western Heights on probation. According to the Department's *Standards for Accreditation of Oklahoma Schools*, Standard XI, a school district may be placed on probation if it:

- "(A) consistently fails to remove or make substantial progress towards removing all deficiencies noted the previous year; and/or
- (B) consistently violates regulations; and/or
- (C) deliberately and unnecessarily violates one or more of the regulations."

26. "'Accreditation with Probation' is the lowest accredited status a school may

hold”, with ‘Not Accredited’ as the only status remaining if the deficiencies are not corrected”. (Exhibit “7”, Letter for State Board Attorney). Western Heights is but one step away from a complete loss of accreditation and the loss of all funding to the District.

27. On April 16, 2021, the Respondents formally notified the District of the actions taken at the April 9th meeting. (Exhibit “7”). The letter **falsely implies** that the “materials” (assumably the 112 documents) were provided to Western Heights before the meeting in which they were discussed (either March 25th or April 9th). The letter also **falsely states** that the State Board “identified areas of noncompliance for necessary correction by the District”. Rather, the State Board issued no findings of fact or conclusions of law which would indicate the details of their decision, including but not limited to exactly what standards had not been met, which laws or regulations had been violated, exactly how the District failed to meet those standards, and what actions would be required to correct the conditions which supposedly led to the determination.

FIRST CAUSE OF ACTION

FAILURE TO COMPLY WITH THE ADMINISTRATIVE PROCEDURES ACT

Petitioners incorporate paragraphs 1 through 27 as though set forth in full herein.

28. Hofmeister, the State Board, and the Department are subject to the provisions of the Administrative Procedures Act, Title 75 O.S. §250 *et seq* (the “OAPA”). This includes actions against the District as well as actions against the Superintendent.

29. The OAPA requires that Western Heights is entitled to full and detailed notice of all allegations, and an opportunity to defend those allegations in an ‘individual

proceeding', the formal process to resolve issues of law and fact by a fair and impartial tribunal.

30. The OAPA requires that at the conclusion of a fair individual proceeding before a hearing officer, that a final written order be issued that includes detailed findings of fact and conclusions of law.

31. Western Heights and the Superintendent are entitled to a fair and impartial decision maker, who has not pre-judged the issues or the law. By reaching decisions in both the March 25th and April 9th meetings, and based upon the State Board members' biased statements adjudging Western Height guilty before a fair and impartial hearing was held, the State Board members must be disqualified as biased and prejudiced decision makers in all further proceedings against Western Heights.

32. The decisions of the Respondents, as set forth herein, were not based upon substantial, reliable, or probative evidence, and were arbitrary and capricious. Further, the substantive rights of Petitioners have been prejudiced as a direct result.

33. In addition and in the alternative, Petitioners are entitled to judicial review of all the Respondents' decisions, pursuant to Title 75 O.S. §318.

WHEREFORE, Petitioners respectfully request judgment against Respondents, determining that:

- A. Respondents have violated the provisions of the Administrative Procedures Act, and all decisions regarding or affecting Western Heights or the Superintendent, including the decision placing the District on probation, should be vacated and held for naught; and
- B. Petitioner's are entitled to fair notice of all allegations, copies of all exhibits

and evidence, and all other fair hearing and due process protections *before* a hearing is held which might affect Western Heights' accreditation or the Superintendent's license; and

- C. Petitioner's are entitled to an individual proceeding with all statutory protections and due process; and
- D. State Board Members, based on their past actions and statements, are not able to serve as fair and impartial decisionmakers, and must be disqualified; and
- E. Petitioners are entitled to an award of their costs and attorney fees, and for such other and further relief that the Court finds fair and equitable.

SECOND CAUSE OF ACTION

VIOLATIONS OF THE OPEN MEETING ACT

Petitioners incorporate paragraphs 1 through 33 as though set forth in full herein.

34. That the State Board is a political subdivision and agency of this state, and is therefore required to comply with this state's Open Meeting Act ("Act"), Title 25 O.S. §301, *et seq.*

35. Title 25 O.S. §301 provides that it is public policy of this state to encourage and facilitate an informed citizenry's understanding of governmental processes and governmental problems.

36. In order to keep the citizenry informed, the Respondents are required by the Act to post an agenda setting forth all matters to be discussed at a meeting that reasonably

informs the public of the matters to be taken up at the meeting.

37. The executive session agenda (Exhibit "1", p. 4) does not offer any indication as to the purpose of the executive session other than "Western Heights Public Schools"; there is no indication that the secret discussion includes issues of accreditation, the loss of accreditation, probation, or warning.

38. Title 25 O.S. §307(C)(1)(1) provides that "a public body may hold meetings by videoconference where each member of the public body is visible or audible to each other and the public, . . . ". At the meetings of March 25, 2021 and April 9, 2021, each member of the State Board was **not** visible to the public; it is unknown at this time whether each member was visible to each other.

39. With respect to the executive session at the March 25, 2021 meeting, the Respondents justified the executive session pursuant to Title 25 O.S. §307(B)(4) and (7), which provide as follows:

"B. Executive sessions of public bodies will be permitted only for the purpose of:

4. Confidential communications between a public body and its attorney concerning a pending investigation, claim, or action if the public body, with the advice of its attorney, determines that ***disclosure will seriously impair the ability of the public body to process the claim or conduct a pending investigation, litigation, or proceeding*** in the public interest; . . .

7. Discussing any matter where **disclosure of information would violate confidentiality requirements of state or federal law;**"

40. Based on the Motion made, seconded and unanimously passed in the March 25, 2021, meeting, and the documents and discussion on the April 9, 2021, meeting, there was no legal justification for an executive session. It is believed, and is therefore alleged,

that the State Board's attorney presented substantially the same allegations and documentation, as was presented in open session on April 9th. Executive session is not legally justified as a method of pre-determining in secret the State Board's determination and preference in advance of a later public meeting. Based on the motion asserted after the executive session, the State Board just preferred to conduct the proceeding in a "star chamber" secret meeting.

41. The aforesaid actions of the State Board on March 25, 2021, and April 9, 2021, as set forth herein, were in willful violation of the Act, and are invalid.

42. The Court should order the detailed minutes and audio/video recordings of the March 25, 2021 executive session produced to Western Heights. If it is determined that the executive session was not legally justified, then the Court should order all of those recordings, documentation, and records immediately published of record.

43. As a result of the Respondents' actions taken on March 25, 2021, and April 9, 2021, as set forth herein, an actual controversy and dispute has arisen in that Petitioners assert and contend that the action taken by the State Board, was willful and in clear violation of the Act, and that Petitioner's are entitled to both a judicial declaration and injunctive relief as provided in Title 25 O.S. §314 to enjoin and restrain the State Board from "lowering" Western Heights accreditation to probation.

