



THE DISTRICT COURT OF OKLAHOMA COUNTY JUL 22 2021
STATE OF OKLAHOMA

RICK WARREN
COURT CLERK

109 _____

WESTERN HEIGHTS INDEPENDENT
SCHOOL DISTRICT NO 1-40 OF
OKLAHOMA COUNTY and MANNIX BARNES,)
Superintendent

Plaintiff,

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

Defendant.

Case No.: CV-21-945
Judge Timmons

COUNTERCLAIMS - EMERGENCY PETITION FOR WRITS OF MANDAMUS

COMES NOW, Defendants, Oklahoma State Board of Education (the "State Board"), Oklahoma State Department of Education (the "State Department") and Joy Hofmeister (the "State Superintendent") and for their counterclaims seeking emergency writs of mandamus against Plaintiff, Western Heights Public School District's ("Plaintiff," "Western Heights" or the "District") states and alleges:

PARTIES, JURISDICTION AND VENUE

1. The State Board and State Department of Education are the agencies created and authorized by the Oklahoma Constitution and Legislature with the responsibility to provide oversight, and to direct, administer and supervise the public schools in the State. Okla. Const. Art. XIII, § 5; 70 O.S. §§ 1-105, 3-104. The State Board is the governing board of the public school system (i.e., the local public schools and boards of education). *Id.* Consistent with its identified policymaking standards of ensuring every child has an opportunity for an excellent education and that taxpayer funds are used in an efficient manner to operate a school, the Legislature vested the State Board with the authority to promulgate rules governing the accrediting of all public schools

in the state. 70 O.S. §§ 3-104(A)(7), 3-104.3 and 3-104.4. The State Superintendent is the official provided in Article VI, Section 1, of the Oklahoma Constitution to be the executive officer of the State Board. *Id.* Further, the State Superintendent is vested with the authority and power to control and direct the State Department. 70 O.S. § 3-107.1.

2. The District is an Oklahoma public school district operating in Oklahoma County, Oklahoma and is a political subdivision of the State of Oklahoma.

3. Venue is proper in this Court in that a significant part of the events giving rise to this action occurred in Oklahoma County, Oklahoma.

4. The dispute giving rise to the counterclaims set forth below arises from the Defendants receiving a substantial volume of complaints from the District community (parents, staff, business and more) regarding the operations and decisions of the District. These complaints significantly increased in the Winter-to-Spring of 2021 and included issues surrounding the District's decision to not provide students with an in-person instructional option for over 365 days, financial mismanagement, hostile work environment, governance of the District not being responsive or attentive to concerns, and a collapse of harmony in the District's culture. A review of the complaints demonstrated that the District was the only school district in the state to not offer in-person instructional services to students for the 2020-21 school year; the District's academic opportunities and outcomes for students were near the bottom in the state; more than ninety percent (90%) of students enrolled were eligible for Free and/or Reduced meals demonstrating an economically disadvantaged status and potential lack of food security outside of the school; audit findings including a violation of Oklahoma statute; significant loss of student enrollment; apparent loss of more than 35% of staff; a board of education member consuming alcohol during a public meeting where public business was being transacted and more. As a result, on March 25, 2021, the

State Board took action in a public meeting to advise of these utmost concerns and notify the District that it was to appear at the State Board's April 9 meeting and address the issues. Shortly after the March 25 meeting, the District commenced its challenges to the Defendants' authority, powers and duties, refused to engage in opportunities made available to address Defendants and the issues presented, and refused to comply with the conditions of continued accreditation imposed by the State Board.

5. On April 9, the State Board adjusted the District's accreditation to "Accredited with Probation" and provided ninety (90) days for the District to take corrective action.

6. The District has refused to perform certain acts required by law, including recognizing the authority, powers and duties of the State Board of Education, State Department of Education, and the State Superintendent. As set forth in additional detail below, instead of taking action to comply with the conditions of being Accredited with Probation, such as committing available funds and resources to increase opportunities to students, mitigating student learning loss resulting from COVID-19 disruptions, engaging in efforts to recruit and retain staff, and working to repair the disharmony in the community, the District has taken the following actions:

- a. Despite prior notice and authority being provided, refusing to attend the April 9, 2021, meeting of the State Board of Education, at which the District's accreditation status was under consideration to be adjusted to Accredited with Probation.
- b. Refusing to address the State Board of Education's questions during the April 22, 2021, meeting of the State Board.
- c. Filing a lawsuit against Defendants as a result of being provided ninety (90) days to take corrective action and turn around the District's noncompliance. Despite prior and ongoing notice provided with authority for actions taken, allegations include: (1) that the State Board did not have the authority to convene in an executive session pursuant to 25 O.S. § 307; (2) that the State Board does not have the authority to suspend the educator certificate of a school administrator; and, (3) the State Board does not have the authority to adjust a school district's accreditation absent an individual proceeding under the Oklahoma Administrative Procedures Act.
- d. During the ninety (90) day period of being Accredited with Probation, extending the District superintendent's contract with an effective date made after the date of

suspension of his educator certificate, thereby also obligating the District in excess of \$1,000,000.00 to this individual for salary and benefits.

- e. Despite notice and authority being provided, refusing to place the District superintendent on suspension following the emergency order to suspend his educator certificate.
- f. Subsequent to the State Board's Emergency Order to suspend the educator certificate, the District superintendent's credentials have been utilized 103 times to access State applications, including but not limited to those relating to school personnel records, accreditation, teacher certification and accountability.
- g. Subsequent to the July 12, 2021, action of the State Board to amend the conditions of Accredited with Probation, inclusive of - (1) appointment of an interim superintendent; (2) requiring advance notice of the scheduling of District school board meetings; (3) advance notice of personnel actions being recommended; and, (4) District actions being subject to the State Board's approval - the District ignored all of these provisions and took action at a board meeting on July 14 to appoint its own interim superintendent.
- h. Refused to respond to the Defendants' appointed interim superintendent's request for the District to assign him an email address to begin work in the District.
- i. In violation of established administrative rule and District policy, outside of a District board of education meeting, the District's board president has injected himself into the affairs of the District's daily operations and for the purpose of asserting defiance of the State Board's actions.
- j. Despite prior notice of the State Board's actions of July 12, including the state intervention and appointment of an interim superintendent, and authority being provided, advising:

The Western Heights School District does not recognize the authority of the State Superintendent or State Board to take over and operate the District, or conduct an "intervention", or to employ or appoint our Superintendent...please be advised that **our local Board of Education, our Interim Superintendent, and our staff will continue to control and operate the Western Heights School District.** See July 20, 2021, Letter, attached as Exhibit "A." (Emphasis in original).

7. Additionally, counsel for the District has apparently advised the District's board of education that "until I receive and Western Heights receives a court order from a judge, then I think this board is well within their right, and in fact has a duty to follow the law and run this school district in the way that you best deem advisable." <https://nondoc.com/2021/07/15/western-heights-appoints-interim-superintendent-despite-state-orders/>

8. Defendants seek a writ of mandamus to compel the District to perform their mandatory legal duties with regard to recognizing the authority and powers of the Defendants as established by the Oklahoma Constitution, Oklahoma statutes, and promulgated administrative rules.

9. A writ of mandamus may be issued where there is a clear legal right vested in the petitioner and refusal to perform a plain legal duty not involving the exercise of discretion in a situation in which the writ, and no other relief, would be adequate. *State ex rel. Independent School Dist. No. 1 of Oklahoma County v. Barnes*, 1988 OK 70, 762 P.2d 921. Mandamus has been utilized in prior proceedings involving school districts and the failure to follow rules governing their operations. *Id.*; *State ex rel. Tulsa Classroom Teacher's Ass'n, Inc. v Board of Equalization, Tulsa County*, 1979 OK 129, 600 P.2d 861.

10. Specifically, Defendants seek a writ of mandamus to compel the District to: (1) recognize and adhere to the terms of the State Board's assignment of the District's accreditation as Accredited with Probation, including the amendments to this status as determined by the State Board on July 12, 2021; and, (2) pursuant to the requirements in 70 O.S. § 6-101(L), take action to suspend the employment of Mannix Barnes that must result from the State Board's action to suspend his educator certificate (the "Certificate") on June 24, 2021.

11. In considering these requests, the Court is advised of the following provisions of the Oklahoma Constitution, statutes and administrative rules, set forth in Paragraphs 12-19.

12. Local school boards lack the power to take any action in violation of state laws or the rules of the State Board of Education. *See* 2012 OK AG 14.

13. The Oklahoma Constitution imposes a duty on the Legislature to establish and maintain a system of free public schools. Okla. Const. Art XIII, § 1.

14. The Oklahoma Constitution vests the supervision of instruction in the public school system with the State Board of Education, and the State Superintendent is the chair of such State Board. Okla. Const. Art XIII, § 5.

15. The Legislature has plenary power with respect to the establishment and maintenance of the public school system, and may delegate the exercise of that power to agents under terms as it deems proper and reasonable. See *Hatfield v. Jimerson*, 1961 OK 250, 365 P.2d 980; see also *Indep. School Dist. No. 65 of Wagoner County v. State Board of Educ.*, 1955 OK 301, 289 P.2d 379.

16. The Legislature has chosen to delegate certain of its powers to the State Board, State Department and State Superintendent.

17. At 70 O.S. § 1-105, the Legislature has unequivocally established that the State Department, State Board, State Superintendent and any divisions *or positions* as may be established by law, by the State Board or by the State Superintendent are charged and placed with the responsibility of determining the policies and directing the administration and supervision of public schools. More concisely, these offices and state officers, *including positions established by their action*, are vested with the power and authority to supervise and direct the public schools, including their operations and actions, by and through their governing board and employees thereof.

18. The Legislature has also expressly provided that the State Board is the governing board of the public school system in the state. *Id.*, at subsection (B). As a part of its authority and power as the governing board of the public schools of the state, the Legislature has also vested the State Board with the supervision of the public schools, including authority to:

- a. Adopt policies and make rules for the operation of the public school system;

- b. Have authority in matters pertaining to licensure and certification of persons for instructional, supervisory and administrative positions in public schools of the state;
- c. Promulgate rules governing the classification, inspection, supervision and accrediting of all public nursery, kindergarten, elementary and secondary schools in the state;
- d. 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.
- e. Have authority to provide for the health and safety of school children and school personnel while under the jurisdiction of school authorities
- f. Have authority and is hereby required to perform all duties necessary to the administration of the public school system in Oklahoma as specified in the Oklahoma School Code; and, in addition thereto, those duties not specifically mentioned herein if not delegated by law to any other agency or official See 70 O.S. § 3-104(A)(1), (6), (7), (13), (17), (20).

18. Further, recognizing the obligations to the children to ensure their opportunity to receive an excellent education and to the taxpayers to ensure schooling is accomplished in an efficient manner, the Legislature has prioritized the establishment of compliance and quality standards for the public schools and school districts to meet. 70 O.S. § 3-104.3. In doing so, the Legislature vested the State Board with authority to adopt standards for accreditation. 70 O.S. § 3-104.4(A). Short of vesting the State Board with complete control of the accrediting of public school districts, the Legislature established the following general framework, including accrediting tiers and requirements of State Board determined sanctions of school districts, to guide the State Board's adoption of accrediting standards:

- a. Public schools shall meet the accreditation standards as a condition of continued accreditation;
- b. The State Board-adopted accreditation standards shall provide for warnings, probation or nonaccredited status for schools that fail to meet the standards;
- c. If the State Department investigates a complaint of failure to provide educational services or failure to comply with accreditation standards, and substantiates the allegations in the complaint, the Department shall report the recommended warning, probation or nonaccredited accreditation status to the State Board of Education;

- d. If a school district does not take action to comply with the accreditation standards within ninety (90) days, the State Board shall withdraw accreditation of a school. 70 O.S. § 3-104.4(C).

19. From this framework and the vesting of authority for the adoption and establishment of accreditation standards for the public schools, the State Board has longstanding administrative rules governing the accrediting of public school districts.¹ In one portion of the totality of the administrative rules governing its accrediting of public schools, the State Board has defined and established tiers of school district accreditation status and include Accredited with Deficiencies, Accredited with Warning, Accredited with Probation and Nonaccredited. OAC 210:35-3-201. In part, these rules provide that prior to placing a district on warning or probation, representatives of the school district will meet with the State Department to review their accreditation status, and after the review a determination will be made through presentation to the State Board. *Id.*

21. The District is scheduled to begin the 2021-22 school year on August 18, 2021. As such, and given the District's refusal to recognize and comply with Defendants' actions taken in regard to its oversight, supervision, governance, and accrediting authorities, an Emergency Writ of Mandamus is the only appropriate legal remedy.

FIRST CAUSE OF ACTION
WRIT OF MANDAMUS

22. Defendants incorporate by reference, as if fully set forth herein, Paragraphs 1 through 21 of the Counterclaim.

¹ The administrative rules were promulgated pursuant to the provisions and requirements of the Oklahoma Administrative Procedures Act ("OAPA"), and can generally be located in Oklahoma Administrative Code ("OAC"), Title 210, Chapter 35.

23. In March of 2021, the State Department began to receive a high volume of complaints regarding the District's leadership and action, as well as the lack of providing students and families with an in-person educational service option since March of 2020. The complaints were made by parents and families, as well as District personnel, expressing a range of issues from the lack of in-person instructional services and the resulting learning loss to students, identified hostile work environments, financial concerns, staff and student losses. The lack of services to students in a school district that was already low performing was concerning. Similarly, noting that in excess of ninety-percent (90%) of the District's students are eligible for Free and/or Reduced Lunch meals demonstrated an elevated need for the District to ensure continuity and provision of all services to students. Further, a review of the staff reductions and complaints evidenced a clear disharmony in the District's community.

24. Pursuant to 70 O.S. § 3-104.4, the Department began to conduct an investigation into the complaints. With a pending investigation into the complaints and reviewing confidential information, on March 25, 2020, the State Board convened in a lawful executive session pursuant to 25 O.S. § 307(B)(4) and (7). Following the executive session, the State Board took no action other than to publicly express the utmost concern surrounding the operations, decisions and outcomes in the District: including:

- a. Failure to provide in-person instructional services to students, including students with disabilities, since March 2020;
- b. 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;
- c. 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 Financing;
- d. District School Board member consuming alcohol in a public meeting in June 2020;

- e. Majority of school sites in the District are federally designated as in need of increased student support and school improvement;
- f. A significant loss of student enrollment (3365 to 2597) in the last year;
- g. A loss of more than 100 District personnel in the last two years;
- h. Disharmony in the school environment and community.

25. Additionally, as a part of its action on March 25 and with the pending investigation matters, the State Board required the Department to conduct a performance audit of the District, urged the District to provide an in-person instructional delivery option to students and families, and required the District's attendance at the April 9, 2021, special meeting. Further, the State Board advised the District that at the April 9, 2021, special meeting, the State Board may take action on the District's accreditation status to adjust it to Accredited with Probation.

26. A few days later, the State Board and State Department provided notice to the District of these matters, including that representatives of the District's leadership appear at the April 9, 2021, meeting of the State Board. See March 30, 2021, letter attached as Exhibit "B." Thereafter, pursuant to the aforementioned administrative rules, the Department sought to meet with representatives of the District for the purpose of reviewing the District's accreditation status and the possible recommendation to the State Board to adjust the District's accreditation status on April 9.

27. Upon receipt of the March 30 correspondence, the District began its consistent refusal to meet with and in any way regard the authority, duties and powers of the State Board and State Department. Immediately, the District denied the authority of the State Board to compel representatives of the District to the April 9 meeting, and despite being provided with evidence of

the authority (including 70 O.S. § 3-104) by letter dated April 8, the District refused to appear at the April 9 meeting of the State Board.¹

28. As a result, as previously advised, the State Department proceeded on April 9, 2021, in presenting its findings of the investigation and performance audit of the District with a recommendation to the State Board that Western Heights' accreditation be adjusted to reflect probationary status. See April 9, 2021, Presentation, attached as Exhibit "D."

29. Following the State Department's presentation and recommendation on April 9, the State Board took action to assign Western Heights the accreditation status of "Accredited with Probation." Official notice of the State Board's action and conditions of probation followed. See Letter dated April 16, 2021, attached as Exhibit "E." Pursuant to Oklahoma law at 70 O.S. § 3-104.4, Western Heights was provided with ninety (90) days (or, until July 8, 2021) to take action to correct and successfully implement the corrective actions determined by the State Board on April 9 and reflect in its official notice of April 16. *Id.*

30. On April 22, 2021, the District appeared at the State Board meeting and announced that it had commenced the instant litigation and to advise that it had provided a response and report to the State Board the evening prior to this meeting. Aside from these announcement and general references to the minimal report provided, the District refused to engage in discussions with the State Board regarding the complaints received or the information presented by the State Department in relation to efforts to take corrective action in the District's school community.

¹ Prior to the April 9 meeting, the State Department respectfully requested that the District reconsider its refusal to meet with the Department to review the concerns identified and recommendation to the State Board at the April 9 meeting. These efforts include the eve of the April 9 State Board meeting where the State Department advised the District that it "remain[ed] hopeful that you and your client will avail themselves of the opportunity to appear [at the April 9 meeting]" and provided the information to access the State Board meeting on April 9. See e-mail dated April 8, 2021, attached as Exhibit "C."

31. On June 24, 2021, the State Board was provided with an update on the District's accreditation status, including any corrective actions taken or responses provided by the District to the State Department on such matters.³ As a part of the update to the State Board, information was provided evidencing the District's knowing disregard for the high school's non-functional fire prevention (sprinkler) system from February 23 to April 27, inclusive of a citation from the Oklahoma City Fire Department for these failure. See June 24, 2021, Presentation, attached as Exhibit "F;" see also Citation, attached as Exhibit "G." Additionally, the State Department presented information concerning the District's worsening academic opportunities and outcomes for students, additional complaints received, historical information concerning the District's leadership (including claims of financial mismanagement and hostile work environments), and the District's. To this latter issue, since being Accredited with Probation and given notice of a ninety (90) day period to cure, the District has not taken course-correcting measures such as committing available funds and resources to increase opportunities to students, mitigating student learning loss resulting from COVID-19 disruptions, engaging in efforts to recruit and retain staff, and working to repair the disharmony in the community. Instead, the District has elected to focus its efforts on filing the instant lawsuit and extending its superintendent's contract and awarding him a \$25,000 performance bonus, and obligating the District to more than \$1,000,000 in salary and benefits to this individual. With these realities, at the June 24 meeting the State Board provided notice to the District that on July 12, the State Board may take action to amend the conditions of Accredited

³ At 7:07 P.M. on June 23, the eve of the State Board's June 24 meeting, counsel for the District sent 126 pages of a purported update on the District's accreditation deficiencies to the State Board members (excluding the State Board's counsel). At the 9:30 A.M. June 24, 2021, State Board meeting, an update was provided to the State Board, including but not limited to the topics addressed in the District's June 23 documentation.

with Probation, to include possible appoint of an interim superintendent and state intervention, and/or possible annexation and nonaccrediting of the District.

32. On July 8, 2021, the District filed an Application for Temporary Restraining Order and Injunction, requesting an order to: 1) reinstate Mannix Barnes' personal educator certificate and 2) prevent the State Board, State Department and/or State Superintendent from taking any action against the District, including but not limited to the possible amendment of the conditions of Accredited with Probation and/or nonaccrediting and annexation. The Court denied the District's request. See Transcript of July 8, 2021, hearing, attached as Exhibit "H."

33. On July 12, 2021, following a presentation and recommendation by the State Department, the State Board took action in an open meeting to amend the conditions of the District's probation. As a part of its action that day, the State Board appointed an interim superintendent and adopted a state intervention plan ("Intervention Plan"). The Intervention Plan includes an on-site assessment of the District's needs leading into the upcoming school year (currently scheduled to begin August 18, 2021), public meetings to receive community engagement and a community intervention team to develop, the Intervention Plan .

34. Following the July 12 meeting official notice of the State Board's action was provided to the District. See July 14 correspondence, attached as Exhibit "I." In the official notice to the District, specific mention was made of the appointment of the State Board's interim superintendent, as well as that until the Intervention Plan is approved by the State, all actions of the District were subject to approval of the State Board. *Id.* As such, notice was provided to the District of the risk and potential liability to the District and its board members should they take

action in violation thereof. *Id.* On July 14, the District's board of education held a meeting, at which it appointed its own interim superintendent, Ms. Kim Race.⁴

35. In addition, on July 20, 2021, the District sent correspondence to the State Department and State Board, advising:

The Western Heights School District does not recognize the authority of the State Superintendent or State Board to take over and operate the District, or conduct an "intervention", or to employ or appoint our Superintendent... please be advised that **our local Board of Education, our Interim Superintendent, and our staff will continue to control and operate the Western Heights School District.** See July 20, 2021, Letter, attached as Exhibit "A." (Emphasis in original).

36. In 2012, the Oklahoma Attorney General provided an official opinion relating to school district powers and duties, and expressly determined that "local boards of education lack the power to take any action in violation of state laws or the rules of the State Board of Education." See 2012 OK AG 14. In rendering this Opinion, the Attorney General looked to the powers and duties of local boards of education (provided in 70 O.S. § 5-117) and opined that the plain language of the statute mandates that rules made by local boards may not be inconsistent with state law or the rules of the State Board. *Id.*, at ¶ 9.