44. This action is brought pursuant to the provisions of Title 25 O.S. §314, Title 75 O.S. §306, 307, and Title 12 O.S. §1651, *et seq.*, and a judicial determination that a declaration is necessary and proper to determine this matter of important public interest.

WHEREFORE, Petitioners respectfully request judgment against Respondents, determining that:

- A. Probable cause exists that the Respondents violated the Open Meeting Act such that the Court should order the detailed minutes and audio/video recordings of the March 25, 2021 executive session immediately produced to the Petitioners; and
- B. Respondents violated the provisions of the Open Meeting Act, and all decisions on March 25, 2021, and April 9, 2021, regarding or affecting Western Heights or the Superintendent, including the decision placing the District on probation, are invalid; and
- C. Petitioners are entitled to an award of their costs and attorney fees, and for such other and further relief that the Court finds fair and equitable.

THIRD CAUSE OF ACTION

REQUEST FOR DECLARATORY JUDGMENT

Petitioners incorporate paragraphs 1 through 44 as though set forth in full herein.

45. An actual dispute and controversy has arisen between Western Heights and the Respondents in that the Petitioners assert and contend that the Respondents are attempting to reduce or revoke the accreditation of the District and the Superintendent, to reduce or deny benefits to the District, which directly results in lost services and benefits to the students and families in the District, all without proper due process and fair procedures.

46. Even after Oklahoma courts ordered the Respondents to provide fair and impartial adjudication hearings in the form of individual proceedings for actions against

school districts, the Respondents have wholly failed to promulgate appropriate and fair policies and procedures or set forth standards and guidelines for same.

47. The Respondents do not have the jurisdiction, power or legal authority to order any citizen to appear at a State Board meetings, or any other location, including but not limited to Western Heights' volunteer Board Members and the Superintendent. Further, the Respondents cannot legally change the District's accreditation status or remove or reduce its funding, based on a failure to appear pursuant to an "order" from Respondents.

48. The Respondents should be enjoined and restrained from lowering or revoking the District's accreditation status until such time as the Respondents promulgate a fair procedure and policy for doing so, one that protects the rights of the District, the Superintendent, and the students and families of the District.

49. In the absence of standards, objective criteria, policies and procedures, the Respondents are arbitrarily and capriciously violating the rights of the District, the Superintendent, and the students and families of the District.

50. Title 70 O.S. §3-104.4(C) provides as follows:

C. Except as otherwise provided, schools shall meet the accreditation standards as a condition of continued accreditation. Nothing herein shall be construed as preventing changes to the adopted standards by the State Board of Education pursuant to the Administrative Procedures Act. The accreditation standards shall provide for warnings, probation or nonaccredited status for schools that fail to meet the standards. **The Department shall investigate a complaint of failure to provide educational services or failure to comply with accreditation standards within thirty (30) days of receiving the complaint. If the Department determines that a school has failed to comply with the accreditation standards, the Department shall report the recommended warning, probation or nonaccredited accreditation status to the State Board of Education within ninety (90) days.** If a school does not take action to comply with the accreditation standards within ninety (90) days after a report is filed by the Department, the Board shall withdraw accreditation for the school. The State Board accreditation

regulations shall provide for warnings and for assistance to schools and school districts whenever there is reason to believe a school is in danger of losing its state accreditation.

51. Assuming that any legitimate investigation would include contact with the District and a request for a response, the Respondents did not timely investigate most, if not all of the allegations against the District. Most of the allegations were filed by union members who were unhappy over union negotiations and the current status of impasse.

52. No report was filed to the State Board, or recommendation for sanctions. Further, had a report been filed, Western Heights was entitled to a full and fair hearing pursuant to the OAPA, prior to any decision being made.

53. This action is brought pursuant to the provisions of Title 25 O.S. §314, Title 75 O.S. §306, 307, and Title 12 O.S. §1651, *et seq.*, and a judicial determination that a declaration is necessary and proper to determine this matter of important public interest.

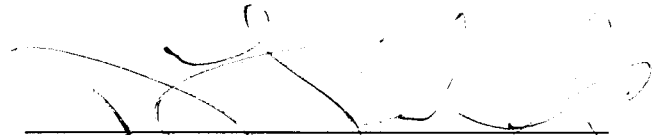
WHEREFORE, Petitioners respectfully request judgment against Respondents, determining that:

- A. Respondents have violated the District's right of a fair and impartial adjudication, and have violated the due process rights of the Superintendent, by reaching decisions of great importance without standards, procedures and policies, and such decisions should be vacated and held for naught.
- B. Respondents have failed to properly promulgate fair policies and procedures or set forth standards and guidelines for the fair and impartial adjudication, in the form of individual proceedings, of accreditation or other actions against school districts which affect the District, its staff, and its students; and
- C. Respondents must lawfully promulgate appropriate and fair procedures prior

to taking any action against the Superintendent or District which might reduce or revoke accreditation and/or funding of the District.

- D. Respondents have no legal authority to order Western Heights employees or volunteer Board Members to attend State Board meetings, nor can they legally sanction the District, its employees and Board Members for failure to appear; and
- E. Respondents have failed to conduct an investigation or file the required reports, all of which must occur prior to an individual proceeding; and
- F. All decisions on March 25, 2021, and April 9, 2021, regarding or affecting Western Heights or the Superintendent, including the decision placing the District on probation, are invalid; and
- G. Petitioners are entitled to an award of their costs and attorney fees, and for such other and further relief that the Court finds fair and equitable.

Respectfully submitted,



Jerry L. Colclazier, OBA No. 13814
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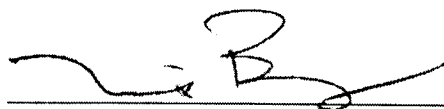
ATTORNEYS FOR PETITIONERS

VERIFICATION

STATE OF OKLAHOMA)
) ss.
COUNTY OF OKLAHOMA)

I, Mannix Barnes, the undersigned, of lawful age, being first duly sworn, upon my oath alleges and states as follows:

That I am an individual Petitioner, and Superintendent of a Petitioner above named; that I have read the above and foregoing Petition; and the facts contained therein are true and correct to the best of my knowledge and belief.



Mannix Barnes

Subscribed and sworn to before me this 21st day of April, 2021.

[SEAL]





Notary Public

**SPECIAL MEETING
STATE BOARD OF EDUCATION**
Public view and access: <https://www.facebook.com/OklaSDE/>

AGENDA

Thursday, March 25, 2021 – 1:00 p.m.

As authorized by 25 O.S. §§ 307.1 and 311, this meeting will be conducted entirely via teleconferencing or videoconferencing.

Board members present via teleconference and videoconference at remote locations will be:

Joy Hofmeister, State Superintendent and Chair, via Zoom videoconference
Estela Hernandez, via Zoom videoconference
Carlisha Williams Bradley, via Zoom videoconference
William Flanagan, via Zoom videoconference
Brian Bobek, via Zoom videoconference
Trent Smith, via Zoom videoconference
Jennifer Monies, via Zoom videoconference

1. Call to order and roll call – 1:00 p.m.

2. STATE SUPERINTENDENT

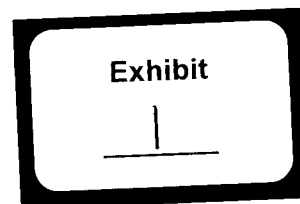
Information from the State Superintendent

(a) Recognition of Department Employee for the month of March: **Alyssa Griggs**

(Action) (b) Discussion and possible action on the minutes of the February 25, 2021, special State Board of Education meeting

3. PUBLIC COMMENT

Patrons may speak to the Board on any matter set forth on the current board agenda, excluding any matter which may be identified as including and/or pertaining to a proposed executive session. Comments will be limited to the **first ten (10) individuals** who email Terrie.Cheadle@sde.ok.gov by 5:00 p.m. on March 24, 2021, advising of their intent to provide public comment to the Board. In the email requesting to provide public comment, the individual or representative must provide their name, email and phone number, along with the agenda item to be commented on. A time limit of three (3) minutes will be allowed for each speaker. In its sole discretion, the time limit may be extended by consent of the Board. The Board Chairperson may interrupt and/or terminate any presentation during public comment, which does not conform to the procedures outlined under this Section. The Board Chairperson reserves and retains the right to interrupt, terminate, or postpone public comment as necessary to effectuate the management of the public meeting.



4. **CONSENT DOCKET (Action)**

Discussion and possible action on the following deregulation applications, statutory waivers, and exemptions for the 2020-2021 school year - 70 O.S. § 3-104; **OAC 210:35-1-4**:

- (Action) (a) **Abbreviated School Day – OAC 210:35-29-2 and 210:35-3-46
3 Years**
Bethel Public Schools, Pottawatomie County
- (Action) (b) **Cooperative Agreements for Alternative Education Programs – 70 O.S.
§ 1210.568**
Balko Public Schools, Beaver County
Goodwell Public Schools, Texas County
- (Action) (c) **Library Media Services – OAC 210:35-5-71 and 210:35-9-71**
Fox Public Schools, Carter County
Arapaho-Butler Public Schools, Custer County
Central Public Schools, Sequoyah County
- (Action) (d) **Library Media Specialist Certificate Exemption - 70 O.S. § 3-126**
Enid Public Schools, Garfield County
- (Action) (e) Request approval on exceptions to State Board of Education teacher certification regulations to permit issuance of emergency (provisional) certificates - 70 O.S. § 6-187
- (Action) (f) Request approval for **Keystone Adventure School & Farm** to participate in the Lindsey Nicole Henry Scholarships for Students with Disabilities program – 70 O.S. § 13-101.2

All of the items of routine nature normally approved at board meetings will be approved by one vote unless any board member desires to have a separate vote on any or all of these items.

5. **LEGAL SERVICES/STATE BOARD OF EDUCATION OFFICE – Brad Clark,
General Counsel**

- (Action) (a) Discussion and possible action on the adoption of the following **proposed rule changes** pursuant to the Oklahoma Administrative Procedures Act, 75 O.S. § 253 – **Lori Murphy, Assistant General Counsel**
 - (1) Title 210. State Department of Education
Chapter 15. Curriculum and Instruction
Subchapter 3. Oklahoma Academic Standards
Part 21. Information Literacy
210:15-3-172. Overview [REVOKED]
210:15-3-172.1 Definitions [REVOKED]
210:15-3-173. Information Literacy [AMENDED]

- (2) Title 210. State Department of Education
Chapter 15. Curriculum and Instruction
Subchapter 3. Oklahoma Academic Standards
Part 23. Instructional Technology
210:15-3-183. Overview [REVOKED]
210:15-3-183.1 Definitions [REVOKED]
210:15-3-184. Standards [AMENDED]
210:15-3-185. Intermediate level prior to completion of grade 8 [REVOKED]
210:15-3-186. Advanced level prior to completion of grade 12 [REVOKED]

- (3) Title 210. State Department of Education
Chapter 20. Staff
Subchapter 9. Professional Standards: Teacher Education and Certification
Part 9. Teacher Certification
210:20-9-110. Alternative placement teaching certificates [AMENDED]

(Action) (b) Presentation, discussion and possible action on **Oologah-Talala Public Schools**, including operations, governance, accreditation and quarterly report as required at the June 25, 2020, meeting of the State Board of Education - **70 O.S. § 3-104, 3-104.3, 3-104.4** and OAC 210:35-3-201

(Action) (c) Discussion and possible action to resolve into Executive Session pursuant to **25 O.S. §§ 307 (B) (4) (7) and (8)** for the purpose of discussing possible action to issue an emergency order summarily suspending the teacher certificate and certificate number of **1) Lester Young** and **2) Roland Butler** pending an individual proceeding for revocation or other action - **70 O.S. § 3-104; 75 O.S. § 314; OAC 210-1-5-6**

1. Vote to Convene in Executive Session
2. Vote to Acknowledge Return to Open Session
3. Discussion and possible action regarding the matters discussed in Executive Session

(Action) (d) Discussion and possible action to resolve into Executive Session pursuant to **25 O.S. §§ 307 (B) (4) and (7)** to discuss confidential communications with legal counsel concerning a pending investigation, claim, or action, concerning **Oologah-Talala Public Schools**, when advised by legal counsel that disclosure of any additional information could seriously impair the ability to process or conduct the pending investigation and/or claim in the public interest - **25 O.S. §§ 307 (B) (4) and (7)**

1. Vote to Convene in Executive Session
2. Vote to Acknowledge Return to Open Session
3. Discussion and possible action regarding the matters discussed in Executive Session

- (Action) (e) Discussion and possible action to resolve into Executive Session pursuant to **25 O.S. §§ 307 (B) (4) and (7)** to discuss confidential communications with legal counsel concerning a pending investigation, claim, or action, concerning **Epic Charter Schools (Epic One-on-One and Epic-Blended)**, when advised by legal counsel that disclosure of any additional information could seriously impair the ability to process or conduct the pending investigation and/or claim in the public interest - 25 O.S. §§ 307 (B) (4) and (7)
1. Vote to Convene in Executive Session
 2. Vote to Acknowledge Return to Open Session
 3. Discussion and possible action regarding the matters discussed in Executive Session
- (Action) (f) Discussion and possible action to resolve into Executive Session pursuant to **25 O.S. §§ 307 (B) (4) and (7)** to discuss confidential communications with legal counsel concerning a pending investigation, claim, or action, concerning **Western Heights Public Schools** when advised by legal counsel that disclosure of any additional information could seriously impair the ability to process or conduct the pending investigation and/or claim in the public interest - 25 O.S. §§ 307 (B) (4) and (7)
1. Vote to Convene in Executive Session
 2. Vote to Acknowledge Return to Open Session
 3. Discussion and possible action regarding the matters discuss in Executive Session
- (Action) (g) Discussion and possible action to resolve into Executive Session pursuant to **25 O.S. § 307 (B) (4)** to discuss pending litigation, ***Oklahoma Public Charter School Association v. Oklahoma State Board of Education***, in the **District Court of Oklahoma County, CV-2017-1330**
1. Vote to Convene in Executive Session
 2. Vote to Acknowledge Return to Open Session
 3. Discussion and possible action regarding the matters discussed in Executive Session