37. As set forth herein, and despite Defendants provision of notice and authority to the District, the District has refused to recognize, comply with and perform certain acts that are required of it by Oklahoma statute, administrative rules and/or the powers and duties vested by the

⁴ Days earlier, the District filed its Application for a Temporary Restraining Order and Injunction, and included a sworn affidavit from Ms. Race therein. See Application for Temporary Restraining Order and Injunction, Exhibit "J," on file herein. In the sworn affidavit, Ms. Race states that she has never served in a superintendent's role in any school district, that she has limited experience in school finance and budgeting and no experience in closing out a district's year-end finances, she has no experience in wire transfers of money for the District, that she has no experience in investments and making sound financial decisions, she is without experience in regards to insurance claims and other related issues, she has no experience in facilities management and construction, and no experience in the areas of personnel. *Id.*

Legislature in the State Board of Education, State Department of Education and/or State Superintendent.

38. Pursuant to 12 O.S. § 1451, this Court has the authority to issue a writ of mandamus, compelling the District's recognition of, compliance with and/or performance of certain actions imposed by Oklahoma statute, administrative rules and/or the powers and duties vested by the Legislature in the State Board of Education, State Department of Education and/or State Superintendent.

WHEREFORE, premises considered, Defendants pray this Court issue a writ mandating that the District, by and through its legal counsel and/or board of education, recognize the authority of the State Board of Education, State Department of Education and/or State Superintendent of Public Instruction as set forth herein, and award Defendants costs of this action, accrued and accruing, together with reasonable attorney's fee, and such other relief as this Court may deem just and equitable.

SECOND CAUSE OF ACTION
WRIT OF MANDAMUS

39. Defendants incorporate and adopt the allegations in Paragraphs 1 through 38 of the Counterclaim.

40. The State Board is vested with the general authority to provide for the health and safety of schoolchildren while under the jurisdiction of school authorities. See 70 O.S. § 3-104(17).

41. Title 70 O.S. § 3-104(6) provides:

The supervision of the public school system of Oklahoma shall be vested in the State Board of Education and, subject to limitations otherwise provided by law, the State Board of Education shall...[h]ave authority in matters pertaining to the licensure and certification of persons for instructional, supervisory and

administrative positions and services in the public schools of the state...and shall formulate rules governing the issuance and revocation of certificates. ...

42. Through administrative rulemaking, Defendants' administrative rules on "suspension and/or revocation of certificates" are located at OAC 210:1-5-6. These rules, at the outset, specifically provide that they are applicable to:

superintendents of schools, principals, supervisors, librarians, school nurses, school bus drivers, visiting teachers, classroom teachers and other personnel performing instructional, administrative and supervisory services in the public schools. See OAC 210:1-5-6(a).

43. Oklahoma law, at 75 O.S. § 314(C)(2), is applicable to public agencies such as the State Board and State Department and provides:

If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined. See 75 O.S. § 314.

44. Further, 75 O.S. § 314.1 provides:

As authorized by or pursuant to law, if an agency finds that the public health, safety, or welfare imperatively requires emergency action, has promulgated administrative rules which provide for such action and incorporates a finding regarding the emergency in its order, emergency actions may be ordered pending the final outcome of proceedings instituted . . .

45. The Board's rule at OAC 210:1-5-6(e) provides:

Pursuant to 75 O.S. § 314.1, in the event the State Board of Education finds that public health, safety, or welfare imperatively requires emergency action, the State Board of Education may issue an emergency order summarily suspending a certificate pending an individual proceeding for revocation or other action. Such proceedings shall be promptly instituted and determined. Such an order shall include specific findings of fact specifying the grounds for the emergency action. Within three (3) business days of the issuance of the order by the Board, a copy of the order shall be sent to the holder of the certificate via certified or registered mail, delivery restricted to the certificate holder, with return receipt requested.

46. On June 24, 2021, the State Board took action to issue an emergency order to suspend the educator certificate of the District's superintendent. This action was taken pursuant to the aforementioned provisions of Oklahoma law and administrative rule, namely 75 O.S. § 314-314.1 and OAC 210:1-5-6. See June 24, 2021 Agenda for meeting of the State Board; see also in Application for the Emergency Order, and the Emergency Order, attached as Exhibit "K."

47. Subsequent to the Application for Emergency Order being granted and the issuance of the Emergency Order, the State Department provided copies thereof to the District's superintendent and the District's board of education. See OAC 210:1-5-6(e) and (f).

48. In the notice provided to the District's board of education, the State Department identified the requirements of 70 O.S. § 6-101(L), which provide:

A teacher whose certificate was suspended by the State Board of Education pursuant to Section 3-104 of this title and Sections 314 and 314.1 of Title 75 of the Oklahoma Statutes shall be placed on suspension pursuant to the provisions of Section 6-101.29 of this title while proceedings for revocation or other action are pending before the State Board of Education. The provisions of this subsection shall not preclude the initiation of due process procedures in accordance with Section 6-101.20 et. seq of this title.

49. The June 29 correspondence also identified that the statutory reference to teacher is that defined in 70 O.S. § 1-116 (any person employed to serve as a district superintendent...) and as defined in the administrative rules at OAC 210:1-5-6 (expressly includes a superintendent). See June 29, 2021 correspondence, attached as Exhibit "L." As such, the State Department respectfully requested the District to confirm that its board of education had complied with the express requirements of this Oklahoma law, and to please provide confirmation within five (5) business days (by July 6) of the date of the letter. *Id.*

50. As a governing body, the District's board of education members take and subscribe an oath to "faithfully perform the duties" of a member of the board of education and will to "the

best of my ability faithfully discharge all of the duties pertaining to said office and obey the Constitution and laws of the United States and Oklahoma." 70 O.S. § 5-116.

51. To date, the District has refused to respond to the State Department's request for confirmation of its taking action to suspend the District's superintendent. A review of the District's board of education meetings held from and since the June 24 suspension of the District superintendent's educator certificate evidence no action being taking to comply with the requirements of Oklahoma law and the Defendants action.

52. To date, since the suspension of the educator certificate on June 24, the District superintendent's credentials have been utilized 103 times to access State applications, including but not limited to those relating to school personnel records, accreditation, teacher certification and accountability.

53. As set forth herein, the District has refused to recognize, comply with and perform certain acts that are required of it by Oklahoma statute, administrative rules and/or the powers and duties vested by the Legislature in the State Board of Education, State Department of Education and/or State Superintendent.

54. The District has taken action inconsistent with the law and/or rules of the State Board.

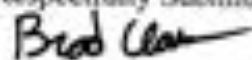
55. Local boards of education lack the power to take any action in violation of state laws or the rules of the State Board of Education. *See* 2012 OK AG 14.

56. Pursuant to 12 O.S. § 1451, this Court has the authority to issue a writ of mandamus, compelling the District's recognition of, compliance with and/or performance of certain actions imposed by Oklahoma statute, administrative rules and/or the powers and duties vested by the

Legislature in the State Board of Education, State Department of Education and/or State Superintendent.

WHEREFORE, premises considered, Defendants pray this Court issue a writ mandating that the District, by and through its legal counsel and/or board of education, to take immediate action to suspend the District's superintendent as required and to recognize the authority of the State Board of Education, State Department of Education and/or State Superintendent of Public Instruction as set forth herein, and award Defendants costs of this action, accrued and accruing, together with reasonable attorney's fee, and such other relief as this Court may deem just and equitable.

Respectfully Submitted,



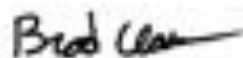
Brad S. Clark, OBA #22525
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Brad.Clark@sde.ok.gov
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Telana.McCullough@sde.ok.gov
Attorneys for All Defendants

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing was mailed and e-mailed, on the 16th day of July, 2021 to the following:

Jerry Colclazier
Colclazier & Associates
Attorneys and Counselors at Law
404 North Main Street
Seminole, Oklahoma 74868
jerry@colclazier.com
Attorneys for Plaintiffs

Dan Murdock
8201 Southwest 44th
Oklahoma City, Oklahoma 73179
Attorneys for Plaintiffs



Brad S. Clark

SDE/Litigation/21.2 Western Heights/Litigation/Reply to Respondent's Response to Motion to Dismiss

COLCLAZIER & ASSOCIATES
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405.382.1212

OKLAHOMA CITY
405.232.1666

WWW.COLCLAZIER.COM

JERRY L. COLCLAZIER

AMIE R. COLCLAZIER

VIA ELECTRONIC MAIL ONLY

July 20, 2021

Joy Hofmeister, State Superintendent
Brad Clark, General Counsel
Oklahoma Department of Education

Dear Superintendent Hofmeister and Mr. Clark:

I am in receipt of your letter of July 14, 2021, received by email. As you know, and as I made clear at the meeting with Mr. Clark and Mr. Guthrie last Friday, the Western Heights School District does not recognize the authority of the State Superintendent or State Board to take over and operate the District, or conduct an "intervention", or to employ or appoint our Superintendent. Title 70 O.S. §5-117 provides that "[t]he board of education of each school district shall have power to: ... 3. Maintain and operate a complete public school system of such character as the board of education shall deem best suited to the needs of the school district; ...".

Western Heights invites and encourages the advice, input, and assistance of the Department in improving the services to our children and staff. We also invite the Department's participation in your concerns over accreditation. As I have repeatedly stated, we requested responses to the two letters sent by Mannix Barnes to your Department, which specifically addressed your accreditation charges, and to which the Department has yet to respond or provide any further information as to whether the District's responses answered your concerns. Without that input, it is difficult for the District to know where it stands with the Department.

In summary, while the District desires to fully cooperate in this process, please be advised that our local Board of Education, our Interim Superintendent, and our staff will continue to control and operate the Western Heights School District. In that regard, there are a few ground rules that will need to be agreed to in order to avoid future conflict. First, Superintendent Race will be directing all of our staff to fully cooperate in the Department's needs assessment in every way. Full disclosure will be the word of the day. However, Superintendent Race will direct and supervise our employees on a day to day basis. Mr. Guthrie has no authority to supervise or direct any employee of the District. As such, all contact and communications with District employees should be channeled through Superintendent Race's office. Superintendent Race shall be copied on all communications

EXHIBIT

A

July 20, 2021
Page 2

(paper, facsimile, and email) to and from Western Heights employees. Further, I would like your agreement to not attempt to contact, direct or control any District employees, without Superintendent Race's knowledge and approval. If you need something from one or more of our employees, please feel free to let her know and I will assure you that your request will have the highest priority. *Provided you agree with these general guidelines*, we can use the Board Room to facilitate meetings between you and your staff and Western Heights' employees. If you need to meet with staff who is located off-site, Superintendent Race will arrange for those persons to come to the Administration Building.

Please let me know if you will agree to these guidelines. If you have any questions or comments, please feel free to contact me.

Sincerely,



Jerry Colclazier

cc: Superintendent Kim Race
Members of the Board of Education
Members of the State Board



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

B

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

SOE 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 needed to make payments on the 2009 and 2013 lease-purchase financings.

Brad Clark

From: Brad Clark
Sent: Thursday, April 8, 2021 4:35 PM
To: jerry@colclazier.com; billflanagancpa@gmail.com; carlisha@impacttulsa.com; Jennifer Monies; estelaok@gmail.com; brianrichardbobek@gmail.com; trentsmith58@me.com; Joy L. Hofmeister
Cc: Lori Murphy; Telana McCullough; Marley Billingsley; Terrie Cheadle; Ryan Pieper
Subject: Re: [EXTERNAL] Letter to Mr. Clark

Jerry,

I am in receipt of your correspondence within traditional business hours and apologize if I sent you an email past your operating hours, though I was working to respond to your letter within 24 hours of receiving it.

Below, please find the access information for tomorrow's State Board of Education meeting. While we remain hopeful that you and your client will avail themselves of the opportunity to appear, your persistent refusals to meet with representatives of the Oklahoma State Department of Education and discuss the matters being presented tomorrow provide no confidence this will occur. Be that as it may, the information is being provided to you.

As a final note, respectfully, please adhere to ethical guidelines of attorneys contact and communications with known represented individuals and do not directly contact my clients again without my authorization. There have been multiple occasions of which have been made aware, including your contacting Mr. Ryan Pieper yesterday, where you have attempted to communicate with my clients about the very matters we have been and are now communicating about. Without an uncertainty, such communications have made with your knowledge of these individuals and entities being represented parties and are inappropriate.

Thank you in advance and should you wish to further discuss anything, please give me a call (even past normal business hours).

Below are Zoom instructions to join the meeting and Executive Session.

Topic: Oklahoma State Board of Education Special Meeting
Time: Apr 9, 2021 09:30 AM Central Time (US and Canada)

Join Zoom Meeting

<https://zoom.us/j/92412967643?pwd=MWJzSGxDRnl1bzN1TWtuWWhFkbTVGdz09>

Meeting ID: 924 1296 7643

Passcode: 839624

One tap mobile

+13462487799,,92412967643#,,,,*839624# US (Houston)

+16699009128,,92412967643#,,,,*839624# US (San Jose)

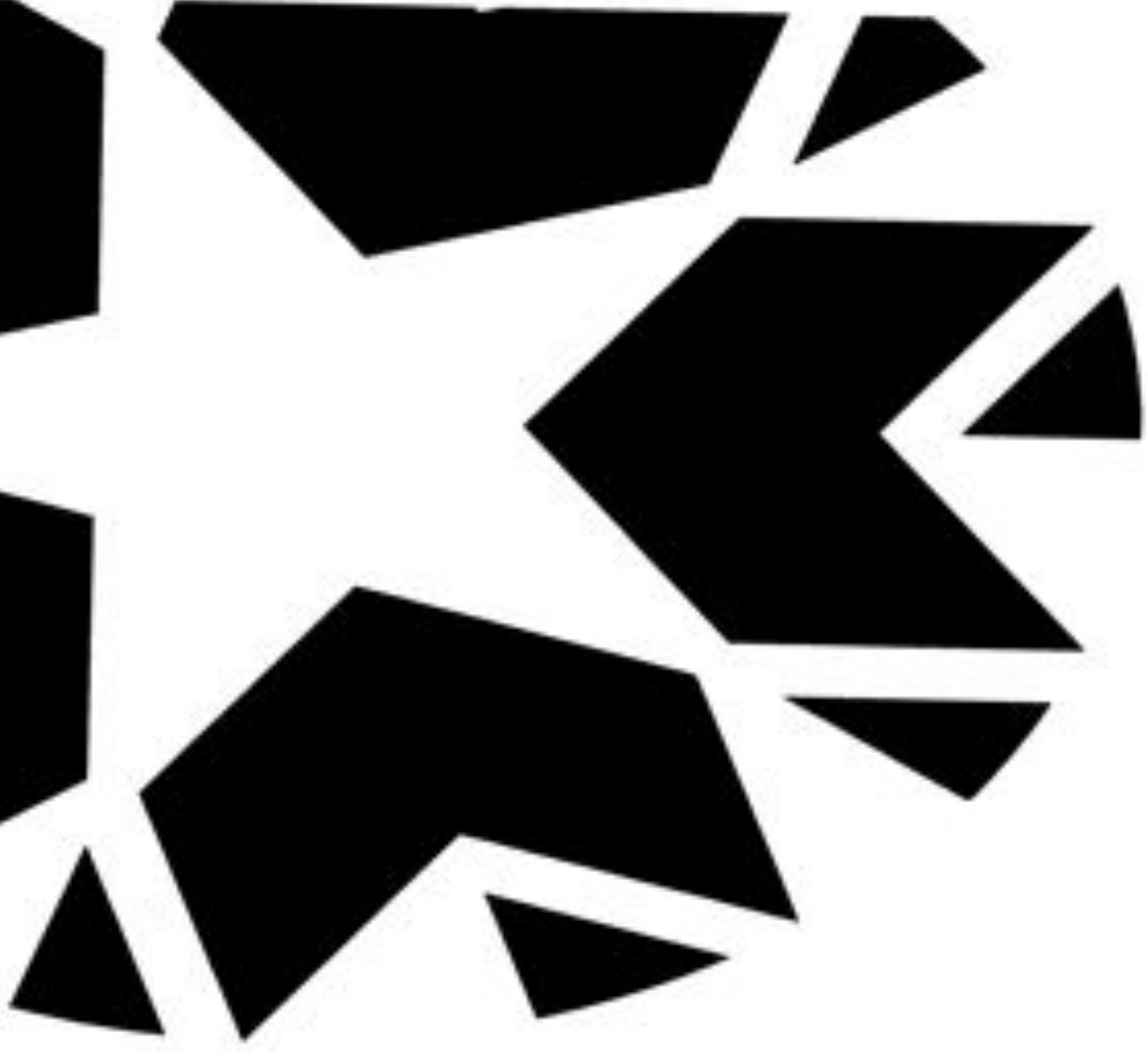
Dial by your location

+1 346 248 7799 US (Houston)

.....

OSBE Special Meeting 4.9.21

Western Heights



Educational Services & Outcomes

9 school sites

3,400 enrollment (2020); 2596 (2021)

Demographics (approximates)

- >90% Economically Disadvantaged
- 35% English Learner
- 46% Hispanic
- 16% Black
- 23% White

Academic year

- No in-person option for 2021-22
- March 2021 – School will not return for the remainder of the year unless forced to avoid losing millions in federal funds. Virtual for entirety of 2020-21.
- Only district in state to not provide in-person option
- State Board: strongly encourage in-person option by 4.1.21
- District: no authority, will consider at 4.12.21 meeting

Educational Services & Outcomes



Academic Achievement -

1% Advanced, 10% Proficient, 35%
Basic, 53% Below Basic



Absenteeism – 20% below state average; one of the highest
absenteeism rates



Graduation Rate – 79%



Postsecondary Opportunities



6 of 9 sites federally
designated for Support &
Improvement

1 site Comprehensive Support
and Improvement
5 sites as Additional Targeted Support &
Improvement



Educational Services & Outcomes – Special Education

Differentiated Monitoring (2020)

- Level 3 Support
- Assessment Proficiency
- 10 files reviewed
- 20% missing evaluation and re-evaluation components
- 40% missing IEP components (present performance; goals/services)
- 3 Teacher caseloads exceed allowable limits

Differentiated Monitoring (2021)

- Level 3 Support
- Graduation Rate and Drop-out Rate
- 28 files reviewed
- 50% missing evaluation and re-evaluation components
- 50%+ missing IEP components (present performance, transition goals and assessments)
- 1 teacher caseload exceeds allowable limit

Educational Services – Federal Programs

- FY 20: Non-compliant (homeless policy, staff training, parent input)
- District: "selective prosecution"
 - Reality: risk assessment required monitoring
- Staff: virtual learning presented obstacles and challenges; appropriate services are provided when students are allowed to attend school in person
- CARES funds: 1-1 technology for all students; hot spots, learning platform and PPE
 - Unsupported
- OSDE: seek greater and more representative parent involvement in plans and activities
- Observed "significant strides" made in knowledge of federal programs
- Result: Non-compliant for failure to timely submit documentation



Child Nutrition

April 2020 – shut off meal service to students and families

Special Field Report 10.5.20

- Complaints received on quantity and quality of food, including expired and moldy
- Serving reimbursable meals when OSDE on-site
- "Tens of thousands of dollars" of food in freezer to cook, but not allowed
- Doing best staff can within directives given
- Western Heights Implementing Everywhere (WHIRE) - not part of Child Nutrition program, local partnership

Child Nutrition

STATE DEPARTMENT OF HEALTH & HUMAN SERVICES
CHILDREN'S DEVELOPMENT DIVISION

SPECIAL FIELD REPORT

Name: Wendy Douglas-Pollack, School

Date of Visit: October 1, 2003

Site Visited: Child Nutrition Office & Wash

Site: 1 day

Agreement: OK (S)
Agency: Child Nutrition

On the above date, Executive Director, Jennifer Oldham and the Director of School Programs, Dana Parker, visited Washburn High School for the purpose of looking into the multiple parent complaints for Child Nutrition. Offices are getting regarding the food at the school.

We spoke with Tracy Moore, the Food Service Director. When there we observed the food service at Wash High. The food that the Child Nutrition Department gives out at schools listed with nondescript per the USDA requirements. They were getting the ingredients and how long they for the week. Study had decided not want to add some additional hours to the weekly logs to help support the needs. These extra on the day of observation included a 4-6 container with a case of frozen pizza as untraceable personal and only sandwich, some eggs and bread. They also handed out necessary instructions with the food.

We were there when a CNA came and requested just the "extra food" for the "average food". Study asked the student and returned for the reason she couldn't get the food just the extra food was because it was not a nutritious meal and she would not be able to offer that food to the program unless she was given all the food. Study recommended that they be prepared. The program requires she is allowed to sell food all over for the program and in fact several schools are doing that during the year. The site visits food are required to meet the State's standards for USDA sets. There are schools giving out the normal nutritious meals and then allowing students to buy the "extra" items if they choose to do so. Study requested her goal was to continue to serve these additional food items going forward.

Tracy has requested several items to be allowed to cook the existing food inventory she has at her kitchen but has not been given the okay by the administration. She stated that she has tens of thousands of dollars of food in her kitchen she would like to be able to use right now. She knows people are frustrated with the food, but she is doing the best she can to meet program requirements and get the students her whole working with the disciplines she has been given by her administration.