6. **ADJOURNMENT (Action)**



JOY HOFMEISTER
STATE SUPERINTENDENT *of* PUBLIC INSTRUCTION
OKLAHOMA STATE DEPARTMENT *of* EDUCATION

March 30, 2021

VIA E-MAIL ONLY

Mannix Barnes
Western Heights Public Schools
8401 SW 44th Street
Oklahoma City, OK 73179
mannix.barnes@westernheights.k12.ok.us

Re: Western Heights Public Schools
(the "District") - Notice to Appear

Dear Mr. Barnes,

This letter shall serve as formal notice from the Oklahoma State Board of Education (the "State Board") that Western Heights Public Schools (the "District") appear at the April 9, 2021, special meeting of the State Board. On March 25, 2021, the State Board took action to require the District's appearance at the April 9 meeting, and in so doing expressed its utmost concern surrounding the operations, decisions and outcomes in the District. The concerns stem from the numerous complaints received by the Oklahoma State Department of Education ("OSDE") and its determination that the District has failed to comply with Oklahoma laws and regulations. The complaints received and subsequent substantiation surround, at a minimum, the following:

1. Failure to provide in-person instructional services to students since March 2021¹;
2. Determination in the Spring of 2020 to discontinue provision of nutritional services to students as provided and represented to OSDE and the community in the District's child nutrition program participation;
3. FY 2019 audit report reflecting violations of state law, including 62 O.S. §430.1, as a result of using 2018 bond election proceeds for the purposes of constructing and repairing facilities to repay 2009 Lease-Purchase Financing and 2013 Lease-Purchase Financing²;

¹ Upon information and belief, at this time the District is the only accredited public school in the State to not offer an in-person option to students. As such, the State Board strongly encourages the District to open its doors and provide an option for on-site instructional delivery to its students, no later than April 1, 2021.

² Section 430.1(E) provides "[t]he payment for lease of real or personal property shall be made only from annual or supplemental appropriations specifically designated for such purpose, and no appropriation for the purpose of paying rentals on real or personal property shall be transferred or diverted to any other purpose, except as may be authorized by the terms of the agreement or by law." Further, Section 430.1(E) prohibits the use of subsequent lease-purchase financing to make payments on previous or existing lease-

Exhibit

2

4. District School Board member consuming alcohol while conducting official District business in a public meeting of the District's school board in June 2020;
5. Majority of school sites in the District are federally designated as in need of increased student support and school improvement;
6. A significant loss of student enrollment (3365 to 2597) in the last year;
7. A loss of more than 100 District personnel in the last two years;
8. Disharmony in the school environment and community (Oklahoma Administrative Code 210:35-3-48), including an apparent lack of willingness to respond to concerns of the parents and the community (OAC 210:35-3-21).

In light of the foregoing, the District is compelled to appear at the State Board's April 9, 2021, special meeting. Specifically, the District's School Board President, Superintendent Barnes and Board Member Linda Farley should appear. The meeting is currently scheduled to begin at 9:30 A.M., and will be held through videoconference means consistent with the amendments to the Open Meeting Act, 25 O.S. 2011, §301 *et seq.*, signed into law by Gov. J. Kevin Stitt on February 10, 2021. *See* Senate Bill No. 1031, 2021 O.S.L 3, §2. At the April 9 meeting, the District is officially notified that the State Board may discuss, consider and take action on the District's accreditation status, including but not limited to placing the District on warning or probation. Finally, should the District not take action and come into compliance with the laws, regulations and standards within ninety (90) days, the District is hereby officially notified that the State Board may withdraw the District's accreditation.

Sincerely,



Brad Clark,
General Counsel

Cc: The Honorable Members of the State Board of Education

SDE/Investigation/Western Heights/March 2021

purchase agreements. By its actions, the District diverted funds approved for specified purposes and uses proceeds of a later (2018) lease-purchase to make payments on earlier (2009 and 2013) lease-purchases. Moreover, in so doing, the District incurred additional interest expense and issuance costs on the 2018 lease-purchase financing due to additional amounts needs to make payments on the 2009 and 2013 lease-purchase financings.

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JERRY L. COLCLAZIER

AMIE R. COLCLAZIER

VIA ELECTRONIC MAIL ONLY

April 5, 2021

Brad Clark, General Counsel
Oklahoma Department of Education

Dear Mr. Clark:

I am writing in response to your email correspondence to Mannix Barnes, Superintendent of Western Heights, dated March 30, 2021. Not surprisingly, Superintendent Barnes and the District are very concerned over the allegations contained in your email, especially your statement that the OSDE has already made a "determination that the District has failed to comply with Oklahoma laws and regulations", before Western Heights had any notice of these allegations, apparently before the Department has started an investigation, and importantly, before the District was provided any notice or other due process, or a fair administrative hearing.

Regardless, the Superintendent and the District want to fully cooperate in any investigation conducted by the OSDE. However, I have several concerns about this proceeding. First, I am concerned as to the authority of the OSDE to compel these citizens to appear before the State Board. Can you identify the legal authority of the State Board to subpoena or otherwise compel board members or employees of the District? You indicate in your letter that the State Board has already determined that the District, and assumably these individuals, have failed to comply with Oklahoma laws and regulations. Are you alleging criminal violations? If so, which ones? Secondly, in order to fully cooperate, the District needs to fully understand the basis and details of the allegations, as well as the authors of the "numerous complaints", so that the District can be prepared to offer a complete defense and fully respond to your concerns. Both our criminal and civil justice systems are premised on full notice of the allegations, *before* being required to appear and testify. Consequently, I am advising the District that it would be improvident for the School Board President, Ms. Farley and Superintendent Barnes to appear before the State Board before being fully advised as to the basis, legal authority, and complete details of these allegations.

For this reason, the District requests the following specifics and documentation, prior to any appearance before the State Board.

Exhibit

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1. Please provide copies of any and all of the “numerous complaints”, as well as any correspondence between any employees or agents of the OSDE; and
2. For each of the eight (8) listed allegations, please identify the specific law, regulation, or accreditation standard that the OSDE and/or the accuser alleges was violated; and
3. For each of the eight (8) listed allegations, please identify the factual basis, including the identification of any witnesses who have provided testimony or support for the allegations, as well as produce any and all documents which the OSDE is relying upon, or has relied upon, to reach its conclusion that the District failed to comply with Oklahoma laws and regulations. This would include any and all documents, reports, presentations, etc., that the Board reviewed in executive session on March 25, 2021; and
4. Please identify specifically what action the District must take within ninety (90) days in order to “come into compliance with the laws, regulations and standards”; and
5. Please provide the statutory authority for the OSDE to revoke the accreditation of the District without providing a hearing pursuant to the Oklahoma Administrative Procedures Act, Title 75 O.S. §250 *et seq.*

If you refuse to provide this basic information based on the concept of fairness and full disclosure, please consider this request as submitted pursuant to the Oklahoma Open Records Act, Title 51. O.S. §24A.1 *et seq.* If you intend to proceed with any adjudicative action against the District, time is of the essence. Until this information is provided, as well as the statutory authority or power of subpoena of the OSDE to compel these citizens to appear before the State Board, I am advising my clients not to make any appearances before the State Board, including but not limited to your meeting of April 9, 2021.

I am also concerned as to the legality of the March 25, 2021, meeting of the State Board, as well as future meetings of the State Board. Title 25 O.S. §307.1(C)(1) provides that “a public body may hold meetings by videoconference *where each member of the public body is visible and audible to each other and the public, . . .*”. Further, I am very disturbed as to the legal justification of conducting an executive session regarding the business of the District. The agenda of the meeting justified an executive session pursuant to Title 25 O.S. §307(B)(4) and (7), which provide as follows:

“B. Executive sessions of public bodies will be permitted only for the purpose of:

4. Confidential communications between a public body and its attorney

concerning a pending investigation, claim, or action if the public body, with the advice of its attorney, determines that ***disclosure will seriously impair the ability of the public body to process the claim or conduct a pending investigation, litigation, or proceeding*** in the public interest;

7. Discussing any matter where **disclosure of information would violate confidentiality requirements of state or federal law;**"

I have reviewed the eight (8) areas of concern that the Board discussed in executive session and cannot find any issue or subject matter that would meet the statutory justification for an executive session. Certainly, it does not appear that the Board discussed or disclosed individual student records or confidential employment records. Rather, it appears that based on the motion asserted after the executive session, that the State Board just preferred to conduct the proceeding in a "star chamber" secret meeting.

Please provide the specific factual justification for the Board's decision to conduct this state business in secret. Failure to do so will result in the filing of a police report and referral to the Oklahoma County District Attorney, as well as the filing of an action in District Court to make the executive session ("including tape recordings") public. Finally, the OSDE is on notice that future executive sessions which do not statutorily qualify as such will very likely be challenged by the District, and you should preserve all recordings and documentation regarding those meetings.

As to any future meetings regarding the potential loss of accreditation, the District requests that they be conducted as an individual proceeding pursuant to the Oklahoma Administrative Procedures Act, Title 75 O.S. §250 *et seq.* In addition, please advise if the members of the State Board intend to preside over or decide any issues regarding the District after the State Board unanimously *pre-decided* that "the District failed to comply with Oklahoma laws and regulations", before the District or its employees and Board members were even advised of the charges. It is my understanding that you took that formal action even after one of your own State Board members correctly pointed out that you were 'getting the cart before the horse' so to speak.

With respect to the State Board's implied directive (received by email on March 30, 2021) for the District to "open its doors and provide an option for on-site instructional delivery to its students", "no later than April 1, 2021, there are several concerns¹. First, the hallmark of Oklahoma's educational system is local board control. The OSDE has no more

¹ You indicated in your letter that Western Heights is "the only accredited public school in the state to not offer an in-person option to students". While the OSDE has much greater access to information than I, based on the news this morning that Putnam City is restarting school only **today**, it appears that your assertion, as of the date of your letter, may have been inaccurate.

authority to order the District to return to the classroom, any more than former President Trump had the authority to order the State Board to return the children to school on a statewide basis several months ago. The District takes its responsibility to protect its teachers and students very seriously. Safe return to school is a subjective decision which has been highly influenced over the last year by political and economic considerations, neither of which are pertinent to consider at the local level. Just this week Rochele Walensky, the new Director of the CDC was quoted as saying "I am very scared", when referring to the current resurgence of COVID and its variants. Just yesterday on *Meet the Press*, Dr. Michael Osterholm, a nationally recognized infectious disease expert who supported the cautious return to school based learning several months ago, appeared to reverse his position. Dr. Osterholm indicated that his earlier position was based on the evidence (then) that COVID was not readily transmittable to children, so in-school learning appeared somewhat safe. However, yesterday Dr. Osterholm discussed the new B117 variant of the virus, which is rapidly spreading in the United States due to it being "50-100% more infectious" than the base strain, **and which "infects kids very readily"**, and indicated that these new scientific developments have caused him to reconsider his earlier position about kids in school. Dr. Anthony Fauci was also quoted in the same news program that "we need to take a step back", when referring to the current situation.

In any event, as you are aware, this a prospective decision of the Board, not the Superintendent. This issue is on the Board's agenda for its April 12th meeting; I will advise you of any decisions made at that time. Suffice it to say this is a critical decision that should be based on the science, which sometimes changes daily. What it should not be based upon is politics or the economy, or even the opinions of the political appointees on the State Board. Certainly, the District respects the opinion of the State Board and its members and will carefully consider those opinions along with the much more pertinent scientific opinions, when and if the issue is properly before the Board of Education. Finally, telling the District on Wednesday, March 30, 2021, to start school on Friday, April 1, 2021, would seem to invite the District to violate the Open Meetings Act, Title 25 O.S. §301 *et seq.* It also doesn't take into account the actual mechanics of re-opening school and making sure the teachers and staff are in attendance when the students show up.

As previously stated, the District wishes to fully cooperate in providing information and assurances that they are operating the District lawfully and appropriately. However, the District will not be selectively prosecuted without cause, or for the wrong reasons. The OSDE has a history of this type of inappropriate conduct going all the way back to 2005, when after Western Heights leadership criticized the Department publically, the Department placed several of their schools on the School Improvement List. Western Heights appealed that determination and your own hearing officer held that the Department's decision to place Western Heights on the List **was not based on facts and was "arbitrary and capricious"**. Of course, you are also well aware that the Department shorted Western Heights close to twenty million dollars (\$20,000,000.00) in funding over

the last several decades, which the District has had to resort to the courts to rectify. If that weren't bad enough, the District, along with all the other litigating school districts, reached an agreement with the OSDE to settle the funding lawsuit, which settlement this very same State Board voted to renege upon. Those funds could have gone a long way to benefit our high poverty students that you referred to in your letter.

If that were not enough, the District believes that selective prosecution is also shown by the OSDE auditing the District's federal programs two years in a row, which failed to show any significant issues last year, and showed no issues this year. Future discovery will show whether that was just a coincidence or was a coordinated effort to mistreat Western Heights. Finally, disparate treatment may also be indicated by the fact that Western Heights was passed over for incentive grant funding for Title I schools, which as you pointed out, the District qualified for based on its high poverty rate. The needed funds were apparently awarded to "rich" districts who have much lower poverty rates.