There was also reported food given out on the day of observation, two clear bags with food items in them. These were given in addition to the breakfast and lunch bags which were in black bags. She did not look at the items for the particular (S) was giving out when the food was not part of the Child Nutrition food. The day after observation we received a picture of one of the pudding cups in the yellow food bag and it clearly had mold growing on it. I would suggest that someone contact the person in charge of the





Governance & Finance

Board member consuming alcohol while transacting official business in a public meeting

FY 2019 audit report

- Violation of 62 O.S. § 430.1 – payment for lease of property shall be made only from annual or supplemental appropriations specifically designated for that purpose.
- Use of \$8,810,000 2018 funds to make payments on a 2009 and 2013 bond

Governance & Finance – 2020 Audit

- Accounting records not properly reconciled with bank accounts
- \$514,760.19 outstanding warrants/checks that were previously cleared
- \$614,408 wire transfer to IRS Account on 6/29/20, made in error
- \$240,000 to Teacher Retirement Clearing that was never coded to general fund
- \$46,000 wire transfer to TRS Clearing that was never coded to general fund
- \$18,276.78 in bank analysis charges not appropriated coded
- \$32,087.44 in TRS late penalties not coded to general fund

Governance & Finance – 2020 Audit

- \$822,450.00 double posted transactions relative to direct deposit transactions (largely due to bank error)
- \$169,006.80 in investment interest not recorded as revenue
- \$144,837.97 returned items on bank statements
- Activity Fund not balanced with bank transactions. 42% of deposits were not timely made
- Purposes of subaccounts and revenues are not always included in board approvals
- 15% of Activity Fund purchase orders did not have adequate documentation. Meals and trips did not include attendees or recipients.

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Governance & Finance – Response to 2020 Audit

Staff and payroll vendor issues - "totally unacceptable and will not be tolerated going forward." Changed payroll vendor.

Talked to staff and will have weekly internal audits of files, records and bank statements

Seeking waiver from TRS on late fees

Corrective actions

New personnel, lack of training and not assertive enough

Checklist created, signatory requirements



Leadership

**OAC: 210:35-3-
41**

Working relationships among board,
superintendent and staff to facilitate
successful function in all phases

School provided with sufficient
professional and service personnel to
ensure effective operation of all phases

Personnel

OAC: 210:35-3-81

- Administrators and staff work in a collegial, cooperative school environment.
- The staff participate in decision-making affecting the school program and teach under conditions favorable to effective performance.
- The schools of Oklahoma shall be staffed by administrators and teachers who are well-qualified for their respective positions.
- Administrators and teachers participate in staff development to enhance professional and instructional skills and to meet locally identified school improvement needs.

Governance - Leadership

- School Board to contract with, fix duties and compensation of superintendent, and other personnel – 70 O.S. § 5-117
- Superintendent contract
 - \$220,000 base salary w/ benefits (5th highest, 1 year experience, 34th enrollment)
 - 20 days unpaid leave for outside activities
 - Reasonable time & pay for professional growth and community involvement
 - 25 semester credit hours annually to further education
 - Chamber of Commerce, civic affairs, clubs, organizational membership
 - 40 vacation days per year
 - 20 sick days per year
 - 20 personal business leave days per year
 - \$75,000 retention bonus on June 15, 2022

School Personnel Issues



STAFF –
115 POSITIONS IN 2
YEARS



2020 PAYROLL
REPORTS



UNDERPAID
PERSONNEL
COMPLAINT



IMPASSE

Late Flexible Benefit Account Payments

- State law provides for Flexible Benefit Allowance funding, to be made available to school district employees for the purchase of insurance plans.
 - "The administrator of the cafeteria plan shall maintain a separate account for each participating school district employee. School districts shall forward the school district employee flexible benefit allowance amounts to the administrator for elected purchases of cafeteria plan benefits." (70 O.S. § 26-104(D))
- OSDE was notified in May 2020 that the District had not been making certain required monthly payments on employee cafeteria plan accounts (e.g., American Fidelity)—*although deductions from employee paychecks had continued.*
- This failure to make timely payments left the affected plans in arrears, and left some District employees unable to access their plan funds for urgent needs such as medical care.

School & Community Relationships

210:35-3-21

- School establishes relationships with parents and community that result in feeling of mutual trust
- Parental involvement in developing and monitoring expected outcomes
- Display willingness to respond to parents and community
- Community supports the school and its programs
- Opportunities to express desires, concerns, ask questions and make suggestions
- Systematic efforts to explain policies, procedures, needs and programs to community

.....

Culture – Community and School Culture

- Parents –
 - Kids are not being served
 - No option but to transfer but do not have means
 - Charged homeless student for device replacement
 - Question athletic team who among them are poor and which are not
 - Use of funds questioned
- Community – citizens petition audit

Concerns



Special Education Concerns

"Our special education department in our district is hanging by a string. He has fired the only severe/profound teacher we had at the high school without a replacement, he fired a deaf ed interpreter, and we have had at least one other special education teacher quit without any new hires. This puts a burden on those that are left. He has not posted any new jobs."

No in-person services to students with disabilities in 2020-21

Staffing Concerns

"The truth is Western Heights does not have the staff to return. He has fired bus drivers and maintenance workers. Teachers have retired in the middle of the year or have resigned because the harassment has been too much to bear."

"At our board meeting this evening, Mr. Barnes said that we would not allow students to return to school unless the state or federal government forced us to. This is disheartening to everyone involved. The real reason we are not opening is he has refused to replace anyone he and the board have fired or any staff that has resigned. Our support staff is almost non-existent. He has fired bus drivers and, in turn, others have quit. We have lost teachers and he has just doubled the students up on other teachers because we are virtual. He doesn't believe these teachers need any or much compensation for taking on another teacher's classes. It is diminishing morale and there will be a mass exodus at the end of the school year."



Concerns

"I was talking with co-workers today and we were reminiscing about failing tests and worried the state would come in and take over our district. Well today, we are ready. We are tired of being treated this way. Our students are suffering and our parents are giving up. Please help us. When I started in [date redacted], this was a great school district! We want that district back! We want to be proud of where we work; not hide our heads in shame."



Concerns

- It has been a positive experience to work in Western Heights with many children, especially those with special needs. Until the past two to three years, I have felt supported, appreciated, and secure as a teacher in the district. Unfortunately, it is no longer that way. I will retire after this school year, and many of my colleagues will find employment elsewhere. We have been discouraged as we have watched the rapid deterioration of our school district. Many of us are praying for God's direction in our personal futures and in the future of the school district which is supposed to serve our children.

Students not returning to in person learning

"Our main concern at this moment is the children of our district. We haven't had face to face contact with our students in over a year. We are desperately worried about their nutrition, safety, mental health, and of course their academics. Friday is the scheduled date for our teachers to receive the second vaccine. Mr. Barnes stated in the last board meeting that we would not go back to school unless we were forced because of the possibility of not receiving federal funding. Mr. Barnes commented that it was due to safety reasons. He even mentioned that the students haven't been vaccinated yet which is ridiculous."

"Our kids have not been allowed to return to school at all this year. All the districts around me have at least done an a/b schedule and are transitioning back towards going back full time. Our kids in Western Heights School District have been out of in school learning for a year now. According to the superintendent Manix Barnes at the board meeting tonight he has no plans to allow our kids to come back to school unless he is forced to do so. Someone needs to help us parents get our kids back in school. It is not right that many of the parents in our district are going to be forced to uproot our families and move out of this district just so our kids can get the quality education they deserve. Please help us."

"Mr. Barnes stated that the school would not be reopening unless they were forced to reopen. He cited skyrocketing COVID deaths and increasing COVID Cases as his reasoning for reopening. He also mentioned your interview with the Frontier and his displeasure with your remarks regarding one Superintendent's refusal to reopen his district as he is only trying to keep his staff and students safe. He did mention that he may have to reopen the school at some point in order to avoid losing millions in federal funding that could be withheld if the school stays closed. His motivation in keeping the school closed seems to be motivated by money that he is saving by keeping the school closed, despite citing health and safety concerns."

Western Heights truly has my heart, but daily life has been very difficult within the district this year

Good evening, I am a concerned parent of children attending Western Heights School District. Our kids have not been allowed to return to school at all this year. All the districts around me have at least done an a/b schedule and are transitioning back towards going back full time. Our kids in Western Heights School District have been out of in school learning for a year now. According to the superintendent Manix Barnes at the board meeting tonight he has no plans to allow our kids to come back to school unless he is forced to do so. Someone needs to help us parents get our kids back in school. It is not right that many of the parents in our district are going to be forced to uproot our families and move out of this district just so our kids can get the quality education they deserve. Please help us.

Thank you,

More Concerns

"As you probably also know, certified staff have never been issued a contract for this year. He has refused to negotiate with the teachers union and it has now gone to fact finding... He tells us there is no money for teacher step raises yet he continues to create positions at the administration building and hires friends with salaries close to or at \$100,000 for each. Our administration costs have increased by 186% since he took over."

"Our situation is dire for our students, our families, and for our teachers. Mr. Barnes has complete disdain for all of us and has made derogatory remarks to individuals about what he thinks about our families such as they are "dumb and poor"."

"We are in a high poverty area. Parents do not always have the funds to purchase the insurance for the equipment they are required to have to attend school. We have had more than one family that lost or broke their device. They are charged \$230. If they don't have that money, they don't get a new device and they get no educational services. At the middle school, we have asked for donations of personal devices from people we know and we are personally handing those out to parents so that students may receive an education. We had one family that was homeless and lived in their car recently. Our administration did not care and we at the middle school provided a personal device to this mother to help her out. We had another mother that asked if she could make payments on the device that was broken. She was told no."

Parents Petition for Audit

"With the help of many volunteers we obtained more than enough signatures for a State investigative audit. Campaigning is starting this weekend to elect a new school board member on April 6th, which should not be a problem."

74 O.S. § 212(L) -10% or more registered voters by declaration upon oath or affirmation that the information is true and correct

██████████ I have met you on several occasions and I hope it is okay for me to reach out to you about a concern I have for several school employees in Western Heights. My concern is with the way Superintendent Mannix Barnes at Western Heights Public Schools is handling his support personnel during this severe weather. ██████████

██████████ has been advised that all support personnel will need to report to work on Tuesday, February 16th but all certified personnel will be able to use a snow day. The support will need to use personal leave only if they choose not to report to work. They are not allowed to use Sick Leave for this day. If they do not have personal days to use and choose to not report, they will be considered "AWOL" and will be docked pay for the day. I have chosen to reach out to you because

██████████ as well as many other support personnel in WH, are afraid if they complain, they will lose their jobs as others have in the past. I am sure he can control the leave in whatever way he pleases but I feel this can be life-threatening for the workers if they attempt to get on the roads. The students are completely virtual and have been all year, so I am not sure what the need would be for them to report to the building when all students, principals, teachers, etc. are home using a snow day. They are willing to make up the days at the end of the school year, if necessary. They have reached out to their district union about this and other incidents/situations that have developed over the few years he has been superintendent, but nothing has been resolved or even heard from the administration.

Students

OAC 210:35- 3-1

- Oklahoma schools have the responsibility of meeting the educational needs of all students, providing equitable educational opportunities, and fostering lifelong learning as they prepare to participate in a democratic society.
- In order to establish priorities, aid in decision making, and provide an effective basis for a comprehensive and continuous evaluation, each school site shall develop and maintain a written statement of the philosophy and goals to be served by educational programs that are based on the belief that all students can learn.
- The school's philosophy and goals must reflect consensus among the school site community, the local board, and the school staff. The educational programs shall address the academic, personal/social, and career/vocational development of students as they prepare for the future.

Students

210:35-3-101

- Balanced and comprehensive student personnel services shall be provided for all students, including those students unable to gain maximum benefit from usual school experiences without specialized educational programs.



Accreditation

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.

Accreditation

No deficiencies – standards are being met

Deficiencies – site fails to meet one or more standards but does not detract from educational program

Warning – site fails to meet one or more of the standards and deficiency seriously detracts from the quality of the school's educational program

Probation – one or more of the following:

- Consistently fails to remove or make substantial progress to meeting all deficiencies from prior year
- Consistently violates regulations; and/or
- Deliberately and unnecessarily violates one or more of the regulations

Nonaccredited – no longer recognized by the State Board



Accreditation 2019

Seeworth Academy – Nonaccredited.
Noncompliance with Federal Programs
and finances.

Langston Hughes Academy – Probation,
then nonaccredited. Noncompliance with
laws and regulations (Open Meetings,
special education, school environment).

Cave Springs – Probation. Board
members have not met required trainings.

Accreditation 2020

Albion - Probation. Administrative costs; audit findings (payroll not supported by contracts, purchase orders dated after invoice, purchases not approved by school board); failure to comply with OCAS; federal programs noncompliance.

Keyes - Probation. Failure to offer required minimum course units or competencies; noncompliance in alternative education.

Oologah-Talala – Probation. Failure to appropriately implement Title IX.

Sovereign Community School – Probation. Noncompliance with statutory and rule requirements; financial inconsistencies.



Accreditation 2021

Woodland - Probation. Failure to report civil rights data; failure to respond to USDE and OSDE.



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
E

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).

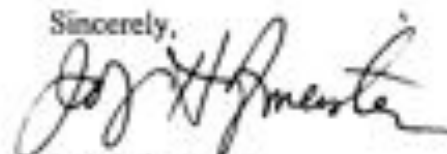
- The District shall ensure full compliance with all standards and requirements for special education services to students with disabilities pursuant to the IDEA, and alternative education program services to students identified as at risk of not completing high school pursuant to 70 O.S. § 566 *et seq.* 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.

.....

**State Board of
Education Meeting
6.24.21**

Western Heights



9 school sites

3,400 enrollment (2020);
2596 (2021)

Demographics
(approximates)

- >90% Economically Disadvantaged
- 35% English Learner
- 46% Hispanic
- 16% Black
- 23% White

Educational Services & Outcomes

Probation – April 2021

Audit findings (2 years)

Academics and student outcomes

Federal programs – non-compliance (2 years)

Emergency relief \$

Students with disabilities – Individuals with Disabilities Education Act (IDEA) – Tier 3 (2 years)

Personnel

Instability and disharmony

Chronic Absenteeism



Academic Achievement -

1% Advanced; 10% Proficient;
35% Basic; 53% Below Basic



Absenteeism – one of the highest absenteeism rates of all schools



Postsecondary Opportunities



6 of 9 sites federally designated for Support & Improvement

1 site Comprehensive Support and Improvement
5 sites as Additional Targeted Support & Improvement

Academic Outcomes

Postsecondary Opportunities

2019-2020

Performance Over Time

2019-2020



Now: Widening Gap in Academic Outcomes

Average Scale Scores of all Districts (Grades 3-8), for ELA



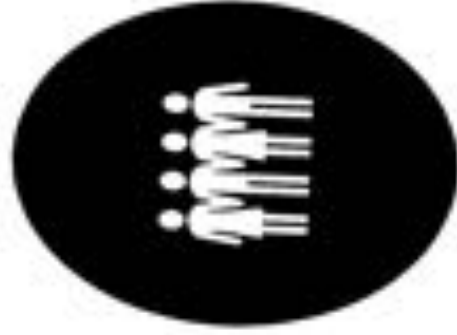
Average Scale Scores of all Districts (Grades 3-8), for Science



Average Scale Scores of all Districts (Grades 3-8), for Math



School Personnel Issues



37% LOSS IN STAFF



CLAIMS OF RETALIATION
AND HARASSMENT



IMPASSE X 2

Audit

- 2019 audit
 - Violation of 62 O.S. § 430.1 Use of \$8,810,000 2018 funds to make payments on a 2009 and 2013 bond
- 2020 audit
 - Accounting records not properly reconciled with bank accounts
 - \$514,760.19 outstanding warrants/checks that were previously cleared
 - \$614,408 wire transfer to IRS Account on 6/29/20, made in error
 - \$240,000 to Teacher Retirement Clearing that was never coded to general fund
 - \$46,000 wire transfer to TRS Clearing that was never coded to general fund
 - \$18,276.78 in bank analysis charges not appropriated coded
 - \$32,087.44 in TRS late penalties not coded to general fund

2020 Audit

- \$822,450.00 double posted transactions relative to direct deposit transactions (largely due to bank error)
- \$169,006.80 in investment interest not recorded as revenue
- \$144,837.97 returned items on bank statements
- Activity Fund not balanced with bank transactions. 42% of deposits were not timely made
- Purposes of subaccounts and revenues are not always included in board approvals
- 15% of Activity Fund purchase orders did not have adequate documentation. Meals and trips did not include attendees or recipients.

District Finances

County: OSOLAUMA

Oklahoma State Department of Education

6/22/2021 1:45:32 PM

District: 041 WESTERN
HEIGHTS

2020 and 2019 - OCAS - Revenue Comparison Report

Page: 1

| 11 - General Fund | 2019 | 2020 | Difference | Percent Change |
|--------------------------------|----------------------|----------------------|---------------------|----------------|
| 1000 Direct Source | 13,941,363.04 | 15,237,300.42 | 1,295,937.38 | 9.32 % |
| 2000 Intermediate Source | 915,611.82 | 934,613.38 | 19,001.56 | 2.08 % |
| 3100 State Dedicated | 1,700,612.90 | 1,625,715.73 | -74,897.17 | -4.39 % |
| 3200 State Aids | 6,063,391.38 | 7,792,796.72 | 1,729,405.34 | 28.35 % |
| 3300-3900 State Appropriations | 305,535.22 | 355,666.23 | 50,131.01 | 16.40 % |
| 4000 Federal | 4,070,559.08 | 4,542,017.05 | 471,457.97 | 11.58 % |
| Totals New Revenue: | 26,981,503.44 | 30,678,995.53 | 3,697,492.09 | 13.71 % |

Claim: budget has been cut by 42% in 2 years

Reality:

2019: Total General Fund \$29,093,593.44

2020: Total General Fund \$30,679,959.09

2020-21

+17,779,545.15 in federal COVID-19 relief funds

Emergency Relief Funding – COVID-19

- Prepare for, respond to, recover from COVID-19 impacts
- Must be "reasonable and necessary"
- Any activity to address the unique needs of low-income children or students and other underserved student subgroups
- Purchasing cleaning supplies; training on uses
- Planning for and coordinating services during long-term closures, including providing meals, technology for online learning, guidance for carrying out IDEA services, etc.
- Purchasing educational technology to conduct online learning for students.
- Providing mental health services and supports.
- Activities related to summer learning and supplemental after-school programs.
- Addressing learning loss among students.

Representations on Use of Funds and Budgeting

- 17,779,545.15 available and allocated
- Reported use of CARES funds: 1-1 technology for all students
 - Unsupported
- Claims for expenditures
 - \$844,683.33 claimed
 - \$278,765 on generators
- No investments demonstrated:
 - Learning loss
 - Mental health
 - Staff retention & Recruitment

Program (AMES) (leaf) 3 2020-2021

Summary Expenditure Reports

Select a Summary Expenditure Report from the list(s) below and press one of the following buttons.

Summary Expenditure Report

| Year | Summary Expenditure Report | Year | Expenditure Report | Amount | Date Submitted | Status |
|------|----------------------------|-------------------|--------------------|-------------|----------------|------------------|
| 2020 | Summary Expenditure Report | 09/2020 | 09/2020 - 09/2020 | \$28,463.19 | 09/20/2020 | Scheduled to SFR |
| 2020 | Summary Expenditure Report | 09/2020 | 09/2020 - 09/2020 | \$28,463.19 | 09/20/2020 | Approved |
| 2020 | Summary Expenditure Report | 10/2020 - 10/2020 | 10/2020 - 10/2020 | \$79,888.88 | 10/20/2020 | Approved |
| 2020 | Summary Expenditure Report | 10/2020 | 10/2020 - 10/2020 | \$79,888.88 | 10/20/2020 | Approved |

Governance & Leadership

1,037 votes in elections school board elections
509 (49%) in 2021 election
5 of 8, unopposed candidate

2013-21

Board member consuming alcohol while transacting official business in a public meeting

2020

4.29 - Board Member Barnes submits application for superintendent certification
6.10 - Former superintendent resigns after 25 years
7.1 - Barnes hired

2019

"Radical" parents Affirm decisions and conduct of Superintendent Barnes

2021



Leadership – Representations and Certifications

Finance - management, budgeting and cost management, policy and procedure development, government regulations,

Human Resources, public relations and media affairs, contract negotiations

Omitted expulsion from University of Oklahoma, College of Dentistry

• <https://www.oklahoman.com/article/2623285/candidate-was-expelled-from-ou-records-show>



District Leadership – Experience and Competencies

- Oklahoma Dept. of Labor
- Chief of Staff: Mannix Barnes; Chief Financial Officer: Robert Everman
- Claims of harassment and retaliation
- Merit Review Board
- Lawsuit filed against Barnes; settled.
 - Jury could find the evidence presented demonstrates Defendants acted intentionally to coerce a resignation

See Laurie Allen v. Oklahoma Dept. Of Labor; Mannix Barnes, et al. (W.D.OK) CIV-07-831-C.



Response to Probation

Lawsuit filed

No attempts to course correct and repair culture

No efforts to retain staff

Zero focus on student learning loss

Disregard safety

Affirm decisions and conduct of Superintendent Barnes

District Leadership – Experience and Competencies

Lucky Star Casinos

- General Manager: Mannix Barnes
- CFO: Robert Everman
- Employee complaints of harassment and hostile environment
- 2016 audit – “unable to obtain sufficient appropriate evidence to provide a basis for an audit opinion”
- \$314,735 accounts not reconciled
- \$32,166,507 unable to obtain documentation to verify fund balances

INSTANCES OF INSUFFICIENT AUDIT EVIDENCE TOTALS FOR ALL CASINOS

- (L) Accounts not reconciled - TOTAL \$314,735
- (A) Unable to obtain documentation to verify fund balances - TOTAL \$32,166,507

CHEYENNE AND ARAPAHO GAMING COMMISSION

2016 EXTERNAL AUDIT REPORT

- FINANCIAL AUDIT
- MINIMUM INTERNAL CONTROL STANDARDS -

MIK'S AUDIT

2016 FINANCIAL AUDIT

Joseph Eve auditors completed the 2016 External Audit for the year ended December 25-27, 2016, for Lucky Star Casinos Coosho, Clifton, Hammon, Cannon and Watonga and Lucky Star Casino Travel Center Coosho. Financial reports were submitted to National Indian Gaming Commission on April 24, 2017. Joseph Eve submitted the Audit report with a disclaimer of opinion on the 2016 financial statements for each casino. **Auditors statement:** “Our responsibility is to express an opinion on these financial statements based on our audits. Except as explained in the Basis for Disclaimer of Opinion paragraph, we conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free from material misstatement.”

“We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our qualified audit opinion on the financial statements for the year ended December 31, 2016.”

Because of the matter described in the Basis for Disclaimer of Opinion on 2016 paragraph, however, we were not able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion on the financial statements as of and for the year ended December 25-27, 2016.”

Governance - Leadership

- School Board to contract with, fix duties and compensation of superintendent, and other personnel – 70 O.S. § 5-117
- Superintendent contract
 - \$220,000 base salary w/ benefits (5th highest, 1 year experience, 34th enrollment)
 - 20 days unpaid leave for outside activities
 - Reasonable time & pay for professional growth and community involvement
 - 25 semester credit hours annually to further education
 - Chamber of Commerce, civic affairs, clubs, organizational membership
 - 40 vacation days per year
 - 20 sick days per year
 - 20 personal business leave days per year
 - \$75,000 retention bonus on June 15, 2022

Patterns

- Culture: Labor Dept. Litigation -> District complaints
- Financial mismanagement: Lupus Foundation -> Lucky Star Casinos -> District
- Incestuous relationship on governing boards and administration
 - Department of Labor
 - Lupus Foundation
 - Lucky Star Casinos
 - OneFire Holdings
 - Western Heights Public Schools
- Disregard for safety, health and welfare

IN WITNESS WHEREOF, Board has caused this Employment Contract to be executed on its behalf by its duly authorized President and Clerk and Superintendent has approved this Contract effective on the day and year specified in paragraph 1 above.

Western Heights Public Schools
Independent School District #1
Of Oklahoma County, Oklahoma

(District)

By  Superintendent

(Superintendent)

By  Superintendent

ATTEST:

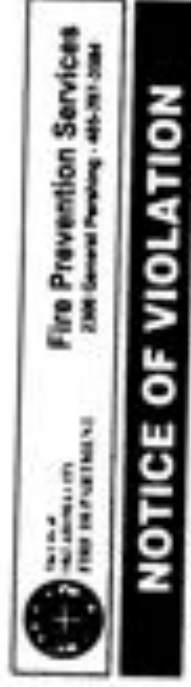
By  Clerk of the Board

Off as to form
By District Legal Counsel

Oklahoma City Fire Department

- Notice of Violation

- Feb. 21 -> April 27
- Sprinkler systems in high school not working
 - Students and staff in building
 - Non-district patrons scheduled to be in the building
- "Who is making decisions of when to fix these things and when not to?"
- "Mannix Barnes is the Superintendent so he is really going to make the final decision."
- Handcuffs or school closure



Date: 4/27/2021 Ref: FCOM-2021-01346
Owner: Occupant: Western Heights High School
Address: 8201 SW 44th OKC OK
Phone #: Title:
Fire was hereby notified that you have violated City Code 20-21.9(C)2015
Penalty Code: FC3 - Fire Code Violation
of the Ordinances of City of Oklahoma City
Compliance to the code(s) requiring this to be done:

This shall be completed by 7:00 of any safety systems or anything under state or current year
regulations by 7:00 AM and be accompanied with photographs
and the following is violation Code of Oklahoma Code Book

By: 5/4/2021 in penalty of Ordinance will be enforced

Fire Inspector: Major Sunderman Date: 4/27/2021



9

NEWS

Fast & Reliable AC Services in OK
TradePro
(405) 376-0183 www.tradeprook.com
Residential • Commercial • Service • Installation

Parents Frustrated With Western Height Transportation Due To Bus Driver Shortage

Western Heights School Board Makes Controversial Decision To Hire Fellow Member As New Superintendent

NEWS
November 12, 2014 1:00 PM
By Kathy Hagan



NEWS
Tuesday, July 29, 2014 1:00 PM
By Dawn Hagan

Western Heights schools to resume classes Tuesday after heated school board meeting with teachers staff

Executive Homes
BUILDING DESIGNERS
EH

Former Western Heights Teacher Explains Years

NEWS
September 11, 2014 4:00 PM
By Kathy Hagan



15 employees resign at Western Heights School Board meeting

NEWS
15 employees resign at Western Heights School Board meeting

Western Heights rolls out new curbside meal plan, but not everyone gets food

NEWS
August 18, 2014 11:00 AM
By Dawn Hagan

NEWS
August 18, 2014 11:00 AM
By Dawn Hagan

'Please help us': Oklahoma City schools face urgent complaints, one district on probation

NEWS
August 18, 2014 11:00 AM
By Dawn Hagan



Superintendents' Critics Confront W

NEWS
August 18, 2014 11:00 AM
By Dawn Hagan

NEWS
August 18, 2014 11:00 AM
By Dawn Hagan

Western Heights School District Faces Criticism At Oklahoma State School Board

NEWS
August 18, 2014 11:00 AM
By Dawn Hagan

Western Heights parents asking superintendent, some board members to resign

NEWS
August 18, 2014 11:00 AM
By Dawn Hagan

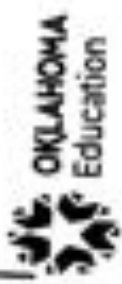
Western Heights School District Faces Criticism After Ending Food Distribution Program

NEWS
August 18, 2014 11:00 AM
By Dawn Hagan

NEWS
August 18, 2014 11:00 AM
By Dawn Hagan



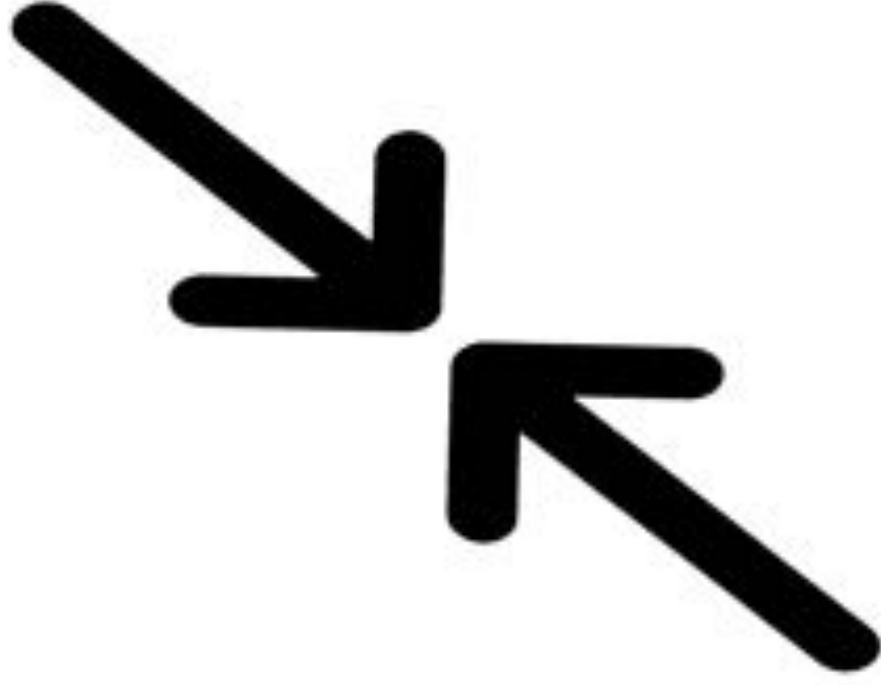
NEWS
Western Heights board member spotted drinking a beer during board meeting





Recommendations - Next Steps

- Opportunity for corrective action through July 8, 2021
- Continued lack of response and failure to serve may result in:
 - Administrative takeover to ensure stability, competency and harmony
 - Appointment of a superintendent, interim trustee and/or liaison
 - Loss of accreditation
- State Board of Education meeting on July 12, 2021



Recommendation item 12(c) 1

1. A school superintendent serves as the Chief Executive Officer of a local school board and is responsible for demonstrating and maintaining professional competencies required for certification by the State Board of Education and for providing leadership in all facets of administration of a school district;
2. Based on the matters presented and action today to immediately suspend and implement procedures to revoke the certification of Mannix Barnes, the school district board of education shall immediately suspend Mannix Barnes from his employment with the district;
3. Should the Western Heights board of education not take immediate action on the conditions of probation and consistent with the actions of the State Board of Education today, the State Board is ready, able and willing to intervene to provide confidence, competence and continuity of the school district for the families and children it serves;
4. As such, as noticed and pursuant to the authority provided, move to have the Oklahoma State Department of Education notify Western Heights Board of Education that on July 12, 2021, the State Board of Education may consider modifying the conditions of probation, to include state intervention and/or possible loss of accreditation and annexation should the school board not implement immediate corrective actions consistent with the State Board of Education's actions regarding Western Heights from and since March 25, 2021.



The City of
OKLAHOMA CITY
FIRE DEPARTMENT

Fire Prevention Services
2300 General Pershing - 405-297-3584

NOTICE OF VIOLATION

DATE 4/27/2021 RFS# FCOM-2021-01346

Owner / Occupant Western Heights High school

Address 8201 SW 44th OKC OK

Phone # _____ Tag/Lic _____

You are hereby notified that you have violated City Code 20-21/IFC2015

Penalty Code FC3 - Fire Code Violation

of the Ordinances of City of Oklahoma City.

Comments All fire safety systems back to full service.

You shall be compelled to Put all fire safety systems in working order With a current green inspection tag. Fire watch will be established and maintained any time the building is inhabited. Until all systems have been repaired.

By 5/4/2021 or penalty of Ordinances will be enforced.

Fire Inspector Major Sunderman. Date 4/27/2021



1 IN THE DISTRICT COURT OF OKLAHOMA COUNTY
2 STATE OF OKLAHOMA

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

7 Petitioners,)

8 vs.)

CASE NO. CV-2021-945

9 THE STATE OF OKLAHOMA, ex rel.)
10 OKLAHOMA STATE DEPARTMENT OF)
11 EDUCATION, OKLAHOMA STATE BOARD)
12 OF EDUCATION, and JOY HOFMEISTER,)
13 State Superintendent of Public)
14 Instruction,)

15 Respondents.)

16 * * * * *

17 TRANSCRIPT OF PETITIONERS' MOTION FOR TEMPORARY
18 RESTRAINING ORDER AND PRELIMINARY INJUNCTION, AND BRIEF
19 IN SUPPORT PROCEEDINGS
20 HAD REMOTELY, TELEPHONICALLY AND IN-CAMERA ON THE 8TH DAY
21 OF JULY, 2021, BEFORE
22 THE HONORABLE ALETIA HAYNES TIMMONS

23 * * * * *

24 **ATTORNEY'S COPY**

25 Reported by:

Tara Nixon, RPR, CRR, CRC
321 Park Avenue
Oklahoma County Courthouse
Oklahoma City, Oklahoma 73102

DISTRICT COURT OF OKLAHOMA - OFFICIAL TRANSCRIPT

EXHIBIT
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A P P E A R A N C E S

ON BEHALF OF THE PETITIONERS (in-chambers):

MR. JERRY COLCLAZIER
Attorney at Law
Colclazier & Associates
404 N. Main Street
Seminole, Oklahoma 74868

MR. DAN MURDOCK
Attorney at Law
8201 SW 44th
Oklahoma City, Oklahoma 73120

ON BEHALF OF THE RESPONDENTS (remote via telephone):

MR. BRAD CLARK
Attorney at Law
Oklahoma State Department of Education
Oklahoma State Board of Education
2500 North Lincoln Boulevard
Joy Hofmeister, Superintendent
Oklahoma City, Oklahoma 73105

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1 (Whereupon, the following transpired at
2 3:07 p.m. in-chambers).

3 THE COURT: All right. If you'll put Mr. Brad
4 Clark through.

5 THE BAILIFF: (Complies).

6 THE COURT: Mr. Clark, this is Judge Timmons.
7 How are you?

8 MR. CLARK: I'm good, Judge. How are you doing
9 today?

10 THE COURT: Pretty good. Pretty good.

11 MR. CLARK: Good. Good.

12 THE COURT: Let's go on the record in Western
13 Heights vs. The State of Oklahoma, case number
14 CV-2021-945. And I've reviewed to see when the
15 filing of this case was and it was April the 22nd.
16 And today, on July 8th, there was filed
17 Petitioners' Motion for Temporary Restraining Order
18 for Preliminary Injunction and Brief in Support.
19 And I noticed from the filing of it, it doesn't say
20 an emergency, an emergency order for temporary
21 restraining order, which would be when we'd set it
22 on an expedited basis.

23 And then, secondly, I noticed there was no
24 Rule 13 Affidavit that notified anyone that any of
25 the attorneys for the Defendant had been contacted.

1 So Mr. Colclazier was accommodating with regard to
2 that. He went and filed an Affidavit with regard to
3 notifying all of the parties present.

4 And Mr. Clark, I would assume that's why you
5 called.

6 **MR. CLARK:** In part, yes. I mean, the whole
7 purpose -- yes is the answer to that.

8 I received an e-mail from Mr. Colclazier, just
9 saw it not too long ago, with his second e-mail.
10 The first e-mail was requesting whether or not I
11 objected to him filing an oversized brief with a
12 Motions for Injunction today. And then the second
13 e-mail was to notify me that a hearing had been set
14 on what he filed. That hearing was to be held
15 tomorrow at 1:30, I believe.

16 **THE COURT:** No. I did not set a hearing,
17 Mr. Clark.

18 **MR. CLARK:** Okay.

19 **THE COURT:** What I said was that he needed to
20 contact you. And my availability for a hearing was
21 those times that were set out in the Affidavit. I
22 said I was available based on whether or not there
23 was contact with you. I did not say I would conduct
24 any hearing on either one of those days, prior to
25 any determination about whether you were going to

1 enter your appearance, what was going on. I gave
2 them my availability in the event that the
3 requirements that are necessary under a temporary
4 restraining order were met and whether or not there
5 was a reason for an emergency. And so I thank you
6 for turning on a dime and getting a call in to my
7 office with regard to that.

8 **MR. CLARK:** Absolutely.

9 **THE COURT:** Also I was made aware that
10 Mr. Murdock came into my office on Tuesday with
11 nothing filed and no pleadings and requested to
12 make... to talk to me about a procedural matter, and
13 I as a matter of course don't discuss procedural
14 matters with lawyers, especially with no pleading
15 having been filed. And so he was here Tuesday. I
16 was out at the dentist.

17 And then I believe staff was told that they
18 planned to file something on Thursday, and, in fact,
19 something was filed today, July the 8th --

20 **MR. CLARK:** Thank you.

21 **THE COURT:** And I don't know if my staff was
22 ever told it was going to be a restraining order of
23 any kind. Am I correct on that, Charles and Eric?

24 **THE CLERK:** That's correct. It wasn't clear.

25 **THE COURT:** Okay. It wasn't clear? And part of

1 the reason is that's why I don't entertain matters
2 without pleadings, because my staff is not supposed
3 to be able to look at it and then tell everybody
4 what happens on it. You're supposed to come with
5 your pleading on file. And then they always scan it
6 in so that wherever I'm at, no matter what's going
7 on, I can look at it and I know if it's a true
8 emergency or something that's not an emergency. So
9 that's why we're here on Thursday with something
10 that is not styled in the style of an emergency.

11 All right. So I wanted to get that straight.
12 And I went to lunch, was on my way back from lunch
13 and got a call that Mr. Murdock and Mr. Colclazier
14 were here with a Motion for a Temporary Restraining
15 Order. And after a recitation of what was in the
16 Petitioners' Motion I got a copy of it when I got
17 back, about 1:45, and -- Well, no, I didn't. Did we
18 have a copy of it?

19 **THE CLERK:** Yes.

20 **THE COURT:** Of the Motion? Okay. Got a copy of
21 the Motion and then was brought the Affidavit, the
22 Rule 13 Affidavit, and so here we are.

23 **MR. CLARK:** Yeah, I think that's exactly where I
24 was and wanted to reach out to you, Judge. I think
25 our position is the overall prejudicial, unfair

1 surprise. The District has known about the publicly
2 scheduled meeting of the State Board of Education on
3 Monday, for weeks, at a minimum, and months at
4 another level. And to have -- I haven't read what
5 was filed. But given that Mr. Colclazier requested
6 to file an oversized brief I had reason to believe
7 that it's not a thin document by any standard, so I
8 have not read it. And then to see the e-mail, I
9 believe it says the hearing will be held on
10 July 9th at 1:30 or Monday at 8:30, I think. But
11 it was the -- I think it said it will be held on
12 either July 9th at 1:30 or Monday at 8:30 a.m.,
13 which, again, I have not read any of what was filed,
14 but trying to, you know, create a response is going
15 to be very, very difficult.

16 **THE COURT:** I understand.

17 **MR. CLARK:** If possible. That's the purpose for
18 reaching out.

19 **THE COURT:** With regard to that, when you talk
20 about the meeting that's happening on Monday
21 morning, how long has notice been given that this
22 meeting was going to be on Monday morning?

23 **MR. CLARK:** Judge, I will check. I know it has
24 been weeks, and I say that because at a June 24th,
25 2021 meeting, on the topic of Western Heights, there

1 was public at the public meeting, public action
2 held, patrons from the school district community
3 were present. And action was taken indicating that
4 this July 12th meeting may include action.

5 **THE COURT:** When you say "action", action with
6 regard to terminating the Superintendent?

7 **MR. CLARK:** That action was actually taken on
8 June 24th. The State Board entered an emergency
9 order suspending the superintendent certificate and
10 prior to that the Application for the Emergency
11 Order and a Revocation to follow was sent to the
12 Superintendent and the School District Board of
13 Education. The State Board then entered that
14 emergency order on June 24th at a public meeting.
15 And notice was sent to the Superintendent and the
16 School District Board of Education within three days
17 of that, as required by administrative rule, and a
18 hearing will be scheduled on a revocation.

19 So there is a hearing that will be held on the
20 potential revocation of the District
21 Superintendent's certificate. The action that is
22 possible on Monday, July 12th, is relating to the
23 School District itself. And that has been put in
24 notice to the District, as well as at public
25 meetings, and that's why I say at least a period of

1 weeks going back to that June 24th meeting and
2 even arguably April 9th at a public meeting.

3 **THE COURT:** All right. And so the meeting on
4 July 12th, does that have to do with... anything
5 has to do with the Superintendent?

6 **MR. CLARK:** It does not. Well, it does not have
7 anything to do with the superintendent certificate.
8 Candidly, I will say that it could possibly impact
9 his day-to-day, by that I mean the District has been
10 put on notice that the State Board may intervene in
11 the School District's operations and that has been
12 notified to them that they may include appointing an
13 interim superintendent.

14 **THE COURT:** All right. And your testimony is,
15 as the counsel for the State Department of Ed, that
16 at least as of June 24th and maybe prior to that,
17 there was an Application and Revocation sent to the
18 Superintendent and there was a public meeting with
19 regard to that, at least between the May and the
20 June 24th time period? And then there is a
21 hearing to be scheduled on the revocation of his,
22 the Superintendent's license?

23 **MR. CLARK:** That is all correct.

24 **THE COURT:** Okay. So as we sit here today is
25 the Superintendent still the superintendent of

1 Western Heights?

2 **MR. CLARK:** As far as I have been made aware,
3 that is true. I will add to that, that state law as
4 an amendment to the statutory section I'm talking
5 about, this past year the legislature passed an
6 amendment. The governor signed it. It's now
7 effective. That requires when an individual,
8 includes the school district superintendent, is
9 suspended by the State Board of Education, the
10 District is required to put that person on suspended
11 leave. And we've notified the District of this
12 requirement by letter.

13 **THE COURT:** When was that?