In summary, the Department has given Western Heights no reason to trust its motives or actions on any issue. Whether their suspicions of retaliation are true will likely only be revealed in court ordered and/or Title 75 discovery in the event the Department continues to threaten and intimidate the District to the point that it must file suit to protect itself in court.

I look forward to receiving the information and documents requested. If you have any questions or comments, feel free to call.

Sincerely,


Jerry Colclazier

cc: Mannix Barnes
Members of the Board of Education
Members of the State Board

Date: 4/5/2021 2:05:02 PM

Sender: "Jerry Colclazier"

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CC: Mannix Barnes ; lljamesco@sbcglobal.net; coachnok@aol.com;
sharpr1954@gmail.com; rosalind.cravens@yahoo.com; draper@whisd.org;
Dan Murdock
Subject: Response to March 30, 2021 letter

Attachment: Letter to Clark, April 5, 2021.pdf

See attached.

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JOY HOFMEISTER
STATE SUPERINTENDENT *of* PUBLIC INSTRUCTION
OKLAHOMA STATE DEPARTMENT *of* EDUCATION

April 6, 2021

VIA E-MAIL ONLY

Mannix Barnes
c/o Jerry Colclazier
Jerry@colclazier.com

Re: Western Heights Public Schools
(the "District") - Notice to Appear

Dear Mr. Colclazier,

I am in receipt of your April 5, 2021, correspondence on behalf of Western Heights Public Schools (the "District."), sent in response to the State Board of Education's action to require the District's administration and a board member to appear on April 9, 2021.

As you know, the State Board of Education ("State Board") has been entrusted with the supervision of the public school system of Oklahoma, through the Constitution and laws of this state (*see, e.g.*, Okla. Const. Art. 13, Section 5; 70 O.S. § 3-101 *et seq.*). Specific to your questions about legal authority to compel representatives of a school district's administration to report to the State Board of Education, the Oklahoma Legislature has provided in law that the State Board shall:

Have authority to require persons having administrative control of all school districts in Oklahoma to make such regular and special reports regarding the activities of the schools in said districts as the Board may deem needful for the proper exercise of its duties and functions. Such authority shall include the right of the State Board of Education to withhold all state funds under its control, to withhold official recognition, including accrediting, until such required reports have been filed and accepted in the office of said Board and to revoke the certificates of persons failing or refusing to make such reports (70 O.S. § 3-104(13)).

Further, you have requested not only the content of communications received by the State Department of Education (OSDE) alleging complaints about the District, but have *specifically requested the identities of the complainants*. Pursuant to 51 O.S. § 24A.14, the OSDE does not release the identities of complainants who allege violations of law by school districts or their employees, to protect against the danger of retaliation.

Exhibit

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While the scope of the complaints was identified in the State Board's motion and vote on March 25, and in subsequent correspondence to the District on March 30, they will again be addressed at the Special Meeting of the State Board scheduled for April 9. Moreover, the District's attempt to claim ignorance of the complaints and issues is misplaced. A cursory review of the matters identified reveals that these issues were actions taken by District actors (ex., 2019 audit on illegal use of bond proceeds, discontinuance of child nutrition services in April 2020), have been brought to the attention of the District and its superintendent through communications from OSDE program offices at the time the concerns were received, and/or reflect information any functioning school district should be aware of (ex: significant loss of personnel and student enrollment).

Next, you question the authority of the State Board to hold an executive session "regarding the business of the District." The content of the Board's executive session agenda item regarding Western Heights Public Schools falls squarely under the statutory authorization you cite, 25 O.S. § 307(B)(4) and (7), which provides:

Confidential communications between a public body and its attorney concerning a pending investigation, claim, or action if the public body, with the advice of its attorney, determines that disclosure will seriously impair the ability of the public body to process the claim or conduct a pending investigation, litigation, or proceeding in the public interest; And,

Discussing any matter where disclosure of information would violate confidentiality requirements of state or federal law;

On March 25, the State Board was discussing a pending investigation, claim or action related to the District, and based on the advice of legal counsel, disclosure of such matters would have impaired the ability of the processing of the investigation, claim or action. Further, despite your request for identification of what individuals made complaints about the District, the individual complainants and their complaints contain confidential information that could not be discussed in open session of a public meeting. Executive session was designed to discuss matters like the ones cited in our March 30, 2021, Notice to Appear, and the purposes identified on the State Board's March 25 agenda are expressly authorized by law.

Finally, despite your erroneous belief, the State Board is not seeking to "revoke the accreditation of the district." Rather, as clearly set forth in the March 30 correspondence, the April 9 meeting may or may not result in action on the District's accreditation status, including warning or probation. Oklahoma law requires the OSDE to investigate a complaint of failure to provide educational services or failure to comply with accreditation standards within thirty (30) days of receiving the complaint. 70 O.S. § 3-104.4. Contrary to your assertion, OSDE has engaged in that process, discussed the matters confidentially with the State Board as authorized on March 25, and followed up with the District as reflected in the March 30 correspondence. With that and the State Board's action for the OSDE to conduct a performance review of the District, these matters will be presented to the State Board on April 9 with a recommendation that the District be lowered to probation. This action is consistent with the plain language of applicable law and administrative rules.

As a part of recommending the District be placed on probation, OSDE has attempted to meet with District representatives, including the Superintendent. However, from your letter and the District's own statements, it is my understanding that the District is advised to not meet with OSDE. While OSDE respectfully requests that the District reconsider and meet on either Wednesday, April 7, or Thursday, April 8, this matter is scheduled to proceed on Friday, April 9, regardless of whether the District avails itself of an opportunity to engage prior to the Special Meeting.¹ Should the District elect to meet with OSDE, please advise of a time that you are available and we will work to accommodate your schedules.

Please let me know if you have further questions prior to the District's appearance at the Special Meeting on April 9.

Sincerely,

A handwritten signature in black ink that reads "Brad Clark" with a stylized flourish at the end.

Brad Clark,
General Counsel

Cc: The Honorable Members of the State Board of Education

¹ To the extent this correspondence does not respond to allegations in your April 5 letter, the OSDE and State Board respectfully deny them for lack of merit.