14 **MR. CLARK:** I don't have it in front of me, but
15 it's fair to say it would have been within three
16 days of June 24th. And we provided them with that
17 statute, with a copy of the Emergency Order
18 suspending Mr. Barnes's certificate and asked for
19 them to put him on suspended leave in compliance
20 with that statutory requirement within five business
21 days.

22 **THE COURT:** All right. And is that leave with
23 pay or leave without?

24 **MR. CLARK:** It is leave with pay.

25 **THE COURT:** All right. I have read the

1 Restraining Order and this is a question I'm going
2 to ask. I've done cases where they have suspended
3 teachers before with pay on an emergency basis.
4 With regard to the Superintendent is there -- well,
5 you said that their superintendent will be allowed a
6 *Loudermill* hearing --

7 MR. CLARK: Right.

8 THE COURT: Okay. So --

9 MR. CLARK: And, Judge, you raised the issue of
10 the earlier cases where a teacher may have been
11 suspended by the State Board and the impact. That
12 was the reason for that statutory amendment, to
13 clarify what occurs when someone is suspended by the
14 State Board.

15 THE COURT: All right. So tell me, Petitioners,
16 why this is something that I need to issue a
17 temporary restraining order, in particular, on an
18 expedited basis?

19 MR. COLCLAZIER: Judge, a couple of reasons.
20 And --

21 THE REPORTER: Excuse me. Counsel, your name?

22 MR. COLCLAZIER: Jerry Colclazier.

23 THE REPORTER: Thank you.

24 MR. COLCLAZIER: For the Petitioner. A couple
25 of points, Judge. Keep in mind a couple of things.

1 This application to suspend the Superintendent; one,
2 the State Board of Education doesn't have any
3 lawful, legal authority in their powers and duties
4 to suspend anybody. The statute that incorporates
5 their powers with regard to superintendents is they
6 have a right to grant a license for a superintendent
7 or a certificate, or they have a power to revoke
8 that license.

9 **THE COURT:** My question was why is this
10 necessary on an expedited basis.

11 **MR. COLCLAZIER:** Well --

12 **THE COURT:** This is a firing or a termination or
13 suspension just like any other. What makes this
14 different on an expedited basis for a restraining
15 order? Because I see no reason why there should be
16 one in violation of the rules that are already
17 present that give him a Loudermill hearing. Because
18 your argument earlier, or your recitation of what
19 was in your Motion was that they have given him no
20 notice of anything and he hasn't had an opportunity
21 to be heard and that that's the reason why, one of
22 the reasons why we needed a TRO.

23 **MR. COLCLAZIER:** Two reasons we need a TRO,
24 Judge. First, the Loudermill hearing is, in
25 essence, always a hearing that precedes the action

1 by the governmental agency, unless there is some
2 reason that requires it to be. Now we have teacher
3 statutes, for example, that where school districts,
4 and Western Heights does this, along with all other
5 school districts, if there is an emergency situation
6 that requires that for the welfare of the children,
7 that's a public welfare and it has to be imperative,
8 if there's a situation like that then statutorily
9 school districts can emergency suspend a teacher.
10 One, that doesn't apply to a superintendent. Their
11 regulations indicate they don't have any statutory
12 authority for that. But I think it's more
13 important, Judge, the situation that we're coming up
14 for Monday --

15 **THE COURT:** Okay. Let me respond to the one
16 because a Loudermill hearing can be done after the
17 fact, too. There is ample case law that says as
18 long as you give them one you don't have to give it
19 to them before if there is a suspension. You can
20 give it to them afterwards, but you cannot give it
21 to them at all. So your argument that they're
22 supposed to give it to him before they can suspend
23 it is not consistent with the law that I've read.
24 Okay?

25 **MR. COLCLAZIER:** Yeah.

1 THE COURT: So let's go to rule number two.

2 MR. COLCLAZIER: Okay.

3 THE COURT: Let's go to number two reason.

4 MR. COLCLAZIER: Number two reason, Judge, is
5 the fact that with respect to this specific case,
6 we've been told by the State Department of Education
7 they suspended the Superintendent, they took him --

8 THE COURT: Which they have the ability to do.

9 MR. COLCLAZIER: Respectfully, Judge, we
10 disagree.

11 THE COURT: All right.

12 MR. COLCLAZIER: The statute doesn't allow them
13 the ability to do that and we've said that argument
14 in our Brief. But I think more importantly is the
15 State Department has indicated after they summarily
16 suspended the Superintendent and, of course, keep in
17 mind, Judge, the Superintendent has never had his
18 day in court to be able to defend himself from the
19 allegations that have now been presented in two
20 secret meetings; two secret meetings at the State
21 Department of Education.

22 So he has been suspended. And the State Board
23 has told Western Heights, essentially, if you don't
24 terminate your contract with Mannix Barnes, the
25 Superintendent, we're going to de-accredit or

1 somehow affect the District. I think Mr. Clark
2 indicated that they're going to appoint a, or may
3 appoint a new superintendent. One, we'd also argue,
4 they don't have the authority to do that either.

5 We have local board control in Oklahoma. The
6 State Department of Education has no authority and
7 in fact their own powers and duties indicate they
8 don't have any authority over board members. And
9 they can't tell board members how to do the business
10 in the local board. But the fact is they've
11 suspended the Superintendent and that puts Western
12 Heights to irreparable harm.

13 We have an Affidavit from the Assistant
14 Superintendent that indicates that the loss of the
15 Superintendent operating this district -- we're not
16 talking about a teacher, one of 350 teachers that we
17 lose for a classroom. We're talking about a
18 superintendent who for the last two years has been
19 operating, according to his own accord, well, and
20 doing it exactly right, for two years, and managing
21 a \$30 million budget, 350 employees, all of the
22 other business of the school district. This
23 Superintendent has been doing that. And to take
24 this superintendent away on an emergency basis, keep
25 in mind the Superintendent didn't have an

1 opportunity to go and fight this in their executive
2 session. Their executive session, he wasn't invited
3 in their executive session to conflict --

4 **THE COURT:** He doesn't have a right to be there.
5 He has no right to be there at all.

6 **MR. COLCLAZIER:** He does if they're -- Judge,
7 I'd submit to you that the Open Meetings Act doesn't
8 allow an executive board to be able to conduct
9 executive sessions before the case has been
10 submitted to the finder.

11 **THE COURT:** Yes, it does. I was in the D.A.'s
12 office for 10 years. I represented the Board of
13 County Commissioners.

14 **MR. COLCLAZIER:** Uh-huh.

15 **THE COURT:** And we made termination decisions in
16 executive session and then executed them as a...
17 more than once.

18 **MR. COLCLAZIER:** I understand, Judge.

19 **THE COURT:** So your argument that he -- that
20 they can't go into executive session and decide
21 they're going to suspend his license is belied by
22 the statute, too, the one that you've cited. So my
23 question still is this.

24 They have the right to suspend and do a
25 suspension of his... temporary suspension of his

1 license, they do, under Section 3-104(A)(6), which
2 you've... at Paragraph 6, which you've put in your
3 Brief.

4 **MR. COLCLAZIER:** Judge, the word "suspend" is
5 nowhere in that statute. Nowhere. It talks about
6 revocation. It talks about issuing a license. The
7 word "suspend" is nowhere in the statute. Suspend
8 doesn't come up until you look at the agency
9 regulation, which is ultra vires, they can't just
10 decide with their regulation something that the
11 statute doesn't give them the authority to do. They
12 don't have the authority to suspend the
13 Superintendent.

14 **THE COURT:** This says they, "shall formulate
15 rules governing the issuance and revocation of
16 certificates for superintendent of schools." Then
17 it says, "but not including members of the boards of
18 education and other employees." Then it says -- I
19 don't know in -- that's where it ends.

20 **MR. COLCLAZIER:** If you compare that to the
21 teacher statute, Judge, the teacher statute does
22 allow the local Board of Education to suspend the
23 teacher, especially -- and because they have that
24 power, the local board, they also have the power to
25 emergency suspend, according to the Oklahoma

1 Administrative Procedures Act, under 314 and 314.1.

2 What they don't have is the power to suspend a
3 superintendent, Judge, before he's had an
4 opportunity to refute any of these allegations.
5 They go into a star chamber proceeding before --

6 **THE COURT:** I don't think they have to, they
7 don't have to. That's why there's an emergency
8 suspension.

9 **MR. COLCLAZIER:** Judge, *Loudermill* makes it
10 perfectly clear and all of the other Supreme Court
11 cases, as well as the Oklahoma cases, that in a due
12 process rights my client has the right to refute
13 these charges against him. He first has the right
14 to get the charges --

15 **THE COURT:** Not before he gets suspended and the
16 reason for that -- I'm going to pull *Loudermill*
17 because I've read *Loudermill* and I've sued based on
18 *Loudermill* before.

19 **MR. COLCLAZIER:** Judge, I might point out --

20 **THE COURT:** Hang on. I'm going to find it
21 because *Loudermill* doesn't say -- *Loudermill* does
22 not say you can't suspend them without a hearing.
23 That's not what it says. Says you have to provide
24 a --

25 **MR. COLCLAZIER:** No. There are times when --

1 THE COURT: Okay. Hang on.

2 MR. COLCLAZIER: I'm sorry.

3 THE COURT: Mr. Clark?

4 MR. CLARK: Yeah. I just wanted to have an
5 opportunity to respond. I'm happy to wait until
6 Mr. Colclazier is done. But there are very big
7 statutory provisions, authorizations that are being
8 omitted from what it said. And they're very clear
9 and they've been upheld. The State Board's
10 processes, procedures to suspend have been upheld in
11 multiple venues and using Court of Civil Appeals
12 several years ago. The statutory authority for the
13 emergency suspension is, as you pointed out in
14 Title 70, but also in Title 75 § 314 and 314.1.

15 THE COURT: Yeah, it talks about emergency
16 suspensions in that, too, and suspensions in that.
17 And then it includes a discussion of who it applies
18 to. One of them was superintendents.

19 MR. COLCLAZIER: Well, not in --

20 MR. CLARK: That is correct.

21 MR. COLCLAZIER: -- Title 75, Judge.

22 MR. CLARK: In the statutory definition of
23 teacher includes superintendent as do the
24 promulgated and approved through the ACA process
25 rules of the State Board of Education relating to

1 suspensions and revocations. All of those were
2 included in the Application to Suspend and Revoke
3 and the Order that followed.

4 **MR. COLCLAZIER:** Judge, they submitted the
5 Application the night before the hearing. I even
6 refer to it as a hearing. It wasn't a hearing.
7 They submitted the Application the night before they
8 went into secret meeting with the State Board to
9 consider the suspension of the Superintendent's
10 license. In *Loudermill* --

11 **THE COURT:** Are you talking about the executive
12 session?

13 **MR. COLCLAZIER:** In *Loudermill* --

14 **THE COURT:** Are you talking about -- when you
15 say "secret meeting" --

16 **MR. COLCLAZIER:** Yes.

17 **THE COURT:** -- are you talking about executive
18 session?

19 **MR. COLCLAZIER:** Executive session, yes.

20 **THE COURT:** Okay. So that's not a secret
21 meeting. That's allowed by statute.

22 **MR. COLCLAZIER:** In *Loudermill* the Supreme Court
23 held, quote, "Pretermination hearings need not be
24 elaborate but the opportunity to present reasons,
25 either in person or in writing why the proposed

1 action should not be taken, is a fundamental due
2 process requirement." That's straight out of
3 Loudermill. They go on to say "the tenured public
4 employee is entitled to oral or written notice of
5 the charges against him", which in this case they
6 gave it to the Superintendent the night before the
7 meeting. Going on, "an explanation of the
8 employer's evidence and an opportunity to present
9 his side of the story." That opportunity was not
10 accorded to the Superintendent in their executive
11 session. That's the fallacy with regard to any due
12 process in this case. Due process --

13 **THE COURT:** This is not a termination hearing.
14 This is a suspension.

15 **MR. COLCLAZIER:** Which they don't have the
16 statutory authority to do, as opposed to teachers.
17 For example, Judge, the statute for teachers
18 indicates --

19 **THE COURT:** I'm looking at the statute. I'm
20 looking at the statute and it says they do. I mean,
21 it just flat out says they do. So I don't know how
22 you continue arguing it doesn't when I read what you
23 cited and it gives them the ability to suspend. So,
24 you know, unless you -- do you have something else
25 besides that?

1 **MR. COLCLAZIER:** Well, Judge, there's no
2 statutory authority that gives them -- I mean, I
3 cited to the statutory authority that is their
4 powers and duties that deals with superintendents
5 and also teachers. And teachers have a Due Process
6 Act which covers their situation specifically. But
7 with regard to others, and superintendents included,
8 nowhere in the statute does it give them the ability
9 to suspend. That's only with regard to teachers.
10 And that's only with regard to Boards of Education.
11 They have taken -- I mean simply, Judge, if the
12 statute doesn't say that you have the right to
13 suspend, they can't just make it up as they go along
14 and say, well --

15 **THE COURT:** I'm looking at it.

16 **MR. COLCLAZIER:** -- it sure would be easier if
17 we're able to suspend teachers, suspend
18 superintendents.

19 **THE COURT:** At 75 O.S. 314(C)(2) provides, "If
20 the agency finds that public health, safety, or
21 welfare imperatively requires emergency action,
22 summary suspension of a license may be ordered
23 pending proceedings for a revocation or other
24 actions." It doesn't say teachers' license. It
25 doesn't say -- it doesn't limit it.

1 **MR. COLCLAZIER:** So if they do have, and I think
2 that's a good point, Judge. If they do have the
3 ability to suspend, then, certainly they have the
4 ability under the Administrative Procedures Act to
5 suspend on an emergency basis. The problem here,
6 Judge, is they didn't even follow their own regs.
7 Their own regs say if they want to suspend somebody
8 on an emergency basis, and I believe that's also
9 their requirement at 314.1 they have to incorporate
10 the reason for this emergency. They basically said
11 we've got a big emergency here and the statute and
12 their own regulations of the Department of Education
13 indicate that if they think there's an emergency, in
14 fact, I've cited on Page 16 in my Brief, this is out
15 of their regs. They cite that the reason that they
16 can do what they think they did is 314.1 and then it
17 goes on to say, such an Order shall include specific
18 findings of fact specifying the grounds for the
19 emergency action. Judge, Exhibit D of my, excuse
20 me, Exhibit C.

21 **THE COURT:** And let me stop you.

22 **MR. COLCLAZIER:** I'm sorry.

23 **THE COURT:** Because your own Brief says that you
24 say it's completely void of any specific findings of
25 fact specifying the grounds for emergency action.

1 And then the next page, on 17 says, it said the
2 emergency order goes on for 33 pages bemoaning
3 Superintendent Barnes's past education, work
4 history, discussions of his work. So I'm not going
5 through -- I mean --

6 MR. COLCLAZIER: I don't expect you to, Judge.
7 I understand that.

8 THE COURT: I mean, I will. I will. But I'm
9 like --

10 MR. COLCLAZIER: I'm simply --

11 THE COURT: You quote that there's 33 pages of
12 allegations.

13 MR. COLCLAZIER: And exactly right, Judge.
14 Those are allegations. It's up to the Board to
15 state exactly. Their records say that the Order has
16 to say why did we do this --

17 THE COURT: Well, you said allegations.

18 MR. COLCLAZIER: -- on an emergency basis.

19 THE COURT: You called it allegations.

20 MR. COLCLAZIER: Well, yes.

21 THE COURT: And a smear campaign. I'm --

22 MR. COLCLAZIER: He's never had an opportunity
23 to refute them.

24 THE COURT: I don't know what Clark is going to
25 say.

1 **MR. COLCLAZIER:** They didn't let him come to the
2 emergent -- to the executive session to be able to
3 refute any of these allegations. But the point is,
4 Judge, they're required by their own regs to list
5 what the emergency is.

6 **THE COURT:** Okay.

7 **MR. COLCLAZIER:** They can't just come in and
8 assume it's an emergency.

9 **THE COURT:** Mr. Clark. Mr. Clark, you know --
10 Mr. Clark what is your response?

11 **MR. CLARK:** That is sure quite a bit to unpack
12 there. I would say that, and this is perhaps
13 something everyone is aware of. It's been in the
14 media for a period of months. The District was
15 invited to come and present its side of issues,
16 including those, some of those set forth in that
17 33-page Application dating back to April and the
18 District just patently refused, except for one
19 public meeting in the morning the District appeared
20 through Mr. Colclazier and Mr. Barnes to advise that
21 they had filed a lawsuit and refused to answer,
22 address the State Board of Education's questions
23 relating to the substantive issues. Some of those
24 are included in that Application again.

25 The statutory requirements is that the public

1 body, i.e., the State Board of Education, if they
2 find it is in the -- for the emergency suspension,
3 I'm talking about 314, 314.1, if the public body,
4 i.e., the State Board of Education find that there
5 is an emergency and they clearly found that through
6 the 33-page Order that includes emergency findings
7 relating to putting individuals in physically
8 dangerous situations with nonworking fire prevention
9 protections, measures in place, that's just one
10 example. But there are identified findings that go
11 to that emergency, and the emergency was determined
12 by the State Board of Education.

13 Mr. Barnes has an opportunity at a hearing, a
14 full-blown hearing, but that will be at a later
15 date. The application that was sent to Mr. Barnes
16 identified the authority for the emergency
17 suspension, recommendation, and then, like I said,
18 the order from there, pursuant to the requirements
19 and statutes and APA process promulgated rules. All
20 of that has been followed. And I have -- again, I
21 have not read the filing from today, but this is
22 where we are.

23 It's been going on for a period of months and to
24 say that he has not been provided an opportunity to
25 appear at public meetings that have been scheduled

1 openly where many other people have attended,
2 including patrons of the district, I just think
3 that's a misrepresentation on that part.

4 MR. COLCLAZIER: Judge, they -- they went into
5 exec --

6 THE COURT: I don't need to hear anything else
7 right now.

8 MR. COLCLAZIER: May I respond to just that
9 part --

10 THE COURT: May I finish reading what I'm
11 reading?

12 MR. COLCLAZIER: I'm sorry. Yes, ma'am. Sorry.

13 THE COURT: And when I say step so --

14 MR. COLCLAZIER: Okay.

15 THE COURT: -- I can finish doing what I'm
16 doing, I expect you to do that.

17 I'm reading. I'm reading some of the
18 allegations with regards to the Superintendent, not
19 the least of which is malfunctioning fire system.
20 And the fact that their audit findings that tend to
21 show that staffing levels are not where they need to
22 be, that... and that may be a problem with a lot of
23 places because there is a teacher shortage. But
24 there is audit findings that needed to be redone.
25 Failure to keep employees elective insurance

1 accounts current. Federal programs are noncompliant
2 fiscal year 2020. Special Education staffing issues
3 been a problem. Child nutrition. They suspended it
4 to students during the closure of school sites due
5 to COVID-19 conditions; said kids didn't get any
6 nutritional support. Looks like, to me, that these
7 are fairly specific.

8 They're specific about the issues related to him
9 sufficient to, I think, create an emergency
10 suspension.

11 **MR. COLCLAZIER:** Judge, the problem with that is
12 that this application was -- if you look at the
13 title, the Application for Emergency Order to
14 Summarily Suspend and the Application to Revoke the
15 Teaching Certificate. So we already know from Day 1
16 when they filed this, this is a combination of
17 emergencies and a combination of the regular
18 application to revoke. This is only one side of the
19 story. The fact is the law requires, and their own
20 regulations require them to single out in detail
21 what was the emergency that required him to be
22 suspended without being able to present his side of
23 the story.

24 **THE COURT:** And I found that they did that.

25 **MR. COLCLAZIER:** He certainly -- well, Judge --

1 THE COURT: There's 33 pages of it.

2 MR. COLCLAZIER: The agency has to do it --

3 THE COURT: Don't interrupt me while I'm
4 talking.

5 MR. COLCLAZIER: I'm sorry.

6 THE COURT: There's a 33-page, you call it a
7 smear document. I call it a pretty detailed
8 analysis of why he needs to go and he needs to get
9 on out. I don't know if all this stuff is true, but
10 on the face of it, it looks like there are numerous
11 deficiencies under his leadership that they have a
12 right to summarily suspend him and then set a
13 hearing on whether they ought to revoke his
14 certification. If one-third of this stuff is true
15 my -- it's appalling.

16 MR. COLCLAZIER: Judge, none of it is true.

17 THE COURT: Okay. Well --

18 MR. COLCLAZIER: I'll submit to you none of it
19 is true and the problem is --

20 THE COURT: Okay. And this is not the time --

21 MR. COLCLAZIER: -- they've taken his --

22 THE COURT: -- for a full-blown hearing on that.

23 MR. COLCLAZIER: Well, but they --

24 THE COURT: It's not. It's not. He's going to
25 have an opportunity for a hearing on it. So --

1 MR. COLCLAZIER: Judge, Loudermill --

2 THE COURT: -- I'm not going to second-guess --

3 MR. COLCLAZIER: -- and the other cases, if I
4 may. I don't want to over --

5 THE COURT: Well, you have been interrupting me.

6 MR. COLCLAZIER: My apologies.

7 THE COURT: Okay. In Loudermill, I'm looking at
8 Loudermill. Loudermill is --

9 MR. COLCLAZIER: And all of those cases --

10 THE COURT: -- a termination proceeding.

11 MR. COLCLAZIER: That's correct.

12 THE COURT: It's not a suspension proceeding.

13 MR. COLCLAZIER: And all of the progeny from
14 Loudermill indicate very clearly that there has to
15 be an extremely valid and good reason to deny
16 somebody the opportunity to defend himself in any
17 public, in any fair hearing. He was not allowed
18 into the executive session where all these
19 allegations were made.

20 THE COURT: And he doesn't have a right to be in
21 executive session, that's between the lawyers and --

22 MR. COLCLAZIER: He doesn't -- Sorry.

23 THE COURT: That's between the lawyers and the
24 clients, executive session is, unless they ask for
25 him to come back there, which I've never seen it

1 happen. In the 10 years I spent in the D.A.'s
2 office not one time did we ask the person we're
3 getting ready to terminate to come back in executive
4 session.

5 **MR. COLCLAZIER:** But, Judge --

6 **THE COURT:** Because then you vitiate
7 attorney-client privilege. So your argument on that
8 doesn't bear any water. Okay? It doesn't.

9 **MR. COLCLAZIER:** Can I ask one question, Judge?

10 **THE COURT:** No. I'm talking.

11 **MR. COLCLAZIER:** Oh. Sorry.

12 **THE COURT:** And I'm looking at *Loudermill*.
13 Says, it talks -- "The courts claim does not state
14 that a flat ruling that a nine-month delay in
15 deciding discharge appeals will pass constitutional
16 scrutiny as a matter of course. To the contrary,
17 the court notes that a full post-termination hearing
18 and decision must be provided at a meaningful time
19 and at some point a delay in the post-termination
20 hearing would become a constitutional violation."
21 And that's because *Loudermill* doesn't say you have
22 to have a pretermination hearing, unless it is --
23 they talked about earlier, in dicta, that it would
24 be required with regard to a... in a termination
25 case. "Pretermination hearing though necessary need

1 not be elaborate.* In this case there hasn't been a
2 termination.

3 **MR. COLCLAZIER:** Judge, when they release, when
4 they take away the property, which is my client's
5 property is this license. When they take away the
6 property and then inform his employer that they're
7 going to de-license them if they don't immediately
8 fire him, I submit to you that they have already
9 taken away the property. And he's entitled to have
10 a hearing before they take away the property, not
11 afterwards. Afterwards is meaningless in all of
12 these cases.

13 **THE COURT:** I heard your argument on that and I
14 don't agree with it.

15 **MR. COLCLAZIER:** Okay.

16 **THE COURT:** And he's been suspended with pay.

17 **MR. COLCLAZIER:** Well, Judge, they don't have
18 the right. They don't have the authority to do that
19 at all. And they've never indicated in any document
20 that he's to be suspended with pay or without pay.

21 **THE COURT:** Mr. Clark, is that --

22 **MR. CLARK:** That is absolutely not true.
23 There's a letter that was sent to the District.
24 Mr. Barnes was sent that letter. I think, I know
25 the District was sent that letter. It highlight

1 pre-existing statutory language and construction and
2 the effective July 1 statutory language that is
3 quoted very precisely about the requirements that
4 when someone is suspended by the State Board of
5 Education, and this includes a superintendent, that
6 the District is required to put that person on
7 suspension and then the rest of the statute says
8 with, you know, the benefits that they're otherwise
9 entitled until a hearing has been held. And that
10 has been provided to the District and that hearing
11 is available to Mr. Barnes. We're ready to schedule
12 that.

13 **MR. COLCLAZIER:** Judge, I'm reading the letter
14 right now, and it's not in there. Not that it makes
15 any difference, because when they tell Mr. Barnes he
16 can't act as superintendent --

17 **THE COURT:** That's right. He can't.

18 **MR. COLCLAZIER:** -- that's the big harm there.

19 **THE COURT:** He can't when he's been suspended,
20 so he can't.

21 All right. Well, I've read the Briefs. I have
22 reviewed *Loudermill*. I have looked at the statute
23 involved. I've looked at the Application for
24 Emergency Order to Summarily Suspend Teaching
25 Certification and Application to Revoke Teaching

1 Certification, and I find that the District has
2 complied with the requirements of the law with
3 regard to the particular reason for the emergency in
4 a 33-page document that is clearly set forth and, to
5 me, rises to the level of an emergency such that the
6 suspension of Mr. Barnes's superintendent's license
7 is proper at this juncture anyway with regard to the
8 State Department of Health's actions.

9 And I find at this point in time, pending any
10 hearing on it that is more in-depth, that they have
11 made a preliminary showing that the suspension was
12 necessary and was of an emergency nature.

13 I've looked at the cases cited with regard to
14 Western Heights at 169 P.3d 417 and the case cited
15 at 156 P.3d 53. Those two cases dealt with annual
16 yearly progress and talked about the procedures for
17 those and the notice requirement in that. And I did
18 not find anything in those cases that gave me any
19 real help on whether or not the Superintendent could
20 be suspended for an emergency. But the statute and
21 the statutory authority is clear, that if there is
22 an emergency as the school board, the State Board of
23 Education set forth and attached as Exhibit A to the
24 Motion for a Temporary Restraining Order is
25 sufficient for the emergency order to summarily

1 suspend the teaching certificate.

2 And Mr. Clark, it is my admonition to you that
3 any post-suspension hearing needs to be prompt and
4 should be handled and set forth without delay.

5 **MR. CLARK:** Absolutely. We will do that. As a
6 matter of clarification, is Mr. Colclazier
7 representing Mr. Barnes or the School District?
8 I've heard both. I'm not sure.

9 **MR. COLCLAZIER:** I represent both. Judge, with
10 respect to the District is it your -- I want to
11 clarify, if I can, just your ruling.

12 The District was also asking for relief to keep
13 the State Department of Education from taking action
14 against the District until the District has had an
15 opportunity for a full and fair hearing pursuant to
16 the Administrative Procedures Act which two Courts
17 of Appeal have indicated the District has that
18 right.

19 It's my understanding, and that's one of the
20 issues, the issue in this proceeding was not only
21 just respect to Mr. Barnes's issues and the summary
22 suspension, so to speak, but was also with regard to
23 the District and whether or not the State Board of
24 Education can proceed against the District and
25 potentially de-accredit and close down the District

1 without providing them an individual proceeding
2 under the Act.

3 And as I mentioned and I cited in my Brief two
4 Supreme... two Courts of Civil Appeal have indicated
5 that the District is entitled to an individual
6 proceeding prior to the State Board of Education
7 acting. That's exactly what happened in 2005 and
8 '06 was that the --

9 **THE COURT:** In which cases are you talking
10 about?

11 **MR. COLCLAZIER:** The two Courts of Appeal cases,
12 Judge. Let me find that. I've cited to both of
13 them.

14 **THE COURT:** Yeah. Those were the ones that
15 dealt with the AYP. They didn't say anything about
16 anything related to the fact that there's no
17 superintendent.

18 **MR. COLCLAZIER:** No, they dealt with, if I may,
19 Judge.

20 **THE COURT:** I just -- Okay.

21 **MR. COLCLAZIER:** They dealt with -- certainly
22 AYP was one of the issues, but they dealt with
23 accountability determinations. But the most
24 important thing, and I cited to that in my Brief,
25 that the, both Courts of Appeal indicated that

1 Western Heights was entitled to an individual
2 proceeding. I quoted out of the statute -- out of
3 the... both cases that indicated that clearly under
4 Oklahoma law the District is entitled to an
5 individual proceeding under the OAPA.

6 **THE COURT:** Here's what it says. It says,
7 *School argued it was subject to possible sanctions
8 by the Department's improper classification as
9 having failed to make AYP and the Act requires a
10 hearing for accountability determinations*, so....

11 **MR. COLCLAZIER:** Page 19 in my Brief, Judge.

12 **THE COURT:** I'm looking at the case itself.

13 **MR. COLCLAZIER:** Oh, I'm sorry. Okay.

14 **THE COURT:** I'm looking at the case itself.

15 **MR. COLCLAZIER:** Well, Footnote 2 in Western
16 Heights one, quote --

17 **THE COURT:** Hang on. I'm trying to read.

18 **MR. COLCLAZIER:** Oh, I'm sorry, Judge.

19 **THE COURT:** That case was about whether Western
20 Heights filed it on time, and they said they didn't.
21 Yeah. I mean, the court case didn't even make a
22 finding about AYP and accountability. It said,
23 basically, that it was filed out of time and so
24 therefore, because the trial court correctly
25 dismissed School's Petition, it did not abuse its

1 discretion when it denied School's Motion for a New
2 Trial. "School seeks to distinguish Conoco, arguing
3 Defendant's... Department's determination was not a
4 final order because it did not afford the School an
5 'individual proceeding' as defined under the APA
6 requirements. However, whether School was denied
7 the substantive rights due under the APA is the
8 essence of its appeal, and it forfeited its right to
9 consider... consideration of that question when it
10 failed to timely file its Petition."

11 I'm reading the whole case. It doesn't say --
12 that case does not stand for the proposition that
13 they're entitled to some sort of a determination
14 first. It basically threw the case out because it
15 wasn't filed timely.

16 **MR. COLCLAZIER:** Judge, there's two cases --

17 **THE COURT:** No. Let me go to the second one.

18 **MR. COLCLAZIER:** I'm sorry.

19 **THE COURT:** Because I've read... I've read them
20 both. I wouldn't... you know, I read them both.
21 The other one is 169 P.3d 417. The one that I just
22 read from was *Western Heights vs. The State*
23 *Department of Education*, 156 P.3d 53, Division 2 of
24 the Court of Civil Appeals, and it was thrown out
25 because it was untimely filed. It had nothing to do

1 with -- they made no determination about whether or
2 not there was a cause of action for determination,
3 or whatever it was, determinability. It didn't. It
4 didn't even go to that.

5 MR. COLCLAZIER: Judge, with all due respect, it
6 did. And it says right there in quotes, "School was
7 entitled to the full processes required for agency
8 actions under the OAPA, including a hearing before
9 the Department issued" in this case it was an
10 accountability determination as opposed to
11 accreditation. It's Footnote 2 to Paragraph 14.

12 THE COURT: Footnote?

13 MR. COLCLAZIER: The point was --

14 THE COURT: You're talking about a footnote?
15 Okay. Let me go back to it again. Let me go back
16 to it again.

17 MR. COLCLAZIER: The other case also --

18 THE COURT: Hang on. Let me go back to it --

19 MR. COLCLAZIER: I'm sorry.

20 THE COURT: -- because that wasn't in the entire
21 case. I'm looking at it and you're quoting from
22 something on your lap. Are you quoting from the
23 case itself?

24 MR. COLCLAZIER: No, I'm quoting from my Brief,
25 Judge. I cited it in the Brief.

1 **THE COURT:** All right.

2 **MR. COLCLAZIER:** And I quoted it in the Brief.
3 Paragraph 14, Footnote 2.

4 **THE COURT:** Let me look it up again, because I
5 looked at the whole thing. That's not what I saw.
6 That's not what it held. It didn't make a
7 determination of that in that case, so let me look
8 at it again.

9 "We hold the trial court correctly dismissed
10 School's Petition because it was not filed within
11 the statutory time allowed." And we affirm Judge
12 Parrish's -- I think it was Judge Parrish. Yeah,
13 they affirm. "School alleged Department is charged
14 under the Act with development, submission, and
15 implementation of school accountability standards
16 and reporting."

17 And it says, "The regulations also provide that
18 school districts may appeal AYP determinations in
19 the Data Reports at this time. School alleges that
20 on September 27, it made such an appeal based on the
21 Department's arbitrary and capricious categorization
22 of School as failing to make AYP and placing the
23 School on the School Improvement List. School
24 complains it was not afforded a hearing other than,
25 or other 'substantive due process' during the appeal

1 or in the 'format of the ruling rendered denying the
2 appeal.'"

3 "Department argued School cited no legal
4 authority for the requested relief and that no
5 denial of a fundamental right was identified in the
6 Petition." And then it said that you all argued,
7 the School argued the subject of possible sanctions
8 by Department's improper classification. The School
9 further argued Defendant's actions... Department's
10 actions were subject to the Oklahoma Administrative
11 Procedures Act."

12 Yeah, basically said, and that the argument was
13 that applicability of an agency rule may be
14 determined in an action for declaratory judgment.
15 "Department also asserts School has cited no
16 specific statutory authority requiring a hearing for
17 accountability determinations and that this process
18 is not subject to judiciary review under the APA."

19 Said, "The trial court, without specific
20 findings, ordered the School's Petition dismissed
21 with prejudice."

22 "Here, the dispositive facts relating to
23 timeliness of school's filing its Petition are
24 undisputed. Question is whether the 30-day
25 limitation period in 318 of the APA applies. We

1 find that it does."

2 Talks about -- does say, "School was entitled to
3 the full processes required for agency actions under
4 the APA, including a hearing, before Department
5 finally determined School failed to make AYP." But
6 it says, "it was the School's responsibility to file
7 its petition" and that was not done in the 30-day
8 time period. So the Court did not abuse its
9 discretion when it denied School's Motion for New
10 Trial.

11 So what your argument with re -- let me look at
12 the other case, too. Because your argument is, is
13 that, what? That they don't... they didn't give the
14 School --

15 **MR. COLCLAZIER:** Judge, the previous -- Yes.
16 The previous -- in both of those cases the issue
17 was, one of the issues was is Western Heights -- can
18 we go ahead and just rule against Western Heights at
19 the State Department of Education or do we have to
20 give them a trial-like individual proceeding under
21 the APA.

22 The first case indicated clearly that they were
23 required to give us an individual proceeding, which
24 ultimately occurred. And the second case simply
25 referred back to that first case and basically

1 repeated and said, yes, Western Heights is certainly
2 entitled to a full-blown evidentiary hearing before
3 they ruled, and we had an evidentiary hearing at
4 that point and that's when the administrative law
5 judge indicated that Western Heights had been
6 singled out for selective prosecution and had been
7 unfairly, arbitrary and capricious.

8 **THE COURT:** That was in '07. That was in '07.
9 So I'm looking at the second case and all it says in
10 the second case is, essentially, that you're
11 entitled to a hearing with regard to AYP because the
12 Court found that there were sanctions that could be
13 taken. How does that translate to they can't tell
14 us to remove the superintendent?

15 **MR. COLCLAZIER:** Well, that's not what we're
16 talking about, Judge. We're not --

17 **THE COURT:** Well, your argument is they removed
18 the Superintendent because the local board doesn't
19 want to and they're going to sanction the School if
20 they don't do it. Right? I mean, that's what you
21 argued earlier. You argued that removing the
22 superintendent takes control from the local school
23 board and the sanctions they're going to impose if
24 it doesn't happen are ones that they're entitled to
25 a hearing beforehand.

1 **MR. COLCLAZIER:** It doesn't matter why they do
2 the sanctions, Judge. And the question is can they
3 do any sanctions against the School District without
4 providing them with an individual proceeding which
5 is essentially the due process rights of school
6 districts. Both these Courts of Appeals said that
7 we get that type of hearing before the State Board
8 of Education can act. That was the key factors in
9 both those cases.

10 The State Department of Education said, No, you
11 don't get any kind of a hearing first. We just get
12 to go have a meeting, maybe an executive session
13 like they did this time, and then we come out and we
14 tell you, Okay, now you're no longer a school
15 district. And that's exactly what they've argued,
16 what they have alleged that they're going to do,
17 Judge, is potentially they're going to shut down the
18 Western Heights School District on Monday.

19 **THE COURT:** I don't know what they're going to
20 do.

21 **MR. CLARK:** That's not true.

22 **THE COURT:** I don't know what they're going to
23 do on Monday. I don't know what they're going to do
24 on Monday.

25 **MR. COLCLAZIER:** Well, Judge --

1 **THE COURT:** They haven't done anything yet. So
2 I'm supposed to anticipate what their actions are
3 going to be and then tell them they can't do what
4 maybe they might be doing?

5 **MR. COLCLAZIER:** No. I'm not just guessing,
6 Judge. They did a meeting on June 24th and they
7 said exactly what could happen. And part of what
8 could happen that they indicated was basically
9 de-accrediting the District. They have made that
10 perfectly clear throughout.

11 **THE COURT:** They haven't done that.

12 **MR. COLCLAZIER:** They haven't done it. That's
13 why we're here.

14 **THE COURT:** All right.

15 **MR. COLCLAZIER:** We're here asking you to
16 prevent them from doing that without us getting a
17 hearing first. That's it. We're not saying that
18 ultimately they may not have the opportunity to do
19 that. The only question that we argue to you,
20 Judge, is can they do that without an individual
21 proceeding under the OAPA. Those two Court of
22 Appeals says they can't.

23 **THE COURT:** No, that's not --

24 **MR. COLCLAZIER:** And we're asking you to --

25 **THE COURT:** That's not what they say. What they

1 say, they talk about specifically AYP.

2 **MR. COLCLAZIER:** Judge, AYP as they point out in
3 another part of the Opinion, they point out the
4 importance of what Western Heights could lose as a
5 result of not making AYP and the importance of that
6 with regard to -- and at one point in the Opinion
7 they point out that conceivably the District could
8 be shut down as a result of not making AYP. That
9 was what No Child Left Behind was all about years
10 ago, was that you can either improve your schools or
11 we'll ultimately shut down your schools and we'll
12 let somebody else do it, let another school district
13 do it.

14 And the Court said clearly, both of them said
15 clearly, yes, and Judge Parrish was the one who
16 said, yes, you get a hearing first. I believe it
17 was Judge Parrish. I may be off on that, but I'm
18 almost certain it was Judge Parrish and not Judge
19 Owens.

20 **THE COURT:** I think that was Judge Parrish's.
21 And I'm looking at Judge Owens's case.

22 **MR. COLCLAZIER:** Yeah, Judge Owens was... Judge
23 Owens, I believe, indicated that they didn't get a
24 hearing and the Court of Appeals reversed and
25 indicated that they did and then the hearing was

1 held.

2 **THE COURT:** Said, "It should also be pointed out
3 that there has been no adjudication of School's
4 claims on the merits. The previous case decided by
5 the Court of Appeals turned on a purely
6 jurisdictional issue, whether the School had filed
7 its District Court Appeal within the statutory time
8 allowed, which was decided adversely to the School
9 and resulted in the affirmance of the trial court's
10 dismissal."

11 Okay. So basically the second case, second time
12 around they heard the issue of whether or not with
13 regards to AYP was something that required a right
14 to be heard prior to any sanctions being in place.

15 **MR. COLCLAZIER:** I think yes, Judge. I think
16 you're --

17 **THE COURT:** Well, I'm reading it. State -- it
18 says -- That's interesting.

19 **MR. COLCLAZIER:** The only difference, Judge,
20 between our opinions, between our positions between
21 the State Board and Western Heights is the State
22 Board believes they can meet on Monday morning and
23 that they can basically de-accredit the School
24 District and put us out of business.

25 **THE COURT:** But you're making accusations that

1 may not even happen.

2 MR. COLCLAZIER: Judge, they told -- they said
3 they were going --

4 THE COURT: They said that's one of the things
5 they could do.

6 MR. COLCLAZIER: That's right. So they had
7 to --

8 THE COURT: They didn't say it's going to be the
9 thing that they can do.

10 MR. COLCLAZIER: That's correct. They said they
11 had the ability to do that. And that if Western
12 Heights didn't fire that superintendent or suspend
13 him --

14 THE COURT: I would be hard pressed --
15 Mr. Clark, did you all say if they didn't fire the
16 Superintendent that you all were going to
17 de-accredit the school?

18 MR. CLARK: I have never said that, Judge. If I
19 might interject --

20 THE COURT: Go ahead.

21 MR. CLARK: -- a little bit here? Thank you.

22 On -- just after March 25th of this year the
23 State Department of Education sent the School
24 District a letter identifying situations,
25 noncompliance issues that would be brought to the

1 State Board of Education on April 9th at a public
2 meeting. And requested the District's presence,
3 actually that's the State Board made that request
4 that you appear on April 9th and have a
5 conversation with the State Board of Education about
6 these issues at that meeting in that letter. Anyway
7 it was identified that the District may be put on
8 probation with respect to its accreditation at that
9 time. The District did not appear despite the
10 notice and the identification of the Board's
11 authority to require certain persons to appear,
12 including school personnel and others who make
13 reports to the State Court. My point is the
14 District did not appear at that meeting. The
15 District was put on probation.

16 And then at the April 22nd meeting, again
17 notice was provided about the probation. I think
18 that letter was dated April 16th, requested that
19 the District appear at the April 22nd meeting.
20 The District through Mr. Barnes and Mr. Colclazier
21 appeared, made statements that a lawsuit had been
22 filed. That lawsuit was filed on April 22nd.
23 That lawsuit before you, Judge Timmons, is
24 requesting the very issues that Mr. Colclazier is
25 arguing is an emergency today. That lawsuit, again,

1 filed April 22nd, says that the District is
2 entitled to a full-blown APA hearing and that the
3 Department and the Board secret meetings on
4 April 9th was improper and they are entitled to a
5 hearing before any further action.

6 The State has filed a Response, or excuse me.
7 The State has filed a Motion to Dismiss on that
8 issue, I believe it is currently set for
9 July 22nd. As a matter of point it was originally
10 set, I believe, prior to today and Mr. Colclazier
11 and I agreed to set it at a later date. My point on
12 that is it does not appear it was an emergency.