COLCLAZIER & ASSOCIATES

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JERRY L. COLCLAZIER

AMIE R. COLCLAZIER

VIA ELECTRONIC MAIL ONLY

April 8, 2021

Brad Clark, General Counsel
Oklahoma Department of Education

Dear Mr. Clark:

I am in receipt of your letter of Tuesday, April 6, 2021, received after the close of business at 8:38 pm, and wanted to respond in kind. First off, I appreciate you sending the legal authority for the State Board to supervise the public school system in Oklahoma; we do not dispute that. However, there is a big difference between supervision of the school system and having the authority to compel citizens to appear before a state agency. While you might have subpoena power in an individual proceeding under the Administrative Procedures Act, we are not in such a proceeding now. Similarly, the authority to require *all of the school districts* to keep certain records and file certain reports is simply not the equivalent of ordering *certain* employees of *certain* school districts to appear and submit to examination by the State Board's members and attorneys. None of the powers you listed include that power; had the Legislature intended to grant such powers it would have been easy to do so. Further, please identify any reports that you allege have not been filed by the District.

I disagree with your attempted justification to keep secret not only the identity of the complainants, as well as the substance of their complaints, as well as the OSDE's responses to those complaints. Even if you chose to redact the identities of the complainants, there is no authority to keep the content of the accusations secret, and certainly not the OSDE's responses to the complainants, with the identities redacted. See *State ex rel. State Board of Medical Licensure and Supervision v. Migliaccio*, 1996 OK CIV APP 37, 917 P.2d 483 (“[R]ecords created by a public body after receipt of a complaint must be open to public access and review”). If the purpose of this inquiry is to conduct a fair investigation, I cannot imagine why you would not willingly provide the substance of the allegations in the complaints, as well as any responses, to Western Heights. This shouldn't be a game of “hide the ball”.

Do you also argue that the dates of these complaints are confidential? I notice that out of the eight stated areas where the Board made their “determination that the District has failed to comply with Oklahoma laws and regulations”, the first dates back to March,

Exhibit

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2020, the second was in the "Spring of 2020", the third was from a 2019 audit released on June 30, 2019, and the fourth was in June, 2020. When did the OSDE first receive notice of these allegations? You state in your letter that Oklahoma law requires the OSDE to investigate a complaint "within thirty (30) days of receiving the complaint". What exactly has been done in this "investigation"? Certainly, it did not include any attempt to find out what Western Heights' response to the allegations was, as the first time the District became aware of the allegations was **after the State Board met in secret** on March 25th, then voted (quoting from your letter) "that the District has failed to comply with Oklahoma laws and regulations". It is antithetical to our system of justice for a state agency to meet in secret, determine guilt, all of which occurs before the agency has either notified the subject of the investigation, informed them of the allegations, or given them any opportunity to respond.

You go on to state in your letter that the "OSDE has attempted to meet with District representatives, including the Superintendent". What you fail to mention is the very first attempt to meet with the District wasn't until the afternoon of Tuesday, April 6th, almost two weeks after the State Board had already decided the District's guilt, and three days before the April 9th State Board's meeting. The Superintendent referred the request to me, and because I had previous court engagements (I returned the call on the way to a court hearing) and depositions on Wednesday and Thursday, I could not meet until Friday. Mr. Piper indicated that he had to meet before the State Board meeting on Friday and would not even set a meeting for Friday afternoon. This type of gamesmanship does nothing to increase the District's confidence that it will receive a fair hearing before the State Board who, according to your letter, has already decided the case. But, just so we are clear, the District stands ready to respond to these allegations, provided it is sufficiently provided notice of same (see my last letter), it is in the appropriate forum, and the appropriate statutory and due process protections are provided.

I truly hope the State Board will take a step back from the precipice of another court action with the District. That should include full, fair, and detailed notification of your concerns to the District, followed by an opportunity for the District to respond and defend those allegations, all of which occurs **before** a determination is made as to whether the allegations have merit. There is good reason, and hundreds of years of experience, that support hearing both sides of an issue before deciding it. If you have any questions or comments, feel free to call.

Sincerely,



Jerry Colclazier

cc: Mannix Barnes
Members of the Board of Education
Members of the State Board

Date: 4/8/2021 3:30:39 PM

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Barnes ; lljamesco@sbcglobal.net; coachnok@aol.com;
sharpr1954@gmail.com; rosalind.cravens@yahoo.com; draper@whisd.org
Subject: Letter to Mr. Clark

Attachment: Letter to Clark 040821.pdf

See Attached.

Jerry L. Colclazier
COLCLAZIER & ASSOCIATES
404 N. Main Street
Seminole, Oklahoma 74868
Telephone: (405) 382-1212
Facsimile: (405) 382-1214
e-mail: jerry@colclazier.com

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OKLAHOMA

STATE DEPARTMENT OF EDUCATION
STATE SUPERINTENDENT JOY HOFMEISTER

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Last updated on April 14, 2021



JOY HOFMEISTER
STATE SUPERINTENDENT *of* PUBLIC INSTRUCTION
OKLAHOMA STATE DEPARTMENT *of* EDUCATION

April 16, 2021

VIA EMAIL W/CERTIFIED U.S. MAIL TO FOLLOW

Superintendent Mannix Barnes and Members of the Board of Education
c/o Jerry Colclazier
Western Heights Public Schools
8401 SW 44th St.
Oklahoma City, OK 73179
Jerry@Colclazier.com

Superintendent Barnes and Members of the Western Heights of Education,

On March 25, 2021, the Oklahoma State Board of Education (“State Board”) approved a motion expressing the utmost concern about several identified issues with the operation of Western Heights Public Schools.

By means of a letter dated March 30, 2021, representatives of your District were formally directed to appear before the State Board at a Special Meeting held pursuant to the provisions of the Open Meeting Act on April 9, 2021. From the March 30 correspondence, there were several attempts to meet with you and District representatives to discuss the areas of concern. As you know, your District leadership declined these meetings and failed to attend the Special Meeting and respond to the information presented by the State Department of Education (“OSDE”) about areas of concern and noncompliance.

Following presentation and discussion of materials made available to the District and the public as well as the Board¹, the State Board voted at its Special Meeting on April 9, 2021, to assign Western Heights Public Schools the accreditation status of “Accredited With Probation.” The probationary accreditation action taken by the State Board of Education imposes conditions on the District requiring the correction of identified areas of noncompliance and concern, as set forth below.

Accreditation of Oklahoma Public Schools

An Oklahoma school district and its school sites must hold state accreditation to operate as a public school system that receives state funding. “Accredited With Probation” is the lowest accredited status a school may hold, with “Not Accredited” as the only status remaining if the identified deficiencies are not corrected. The Oklahoma Administrative Code (OAC) lists conditions under

¹ <https://sde.ok.gov/documents/2021-04-09/state-board-education-handouts-april-9-2021>

Exhibit

7

which the status Accredited With Probation should be assigned, including when a school “consistently violates regulations” or “deliberately and unnecessarily violates” one or more regulations. *See* OAC 210:35-3-201(b)(4). This accreditation provision refers to a violation of any applicable state or federal law or regulation by a public school. Please also note the following provisions of the Oklahoma school accreditation regulations:

“Statement of the standard:

The school establishes relationships with its parents and community that result in a feeling of mutual trust. These relationships are based on open, two-way communication. Parents and the community are involved in developing and monitoring the school's expected outcomes. The school displays a willingness to respond to the parents and the community; and the community supports the school and its program.” OAC 210:35-3-21

“School to provide opportunities for school community expression:

The school shall provide opportunities for both individual parents and for groups of parents and other members of the school community to express their desires, identify their concerns, ask questions, and make suggestions concerning the school and its program.” OAC 210:35-3-26

“Statement of the standard:

The working relationships among the local board, superintendent, principal, and staff are such as to facilitate the successful functioning of all phases of the school's program....The school is provided with sufficient professional and service personnel to ensure effective operation of all phases of the school's program.” OAC 210:35-3-41

“Lack of harmony in the teaching staff, board, or community, when such conditions affect the quality and effectiveness of instruction and climate of the school, shall be considered sufficient cause for not accrediting a school.”