13 And then on the June 24th State Board of
14 Education meeting the District was aware and there
15 was a public meeting held, that meeting included the
16 action on Mr. Barnes's certificate. They also
17 advised the School District that the State
18 intervention would be another possibility that would
19 come at the July 12th State Board of Education
20 meeting.

21 It did say that loss of accreditation was a
22 possibility. It was a possibility. It is no longer
23 a possibility to occur at the July 12th meeting
24 and that is because Oklahoma law clearly provides
25 that prior to a district losing accreditation and

1 annexation they have to have 15 days advanced
2 notice. That has not been provided because it is
3 not being considered and will not be considered on
4 July 12th. It's just not something that is on the
5 table at this point.

6 Lastly, I will say the cases about AYP, nothing
7 that we've talked about today and that we've had to
8 deal with in the past several years pertain to AYP
9 and as Mr. Colclazier pointed out, that because that
10 was a matter in No Child Left Behind. No Child Left
11 Behind went away in 2015, as did AYP, and the
12 requirements in the Motion to Dismiss. The
13 requirements for AYP required the State to have
14 procedures in place for hearings to be held prior to
15 anything relating to AYP being done to a school
16 district. And none of that is applicable to what
17 we're talking about today.

18 What is applicable in the State's position is
19 the accreditation statutes and regulations that have
20 been on the books for years. Notes have been
21 followed. The notice has been provided. The
22 District has chosen not to appear at the prior
23 public meetings and address the Board, and here we
24 are on Thursday afternoon prior to Monday's
25 scheduled board meeting that's been on schedule.

1 The District has been notified for some time and
2 filed a lawsuit on April 22nd about this very
3 issue but now somehow it's an emergency. On behalf
4 of the State I'm not sure how those connect.

5 MR. COLCLAZIER: Judge, we certainly weren't
6 invited to either of those executive sessions to be
7 able to defend --

8 THE COURT: I've already told --

9 MR. COLCLAZIER: -- my client.

10 THE COURT: -- you, you're not entitled to be in
11 the executive sessions.

12 MR. COLCLAZIER: But, Judge, it's unlawful for
13 them to conduct an executive session --

14 THE COURT: All right.

15 MR. COLCLAZIER: -- before the case has been --

16 THE COURT: No, it's not. It's not.

17 MR. COLCLAZIER: We can agree to disagree,
18 Judge.

19 THE COURT: Well, I'm the judge, so --

20 MR. COLCLAZIER: I understand.

21 THE COURT: -- you can disagree all you want.
22 That's called an appeal.

23 MR. COLCLAZIER: Well, Judge, I understand.
24 I'm --

25 THE COURT: I've given you my full --

1 MR. COLCLAZIER: -- just trying to tell you --

2 THE COURT: I've heard it. I heard it like 12
3 times.

4 MR. COLCLAZIER: And I appreciate that.

5 THE COURT: Okay. And I appreciate your
6 argument and advocacy on behalf of your client.

7 MR. COLCLAZIER: Thank you, Judge.

8 THE COURT: All right. The temporary
9 restraining order with regards to the suspension of
10 the Superintendent will be denied.

11 I find that there are ample grounds adequately
12 and clearly set out in 33 pages that there was an
13 emergency, primary being the fact that the sprinkler
14 system doesn't work and there's no fire protection
15 at the School. That, to me, is a state of
16 emergency.

17 And the other issues are regarding
18 documentation, paperwork, accounting issues that
19 seem to be, to me, significant and disturbing with
20 regard to the preliminary data for the most recent
21 school year with the outcomes being in, I think,
22 2020. And they're also disturbing that, that, to
23 me, is not as telling as the other issues that
24 appears in the Exhibit A attached to the Motion for
25 a Temporary Restraining Order.

1 **MR. COLCLAZIER:** Judge, may I make an offer of
2 proof on just the fire suppression? Because I think
3 you're being misled on that issue alone.

4 **THE COURT:** Well, that's with regards to what
5 was filed as the grounds -- I'm looking at it from
6 the viewpoint of the District at the time they filed
7 the Application for the Emergency. So are you
8 telling me that at the time for the Application for
9 the Emergency Order and Summary Suspension, that the
10 fire --

11 **MR. COLCLAZIER:** That's exactly what I'm telling
12 you, Judge.

13 **THE COURT:** -- was not working.

14 **MR. COLCLAZIER:** No. No. I'm telling you
15 exactly the opposite. What they put in the 33-pager
16 was that the fire suppression system was not active.
17 That was a condition that was corrected two months
18 before they filed this but they never mentioned in
19 their 33-pager that the fire suppression system,
20 that the Fire Marshal complaint -- and, Judge,
21 that's why we're ready --

22 **THE COURT:** Hang on. When -- How long was it
23 out?

24 **MR. COLCLAZIER:** One day. It was pointed out on
25 a Thursday. I take -- it was --

1 **THE COURT:** That's not what the Fire Marshal
2 says.

3 **MR. COLCLAZIER:** -- pointed out on a Thursday
4 and it was corrected on Monday.

5 **THE COURT:** That's not what the Fire Marshal
6 stuff... attachment says.

7 **MR. COLCLAZIER:** Judge, that's because it's
8 false what they have in there.

9 **THE COURT:** And that's for a hearing.

10 **MR. COLCLAZIER:** And he's never --

11 **THE COURT:** That's for a hearing. I'm not
12 supposed to look at this and try to determine who's
13 telling a lie and who is not. I'm not. That's not
14 my juncture. At this juncture it is, are the facts
15 as they've pled then, says the Fire Department was
16 advised by school staff April 27 that the sprinkler
17 system was nonfunctional as of February 21st, 2021,
18 but the repairs have been delayed due to financial
19 considerations.

20 So based on that the Fire Marshal went over
21 there.

22 **MR. COLCLAZIER:** Sure.

23 **THE COURT:** Now you may argue that that was a
24 lie and didn't happen. But at the stage I'm looking
25 at, on the temporary restraining order stage, I have

1 to take those allegations as true. This is not the
2 time for a full-blown hearing on it. You're going
3 to set that with the School Board.

4 MR. COLCLAZIER: I just wanted to clear up,
5 Judge, that that was something that had been
6 corrected months before that was ever filed. That
7 the fire suppression system was corrected --

8 THE COURT: I heard you the first time you said
9 that.

10 MR. COLCLAZIER: I just wanted to make sure.

11 THE COURT: You want to say it again for the
12 record?

13 MR. COLCLAZIER: Sorry, Judge.

14 THE COURT: I mean, go ahead. You want to say
15 it again?

16 MR. COLCLAZIER: Well, I just wanted to make
17 sure the record was correct, Judge.

18 THE COURT: Did you get it the first time?

19 THE REPORTER: I did.

20 THE COURT: Okay. I'm just checking. Maybe
21 I'm --

22 MR. COLCLAZIER: I apologize, Judge.

23 THE COURT: That's all right.

24 MR. COLCLAZIER: I advocate for my client.

25 THE COURT: I appreciate that.

1 **MR. COLCLAZIER:** I'm trying to represent my
2 client well. And I think it's important for me to
3 get across all of the arguments that you're
4 addressing. And you brought that up about the fire
5 suppression, and I wanted to make sure --

6 **THE COURT:** That's one of the things that's an
7 issue. And I believe I read through the other ones
8 early on. So it is that taken as a whole, to me,
9 that fully supports the temporary, the suspension,
10 the emergency suspension.

11 And then with regard to the State School Board
12 there, to me, is no emergency with regards to any
13 actions or inactions on behalf of the State Board of
14 Education with regard to the School Board. All I've
15 heard is suppositions about what you believe may
16 happen with no real evidence to back that up, that
17 would require me to do an emergency or enter a
18 restraining order.

19 So the TRO with regard to the State School Board
20 and State Department of Ed against the School Board
21 and the School Board's request, Western Heights
22 Independent School District's request will also be
23 denied.

24 And I looked at the -- I looked at what was
25 filed on April 22nd. These are essentially the

1 same allegations that were filed April the 22nd,
2 and it is July. And so with regard to that,
3 Mr. Clark has given me an explanation and a reason
4 for the fact that there's not an accreditation
5 problem or a fear of that at this point because
6 notice hasn't been given they're intending to
7 suspend the accreditation of Western Heights
8 Independent School District and that was mainly the
9 gravamen of the complaint with regards to the TRO
10 that Western Heights was asking for.

11 Is there anything further?

12 **MR. CLARK:** Judge, I just, as a point of
13 clarification, what I said earlier, I believe
14 anyway, that there's no possibility of the District
15 losing its accreditation at that July 12th
16 scheduled meeting. If I said or represented that
17 there is not an issue or problem with the District's
18 accreditation, I certainly did not mean to, and want
19 to make sure that I clarify that, because from the
20 State's perspective there are definitely issues with
21 accreditation.

22 **THE COURT:** All right.

23 **MR. CLARK:** And that would be the reason for the
24 possible action on Monday, but that action is not in
25 any way possible to include losing accreditation.

1 **THE COURT:** All right. And if that happens
2 there are statutory procedures for notice and
3 opportunity to be heard before that happens; am I
4 correct?

5 **MR. CLARK:** That is absolutely correct.

6 **THE COURT:** Okay. All right. Okay.

7 **MR. COLCLAZIER:** Judge, will we be able to set a
8 date for a hearing on the preliminary injunction?

9 **THE COURT:** You may. I think that's, what, at
10 least 20 days out? I think it's 20 days out,
11 because on an emergency we set them immediately and
12 then 10 days out, I think, if we do it ex parte.
13 And it's 20 days if it's not ex parte, and we've had
14 the hearing with all the parties present. I think
15 that's what the statute says.

16 **MR. COLCLAZIER:** I imagine it will likely take a
17 day, Judge, at least.

18 **THE COURT:** I'll probably have to schedule it
19 for two.

20 **MR. COLCLAZIER:** Okay.

21 **THE COURT:** And hope it goes a day. I want to
22 give you plenty of time to make whatever arguments
23 you need to and present witnesses.

24 **MR. COLCLAZIER:** I think you're anticipating I'm
25 going to talk a little bit, Judge.

1 **THE COURT:** I'm sure everybody will. And that's
2 your job. That's what you're supposed to do.

3 **MR. COLCLAZIER:** Thank you, Judge.

4 **THE COURT:** It is.

5 **MR. MURDOCK:** Judge, while we're talking about
6 that issue, the reason I came down here was to check
7 procedures because I believe that Mr. Colclazier was
8 going to file that, I was asking or trying to ask
9 the question about when would it be set for hearing.
10 And I was told August 19th was a hearing date.

11 **THE COURT:** A normal hearing date, yeah.

12 **MR. MURDOCK:** Yes. And that's the reason I was
13 here.

14 **THE COURT:** Yeah. Well, that's something that a
15 lot of times we don't... I don't normally give
16 hearing dates like that until you file something
17 because --

18 **MR. MURDOCK:** Well, there was --

19 **THE COURT:** -- at some point I like to look at
20 it, depending on what it is. And if it's something
21 like this with a restraining order and all that, I
22 like to look and see how much time I've got, when I
23 can get you in, how long it's going to take. So
24 other than coming in and asking for a regular motion
25 docket deadline I don't -- I can't set a restraining

1 order. I never do unless I've seen the actual
2 document itself.

3 MR. MURDOCK: Well, I wasn't asking for a
4 definite date. I just was asking for possibilities.

5 THE COURT: Okay.

6 MR. MURDOCK: Is what I was here for.

7 THE COURT: All right. I thought you were --
8 yeah, and that's something my staff can do, so, and
9 they're pretty good at that.

10 MR. MURDOCK: And they told me August 19th.

11 THE COURT: Yeah. All right. I appreciate
12 that. All right.

13 MR. COLCLAZIER: Do you want me to get with your
14 staff, Judge --

15 THE COURT: Yes.

16 MR. COLCLAZIER: -- and Mr. Clark and we'll pick
17 out a time?

18 THE COURT: You know a time?

19 THE CLERK: Well, we're going to need a day,
20 right? So that August 19th --

21 MR. COLCLAZIER: Two days.

22 THE CLERK: -- is way off the map.

23 THE COURT: I said two.

24 THE CLERK: So how many days out are we talking,
25 20 or --

1 THE COURT: Yes. Let me look.

2 THE CLERK: So looking at either --

3 MR. COLCLAZIER: Any dates in late August by any
4 chance? Would that be a possibility, Judge? Brad,
5 does that -- Judge, you mind if I ask --

6 THE COURT: Sure. Sure.

7 MR. COLCLAZIER: Brad, do you like the late
8 August, early September?

9 MR. CLARK: I'm sure that's fine. I'm not sure
10 what the issues are. Again, I haven't read what
11 you've filed, but --

12 MR. COLCLAZIER: I mean, we can come back and I
13 can get with Brad and your staff later, Judge, once
14 he's had a chance to look at it.

15 THE COURT: At least 30 days ought to give
16 anybody enough time to respond.

17 MR. CLARK: Sure.

18 THE COURT: Let me see. Looks like we start
19 jury weeks on August the 30th, so maybe the Monday
20 before that.

21 MR. COLCLAZIER: The 23rd?

22 THE COURT: Yeah. Monday, August -- well, we've
23 got -- Goh. How about August 24th, a Tuesday? I've
24 got a non jury scheduled on the 23rd of August
25 already. That's the Winburn vs. Tucker.

1 MR. COLCLAZIER: It's fine by me. The 24th?

2 THE COURT: We could do Tuesday and the
3 Wednesday. I can -- do the 24th and 25th --

4 MR. COLCLAZIER: 24th and 25th.

5 THE COURT: -- of August.

6 MR. COLCLAZIER: Good with me, if that works for
7 you, Brad.

8 MR. CLARK: That should be fine.

9 THE COURT: All right, you all.

10 MR. COLCLAZIER: Thank you, Judge. We
11 appreciate it. Sorry to be so long winded.

12 THE COURT: No problem. You know, it's a hotly
13 contested thing, so --

14 MR. CLARK: All right. Thank you.

15 THE COURT: All right.

16 MR. COLCLAZIER: Is that a 9:00 o'clock start,
17 Judge?

18 THE COURT: Yes. 9:00 o'clock.

19 MR. COLCLAZIER: Thank you, Judge. We
20 appreciate it.

21 THE COURT: All right. No problem.

22 MR. CLARK: All right. Bye guys.

23 THE COURT: All right.

24 (Whereupon, remote telephonic, in-chamber
25 proceedings concluded at 4:25 p.m.)

1 IN THE DISTRICT COURT OF OKLAHOMA COUNTY
2 STATE OF OKLABOMA

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

 Petitioners,)

7 vs.)

CASE NO. CV-2021-945

8 THE STATE OF OKLAHOMA, ex rel.)
9 OKLAHOMA STATE DEPARTMENT OF)
10 EDUCATION, OKLAHOMA STATE BOARD)
11 OF EDUCATION, and JOY HOFMEISTER,)
12 State Superintendent of Public)
13 Instruction,)

 Respondents.)

12 CERTIFICATE

13 I, Tara Nixon, Certified Shorthand Reporter,
14 Registered Professional Reporter, Certified Realtime
15 Reporter, Certified Realtime Captioner, and Official
16 Court Reporter for Oklahoma County, do hereby
17 certify that the foregoing transcript in the
18 above-styled case is a true, correct, and complete
19 transcript of proceedings had in-chamber and via
20 teleconference, to the best of my ability, on the
21 8th day of 2021.

22 Dated this 15th day of July, 2021.

23 //Tara Nixon

24 Tara Nixon, RPR, CRR, CRC
25 State of Oklahoma
Certified Shorthand Reporter
CSR #1542
My Commission Expires 12-31-2021



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

July 14, 2021

VIA EMAIL WITH CERTIFIED MAIL TO FOLLOW

Western Heights Public Schools Board of Education
c/o Robert Everman, President
8401 SW 44th Street
Oklahoma City, OK 73179
coachnok@aol.com

RE: Notice of Intervention and amended conditions of Accreditation With Probation

President Everman and Members of the Board of Education,

At its July 12 public meeting, the State Board of Education ("State Board") took action to modify the conditions that apply to the "Accredited With Probation" status of Western Heights Public Schools (the "District"). The State Board voted to maintain the District's public school accreditation, currently in probationary status, and to amend the conditions of probation to provide for full state intervention and oversight for a period of one (1) year, to be reviewed at least every ninety (90) days. The Intervention Plan approved by the State Board (attached) is effective as of July 12 and includes the following elements:

- Appointment of Monty Guthrie as Interim Superintendent, acting on the authority of the OSDE and the State Board, to begin serving immediately.

As a condition of maintaining public school accreditation, the District shall immediately update all necessary documentation and designations to indicate that only the Interim Superintendent designated by the OSDE under the Intervention Plan approved by the State Board is authorized to act as the District's superintendent under all applicable state and federal laws and regulations for the duration of the state intervention.

- OSDE completion of an on-site Needs Assessment addressing issues such as:
 - A report on parental involvement strategies
 - Details on available staff, including certified staff, and identification of additional staff needed

EXHIBIT

I

- An assessment of the quality, quantity, and appropriateness of instructional materials, including the technology available to students and staff
 - Financial and accounting practices
 - An assessment of the District's governance, including a review of its policies, structure, capacity and performance
 - School district community, including but not necessarily limited to staff, assessment of the environment, relations, trust, culture of the District.
- Under the direction of the Interim Superintendent, establishment of a Community Intervention Team, which shall consist of teachers, parents, students, other District personnel, community leaders, business representatives and others who have knowledge or expertise in the field of public education, underserved students and/or community engagement.
 - Preparation of a District Improvement Plan, subject to OSDE approval. The District Improvement Plan shall be developed by the Community Intervention Team, who will convene no less than three (3) public meetings to solicit input and engagement on the Improvement Plan. The stakeholder engagement and consultations must include students, families, District personnel, business and community representatives, individuals and organizations representing the interests of children with disabilities, English learners, children experiencing homelessness, and students in foster care. The District Improvement Plan shall include such issues as:
 - Governance, procedures, and operations
 - Allocation of resources, and identified needs for technical assistance
 - Teacher recruitment and retention, and staff development for instructional and administrative staff
 - Student opportunities and academic outcomes
 - Family and community engagement
 - Use of COVID-19 relief funds
 - Until the District Improvement Plan is approved, all actions and decisions of the District by and through the school board are subject to the approval of the State Board acting through the designated Interim Superintendent.
 - Engagement of law enforcement as necessary and may be deemed appropriate to effectuate the Intervention Plan.

Willful Disregard of State Authority and Applicable Laws

As has been clear since the March 30, 2021, correspondence was sent to the District, the District has exuded a willful and knowing disregard for the authority of the State and applicable laws and regulations. This extremely concerning trend, intended to perpetuate the attempted stronghold by a few within the District, has only continued recently.

As you know, last Thursday, July 8, a Motion for Temporary Restraining Order (TRO) and Preliminary Injunction was filed by counsel Jerry Colclazier on behalf of the District **and on behalf of Mannix Barnes** against the State Department of Education, the State Board, and the State Superintendent. In this motion, the District/Barnes requested two items of immediate injunctive relief: (1) a TRO prohibiting the State Board from taking any action against the District or its purported "Superintendent", and (2) claiming the State Board did not have authority to suspend a superintendent's certificate such that the suspension of Barnes's administrator certification to be vacated. The brief in support of this motion, 25 pages long, was provided to the OSDE General Counsel by counsel for District and Barnes via email at 2:09 p.m. on July 8. This email from District counsel advised that a hearing on the motion would be held before Judge Timmons at either 1:30 p.m. the next day, July 9, or at 8:30 a.m. on Monday, July 12 (one hour before the scheduled start time of the State Board meeting for which a restraining order was sought). As you know and the record reflects, the assertion that the hearing had been scheduled for one of these two days was a misrepresentation by the District. Notwithstanding the District's tactics of misrepresentation and attempted surprise, Judge Timmons denied the District's requested emergency orders. Unfortunately, though, the District's distortions of the truth continued with its statement to all District staff that no action would be taken against the District on July 12. The District's misrepresentations alone are a concerning demonstration of reckless behavior by adults entrusted with the care of children and taxpayer resources, as is its willful refusal and bold disregard of State authority.

Simply, there is no genuine question of such authority under state law. See, e.g. Okla. Const. Article 13 Sec. 5; 70 O.S. § 3-104.4. Instead of recognizing the authority and instead of addressing other concerns about the District's fulfillment of the obligations of a public school district, the State Board notes that public funds are being expended to pay for what appear to be frivolous legal challenges to the state's general authority regarding public education. Moreover, the District is brazenly attempting to use taxpayer funds to defend the action to suspend Mr. Barnes in his personal licensure proceedings. As though that was not enough, the District has also willfully refused to respond to the State's June 29 letter requesting acknowledgement of the law to put Mr. Barnes on suspended leave. Additionally, *since the suspension*, the District has taken action to renew Mr. Barnes's employment agreement, extending his contract to 2024, provided a \$25,000 performance bonus to him and failed at two meetings to consider and take action to suspend Mr. Barnes as required by law. These brazen acts alone exceed obligations of taxpayer funds beyond \$1,000,000.00. The students and community of Western Heights would be better served by the District's attention to ensuring a quality education than by the apparent decision to engage, to date, four different lawyers to work on legal actions challenging the Oklahoma State Board of Education's authority regarding public education in Oklahoma—more attorneys than the State Department of Education itself employs.