OAC 210:35-3-48(a)(8)(B)

Western Heights Public Schools Placed on Probation for Ninety (90) Days and Directed to Take Corrective Action

On April 9, 2021, the State Board of Education designated a probationary school accreditation status for Western Heights Public Schools and identified areas of noncompliance for necessary correction by the District. Specifically, the action taken by the State Board provides that the District's accreditation status is updated to “Accredited With Probation” for ninety (90) days from the date of the Board's action of April 9, 2021 (or through July 8, 2021). Effectively immediately and by July 8, 2021, the District must have taken action and successfully implemented the following corrective actions:

- It is OSDE's understanding that the District's board of education voted on April 12, 2021 to provide in-person instructional opportunities to students, beginning April 26, 2021. **As a part of corrective actions, the District shall establish a plan for the return to in-person instruction and ensure appropriate arrangements are in place to offer students equitable opportunities for in-person instruction, beginning no later than**

April 26, 2021. The District shall make publicly available on its website and seek public comment, taking such comments into account in the development of the plan for the return to in-person instruction. Special priority should be placed on resuming in-person services to students with disabilities served under the Individuals with Disabilities Education Act (IDEA), or students served under Section 504 of the Rehabilitation Act, whose Individualized Education Plans (IEPs) or Section 504 plans provide for in-person services and supports. These supports and priorities should include convening IEP team meetings as needed, to review each student's IEP and make any updates determined appropriate for in-person instructional services and accommodations. *See* OAC 210:35-3-1; OAC 210:35-3-101; OAC 210:35-3-21; *see also* American Rescue Plan Section 2001(i).

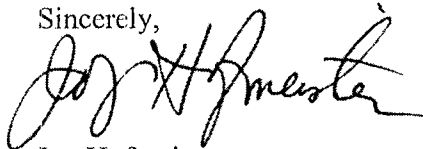
- **The District shall ensure full compliance with all standards and requirements for special education services to students with disabilities pursuant to the IDEA, and alternative education program services to students identified as at risk of not completing high school pursuant to 70 O.S. § 566 *et seq.* Further, the District must continue implementing corrective actions required by OSDE Office of Special Education Services for FY 2021.**
- **To mitigate the effects on instruction and student services of a 25% staffing loss over the past two (2) years due to termination or voluntary departure, the District shall prepare a staffing plan providing for the employment of adequate personnel to deliver all instructional and support services students are entitled to.**
- **The District shall immediately cease imposing any barriers to the enrollment of homeless students, and implement with fidelity the requirements of the federal McKinney-Vento Homeless Assistance Act.** Compliance with the McKinney-Vento Act includes the provision of timely enrollment access to homeless children and youth—with no barriers to the enrollment of a homeless student, such as requiring documentation of residency—and the clear identification of a District homeless services liaison responsible for ensuring homeless youth in the District are served.
- **The District shall demonstrate implementation of the corrective action plans addressing specific actions that will be taken to rectify findings and concerns identified in the FY (Fiscal Year) 2019 and FY 2020 school district audits.**
- **The District shall demonstrate the use of Coronavirus Aid, Relief, and Economic Security (CARES) Act funds to acquire the technology and devices to enable all students in the District to successfully implement the District's Distance Learning Plan, as represented to OSDE's Office of Federal Programs.** Verifiable evidence includes purchase orders, invoices, claims to the Office of Federal Programs and itemized inventory listing the equipment purchased with CARES funds.
- **The District shall immediately ensure that all employee insurance and benefit plans, including but not limited to any cafeteria plans funded through the Flexible Benefit Allowance, are in good standing with no late or outstanding payments due from the District.**

- Pursuant to OAC 210:35-3-26, the District shall make opportunities available to the community to express desires, concerns, questions, and suggestions concerning the school district and its programs. Further, upon receipt of information from the District community, the District should provide reasonable consideration to the information and respond in a timely manner. To protect against concerns about retaliation that have been raised by community members, the District should also provide a means for the anonymous submission of questions and concerns.
- The District administration shall make reports updating the State Board of Education on what the District is doing to rectify the problematic issues identified above. **The first such report is scheduled to be presented to the State Board at its next regularly scheduled meeting on April 22, 2021. Based on the issues of noncompliance and concerns amongst the District's community, including parents and families as well as personnel, it is apparent there exists a lack of harmony in the Western Heights School District. This absence, resulting from decision-making by the District board of education and administration, have put the District's future at risk. The uncertainty and risk may be cured, but it is imperative that these District officials who have been placed in positions of trust and instilled with responsibility for the administrative control of the District, immediately begin to take corrective actions.**

**Attendance of Western Heights Administration Required at
April 22, 2021 State Board of Education Meeting**

In the exercise of its constitutional and legislative duties and pursuant to 70 O.S. § 3-104(13), the State Board of Education requires representatives of the Western Heights Public Schools administration to report to the State Board at its next regularly scheduled meeting. Specifically, the District's School Board President, Superintendent Barnes and Board Member Linda Farley are to appear. **Failure to ensure the attendance of one or more these officials at the April 22, 2021, meeting of the State Board of Education may be construed by the State Board as an indication of the District's refusal to cure areas of noncompliance and implement corrective actions, with further potential impact on the District's future accreditation status.²**

Sincerely,



Joy Hofmeister
Chair of the State Board of Education
State Superintendent of Public Instruction

² The meeting is currently scheduled to begin at 9:30 A.M., and will be held through videoconference means consistent with the amendments to the Open Meeting Act, 25 O.S. 2011, §301 *et seq.*, signed into law by Gov. J. Kevin Stitt on February 10, 2021. See Senate Bill No. 1031, 2021 O.S.L 3, §2.

Date: 4/16/2021 5:01:13 PM

Sender: "Marley Billingsley"
To: jerry@colclazier.com;
CC: Brad.Clark@sde.ok.gov;
Subject: OSDE Letter

Attachment: 20210416153431757.pdf

Good evening Jerry,

Enclosed in this email please find the letter from our office regarding Western Heights.

Please contact our office should you have any questions,

Marley Billingsley