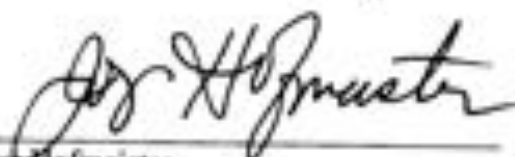
Though there is no confidence that the District's current leadership and advisors will cede their hubris in favor of compliance with the laws and regulations of the State of Oklahoma, OSDE takes this opportunity to again remind the District that its actions in refusing to comply may be determined to be illegal, and result in the imposition of personal and criminal liability on District leaders. Most recently, it has come to OSDE's attention that the District has scheduled a special meeting of its board of education for Thursday, July 15. To the extent you were somehow unaware,

please consider this as formal notice that proceeding with this meeting will be in violation of the State Board's conditions of continued accreditation, with which the District must comply.

Additionally, the OSDE has received information, photographs, and video clips indicating the District's apparent destruction by shredding of a large volume of paper documents. Given the impending state audit of District finances and the need for OSDE staff to access District records to implement the Intervention Plan, as well as applicable state laws and District policies relating to record retention periods, please be advised that any action or conduct to alter or destroy a record may be a violation of law and/or deemed to interfere with the authority and obligations of the State Auditor, the OSDE, and the State Board of Education.

Finally, OSDE and the State Auditor will be on-site on Friday, July 16 to begin the on-site needs assessment and reviews, and begin the work as a part of the State Board and citizens petitions audit requests. The Interim Superintendent or State Auditor will soon make contact with the District to arrange for this on-site meeting and presence.

On behalf of the Oklahoma State Board of Education,



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

Enclosures

Cc: The Honorable Cindy Byrd, Oklahoma State Auditor and Inspector
Honorable Members, State Board of Education
Jerry Colclazier, Attorney for the District



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

Western Heights Public Schools – Accredited with Probation
Conditions of State Intervention

1. Immediate full state intervention for a period not to exceed one (1) year and to be reviewed at least every ninety (90) days. Intervention includes:
 - a. Representatives of the Oklahoma State Department of Education (OSDE), as determined by the State Superintendent and led by the appointed interim superintendent, immediately conduct an on-site needs assessment. The on-site needs assessment shall use each of the following guidelines and procedures:
 - i. Assessment of the District staff to determine:
 1. The percentage of certified teachers who are teaching in their field of expertise and certification;
 2. The percentage of teachers who are certified;
 3. The number of teachers with more than three years experience; and,
 4. The rate of teacher retention;
 - ii. A report on the parental involvement strategies and the effectiveness of the strategies;
 - iii. An assessment of the quality, quantity, and appropriateness of instructional materials, including the availability of technology to students and staff to access and use the instructional materials (as applicable);
 - iv. An assessment of the extent and quality of the mentoring program provided for:
 1. New teachers on campus; and
 2. Experienced teachers on the campus who have less than two years of teaching experience in the subject or grade level to which the teacher is assigned;
 - v. an assessment of the type and quality of the professional development provided to the staff;
 - vi. a demographic analysis of the student population, including student demographics, at-risk populations, and special education percentages;
 - vii. Research and analysis of discipline and school safety, including disparities in rates and length of suspensions, student arrests and other serious offenses;
 - viii. financial and accounting practices;
 - ix. an assessment of the appropriateness of the curriculum and teaching strategies; and,
 - x. any other research-based data or information obtained from a data collection process that would assist the team in:
 1. recommending an action under Section C; and
 2. executing a targeted improvement plan under Section C.

- xi. Assessment of the school district's governance, including a review and assessment of school board's structure, capacity and performance, taking into consideration current term limits for existing board members.
 - xii. School district community, including but not necessarily limited to staff, assessment of the environment, relations, trust, culture of the district.
 - xiii. On completing the on-site needs assessment, information and recommended actions, under the approval of the interim superintendent, shall be provided to the community and intervention performance team as provided in Section C.
- b. Appointment of an interim superintendent. The interim superintendent shall have the authority to make directives, as necessary, to improve services and outcomes in the District, including but not limited to the following powers and duties:
- i. Selection, assignment, evaluation of school district employees, report to the governing board regarding personnel actions;
 - ii. Lead and develop a plan for recruitment, retention, reorganization of staff and resources;
 - iii. Be responsible for the working relationships among the principal(s) and staff and effectuate the effective administration and operation of the educational program. As a part of these responsibilities, the interim superintendent may direct action to be taken by a principal of a school site or other school employee; approving or disapproving any action of a principal of a school site or other school employee;
 - iv. Management of school facilities and equipment;
 - v. Administration and supervision of the educational and communications program;
 - vi. Work with the school district personnel and board of education to identify issues that led to non-compliance and intervention, and report to OSDE on development of a corrective action plan to address the identified issues, which is to include the matters identified here and also
 - vii. Review finances and guide district operations to stabilize operations (staff, finances, daily ops)
 - viii. Guide and support administration and school board in pursuit of these efforts
 - ix. Coordinate and leads community meetings and opportunities for stakeholder engagement, including but not limited to the District Improvement Plan required in Section C.
 - x. Be the liaison for the District to OSDE/OSBE;
- c. Under direction and guidance of the interim superintendent, establishment of a community intervention and performance management team, which shall consist of teachers, parents, principals, students, community leaders, business representatives who have expertise in leadership, individuals who have knowledge or expertise in the field of education and may include representatives of the Oklahoma State Department of Education.

In partnership with the on-site needs assessment review team, the community intervention and performance management team shall recommend actions for inclusion in a District Improvement Plan relating to any area of insufficient performance and needs improvement, including:

- i. Reallocation of resources;

- ii. Technical assistance;
- iii. Changes in school procedures or operations;
- iv. Staff development for instructional and administrative staff;
- v. Teacher recruitment or retention strategies and incentives provided by the school district to attract and retain teachers and other personnel;
- vi. Governance;
- vii. Student opportunities and academic outcomes;
- viii. Uses of COVID-19 relief funds; and,
- ix. Family engagement.

Under the direction and coordination of the interim superintendent, the community intervention and performance management team shall conduct no less than three (3) public meetings to obtain stakeholder feedback on any of the recommended actions relating to the areas of insufficient performance and provided in the on-site needs assessment. The stakeholder engagement and consultations must include, but not be limited to: students, families, school and district administrators (including special education administrators), teachers, principals, school leaders, other educators, staff and unions. Additionally, stakeholder input should be inclusive of individuals and organizations representing the interests of children with disabilities, English learners, children experiencing homelessness, children in foster care, migratory students and other underserved students.

- d. Once developed and approved by the District's local board of education, the interim superintendent shall submit the District's Improvement Plan to the State Superintendent, or designee for approval.
 - e. Until the District Improvement Plan is approved, all actions and decisions of the District, by and through the school district board of education are subject to the approval of the State Board of Education, by and through its interim appointed superintendent. Action shall not be taken without the OSBE appointed interim superintendent and OSDE approval, in writing;
 - i. All personnel actions or recommendations be provided to the interim superintendent at least five (5) days in advance of any proposed action relating thereto;
 - ii. All encumbrances will be provided to OSDE for review at least five (5) days before they are presented to the local board for approval;
 - iii. Bank statements for all accounts of the local board will be provided to OSDE on a monthly basis and at least five (5) days in advance of any presentation, discussion or consideration at a meeting of the board of education;
 - iv. Treasurer's report will be provided to OSDE for review at least five (5) days before it is presented, discussed, considered or recommended to be acted on by the local board of education;
 - v. OSDE will send personnel to the school district to provide technical assistance, as requested and coordinated through the OSBE appointed interim superintendent
 - vi. Monthly reports to OSBE at next meeting (August 26)
2. Ongoing requirements to come into compliance with previously identified deficiencies and non-compliance.

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.)

Case No. CV-2021-945)

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.)

**PETITIONERS' MOTION FOR TEMPORARY RESTRAINING ORDER
AND FOR PRELIMINARY INJUNCTION, AND BRIEF IN SUPPORT**

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"), and respectfully request that the Court issue a temporary restraining order and/or a preliminary injunction against the Respondents herein, and in support thereof, alleges and states as follows:

INTRODUCTION

This case is about an out-of-control state agency and its administrator. In an attempt to silence one of their long-time vocal critics, the State Board of Education (the "State Board") and its leader, Joy Hofmeister ("Hofmeister"), started an investigation and proceedings to shut down the Western Heights School District and strip its Superintendent of his license. To accomplish that legally, both the District and the Superintendent would have to be afforded 1) notice of the allegations, and 2) a full and fair hearing before any

changes could be made. The Oklahoma Administrative Procedures Act ("OAPA") requires that such a hearing be conducted in open session followed by executive session for deliberations. Unfortunately, and in contradiction to state law, that's not the way it works at the Department of Education.

In March, 2021, without an investigation or notification of the Superintendent or District, Hofmeister called a **secret meeting** of the State Board and presented a one-sided set of allegations against the Superintendent and the District. At the conclusion of the three plus hour secret presentation¹, the State Board voted that the Superintendent and the District had "violated state laws and regulations". This "taking of the Board's temperature" violates both the OAPA as well as the Open Meetings Act ("OMA"). When the Petitioners learned of the Respondents' actions, they demanded a full and fair hearing, as well as notice of the specific allegations, all of which was refused. A month later, the State Board met again and put the District on a 90 day probationary period, threatening to close the District's doors and send its students to other districts at the end of the probation.

As if this were not enough, on the afternoon of June 23, 2021, the Respondents emailed the Petitioners' attorney that the Respondents intended to immediately suspend, and later revoke the Superintendent's license. The next morning, the Respondents went into **another lengthy secret meeting**, followed by a vote to "suspend" the Superintendent's license pending a later OAPA mandated individual hearing. As set forth herein, these actions violated the Oklahoma and United States Constitutions, the OAPA, the OMA, as well as various other Oklahoma statutes. It is axiomatic that due process requires notice and hearing **before** the state can take away one's life, liberty or property, not after the decision maker has met in secret (twice) receiving totally one-sided presentations, and already decided that

¹ Which Petitioners allege was in violation of the Open Meeting Act, Title 25 O.S. §301 *et seq.*

the Petitioners had violated the law, and after the Superintendent had been suspended. The Respondents then notified the District that the Superintendent no longer has a license, and demanded that he be fired immediately, or the District would lose its accreditation, all of which would occur before any kind of fair hearing had been provided.

As set forth herein, the Respondents don't have the legal authority to suspend the Superintendent's license, they haven't followed the law and their own procedures in their actions, and both the Superintendent and the District are legally entitled to fair hearings before the Respondent's deprive them of their license and/or the school district is closed as threatened. This Court should issue a temporary restraining order to maintain the status quo until such time as an evidentiary hearing on this Motion can be held, at which time this Court should issue a preliminary injunction, vacating the suspension of the Superintendent, and enjoining the Respondents from taking further action against the District or the Superintendent, not authorized by this Court.

FACTS SUPPORTING INJUNCTIVE RELIEF

1. Western Heights has a long and extensive history of the Respondents' retaliating against, and selectively prosecuting, them 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 the School Improvement List (the "List"), and subjecting the District to numerous arbitrary audits, not required of other districts, the result of which could result in decreased funding to the District and even in revoking its accreditation. The Respondents' retaliation resulted in Western Heights filing two lawsuits against the State Board and State Superintendent, which are discussed later in this brief. *Western Heights Independent School District No. 1-41 of Oklahoma County v. State ex rel. Oklahoma State Department of Education*, 2007 OK CIV APP 92, 169 P.3d 417; *Western*

Heights Independent School District No. 1-41 of Oklahoma County v. State ex rel. Oklahoma State Department of Education, 2007 OK CIV APP 21, 156 P.3d 53. In the second lawsuit, after the Court had ordered a full and fair hearing, pursuant to the OAPA, the Department's own Administrative Law Judge ("ALJ") agreed with Western Heights and reversed the Department's decisions, finding the actions of the Department to be "arbitrary and capricious", and that the District had been unfairly and selectively prosecuted by the Department. The Court ordered the Department to restore Western Heights to good standing and removed it from all school improvement lists, a decision which was affirmed on appeal. In 2013, Western Heights sued the Respondents again, proving along with a number of other lead plaintiffs that the Department, since 1992, had "shorted" Western Heights over fifteen million dollars (\$15,000,000.00) in state mandated funding. This is only part of the contentious history that Western Heights has with the Respondents.

2. Western Heights has been an accredited school district in Oklahoma since 1959. In 2019, the District was accredited with no deficiencies. Western Heights is now aware that the Respondents, primarily Hofmeister, as far back as early 2020, started gathering information and documentation from the teacher's union² and some unhappy patrons with grudges against the District, to assist in the current attacks. Historically, parent and teacher complaints in school districts were handled by the Department's Regional Accreditation Officers, who receive the complaints³, and who then visit with the District

² Western Heights has been at impasse for two years with the teachers union who has targeted the District for its public position against the 2018 teacher strike, as evidenced by the filing of a frivolous lawsuit against the District: *Western Heights Education Association, et al., v. Western Heights Public Schools*, Case no. CJ-2019-3006, which was voluntarily dismissed by the Union in January, 2021, as well as a bargaining grievance filed by the Union against the District which was summarily dismissed as frivolous by the Department's own Dispute Resolution Committee.

³ "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)

representatives, typically the Superintendent, to receive the District's response, and then resolve the matters. However, without notifying the District, in late 2020, the Respondents started reaching out to patrons and teachers, encouraging the filing of complaints against the District, while not informing the District staff of the complaints or making any effort to resolve same. Hofmeister (a voting member of the State Board) even went so far as to travel to the District to meet with dissidents in the District and hear those complaints outside of a formal board meeting. The Respondents state in their Motion that "in the Fall and Winter of 2020-21", they received "a significant volume" of complaints that were "substantial in the gravity of the issues". Yet, the Respondents wholly failed to share the substance of these alleged complaints with the District.

3. The important point is that the Department, despite their mandate to investigate all complaints within thirty days, never sought to hear Western Heights' side of the story, never instituted the required investigations, and instead, held the complaints in secret to use in later proceedings to put an end to both the District and its Superintendent, who had the temerity to criticize these state officials.

4. On March 25, 2021, the State Board met (virtually) in a special meeting. The agenda for the meeting stated that Western Heights would be discussed in executive session. Western Heights was provided no notice that the District was on the State Board agenda. That agenda was the District's first indication that the Respondents had concerns about the District. Prior to this meeting, the Respondents never 1) notified the District that they were being investigated for anything, and 2) never met with the District to disclose or discuss complaints that Respondents had received concerning the District.

5. At the March 25th meeting, the State Board voted to go into executive session

days of receiving the complaint". (See Title 70 O.S. §3-104.4(C); Petition, Exhibit "3").

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". Official notification of the State Board's action arrived on March 30, 2021, when the District was first officially notified by letter of certain general allegations against the District, 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 (3385 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).⁴

In that same letter, the State Board referred to the secret executive session 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

⁴ It should be noted that the District and the Superintendent look forward to the day that they can, after being fully advised of the complaints and charges against them, "have their day in court", and finally present their witnesses and exhibits to refute each and every unsupported claim against them. However, the District prefers to present their case before a fair and unbiased tribunal, not a rogue state agency who has already decided their guilt publicly.

regulations”.

6. Comments by one of the Board Members in the March 25th State Board Meeting contradicted the Respondents’ multiple statements that the Respondents timely conducted the required investigations. Indeed, Board Member Hernandez, after the executive session, and after the motion was made which included the eight (8) detailed allegations above, stated that **she believed the State Board was violating the law by proceeding forward before any investigation was started or completed**, and without ever allowing the Superintendent and District **an opportunity to present their side of the story**.

7. It is important at this point to discuss the legal ramifications of the Respondents’ unprecedented actions. The Respondents, state governmental entities, received complaints regarding an entity, the District and its Superintendent, over whom they have some⁵ superintending authority. The Respondents **conducted no investigation⁶**, unless the solicitation of other complaints could constitute an investigation, they disclosed no complaints to the District, they wholly failed to give the District an opportunity to respond to the issues raise, then they met in secret for three plus hours, then voted that **“the District has failed to comply with Oklahoma laws and regulations”**. This “star chamber”⁷

⁵ In Oklahoma, a hallmark of our educational system is “local board control”, which is statutorily mandated. Title 70 O.S. §5-117, OAC 210:35-3-48.

⁶ 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).

⁷ The Star Chamber (Latin: *Camera stellata*) was an English court which sat at the royal Palace of Westminster, from the late 15th century to the mid-17th century. The term star chamber refers pejoratively to any secret or closed meeting held by a judicial or executive body, or to a court proceeding that seems grossly unfair or that is used to persecute an individual.

represents a *per se* denial of due process, violations of the OAPA and the OMA, 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. In an unprecedented directive by a state agency, the State Board ordered the Superintendent, the volunteer District Board Chairman, and a volunteer Board Member to appear⁸ at the next Board meeting.

8. Western Heights responded to the State Board on April 5, 2021, and expressed concerns 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 OMA 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 OAPA⁹, before the State Board reached its decisions. (Petition, Exhibit "3"). 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. (Petition, Exhibit "3").

⁸ Title 70 O.S. §3-104(6) specifically excludes "members of boards of education" from the authority of the State Department of Education.

⁹ Two separate divisions of the Oklahoma Court of Appeals determined that an individual proceeding under the OAPA was required. ((Division I) *Western Heights Independent School District No. 1-41 of Oklahoma County v. State ex rel. Oklahoma State Department of Education*, 2007 OK CIV APP 21, 156 P.3d 53; (Division II) *Western Heights Independent School District No. 1-41 of Oklahoma County v. State ex rel. Oklahoma State Department of Education*, 2007 OK CIV APP 92, 169 P.3d 417.

9. 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. (Petition, Exhibit "4"). 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. (Petition, Exhibit "4"). Importantly, the Respondents admitted that these complaints were presented¹⁰ to the State Board in executive session, and would again be presented at the April 9th meeting. (Petition, Exhibit "4").

10. 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 of any written allegations, complaints, or other documentation. **The State Board maintained that all of this documentation was privileged and or confidential.** In that meeting, the attorney for the State Board proceeded to present a long list of complaints and allegations, many of which were not included in the eight general allegations in the Respondent's March 30, 2021, letter. The State Board was also presented 112 separate documents, 1,251 pages, **none of which were presented to Western Heights prior to the meeting.** (Petition, Exhibit "6"). Further, the documents were not published on the Respondents' website until after the conclusion of the April 9, 2021, State Board meeting.

11. 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

¹⁰ The District believes that the wholly one-sided power point presentation later presented in open session on April 9, 2021, was presented to the State Board in executive session on March 25th, right before they determined that the District and the Superintendent had violated state law and regulations.

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.

12. 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.*

"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". (Petition, Exhibit "7"). **By this action, Western Heights was but one step away from a complete loss of accreditation and the loss of all funding to the District, effectively shutting its doors.** On April 22, 2021, the District and the Superintendent filed their *Petition* in District Court, alleging violations of the OAPA, the OMA, and requesting declaratory judgment.

13. At this point, having been advised of the position of the District, and having been reminded of the requirements of the OAPA, as interpreted by two divisions of the Courts of Appeal, and the OMA, one would think the Respondents would pause to consider their actions, or at least wait until the Court gave them some legal direction. But no, the

Respondents decided to "double down" and accelerate their attacks on the District and the Superintendent.

14. On June 23, 2021, the Respondents sent a 33 page *Application for Emergency Order to Summarily Suspend Teaching Certification and Application to Revoke Teaching Certification*, with 207 pages of exhibits, which was **scheduled to be presented to the State Board the following day.** (Attached hereto as Exhibit "A"). The Superintendent was not invited or allowed to offer a defense to the *Application*. **The next morning**, the State Board met again in secret, **then voted to summarily suspend the Superintendent's license**, without providing him any due process, without giving him the statutorily mandated individual proceeding where he could defend both his license and his livelihood. Later in that same meeting, after "summarily suspending" the Superintendent's license, the Respondents threatened that they would revoke the District's accreditation at their July 12th meeting, if the District did not immediately terminate the Superintendent. State Superintendent Hofmeister pointed out in that meeting that "the District had sued her", and that the District and Superintendent Barnes "had little respect, and no regard for the authority of this Board – and that's going to change!".

ARGUMENT AND AUTHORITIES

PROPOSITION I

THE RESPONDENTS HAVE DENIED THE SUPERINTENDENT'S DUE PROCESS RIGHTS, AND FAILED TO FOLLOW BOTH STATE LAW AND THEIR OWN ADMINISTRATIVE PROCEDURES

"An essential principle of due process is that a deprivation of life, liberty, or property 'be preceded by notice and opportunity for hearing appropriate to the nature of the case.' "*Cleveland Bd. of Ed. v. Loudermill*, 470 U.S. 532, 542, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985). However, "[i]t is by now well established that "due process," unlike some legal rules,

is not a technical conception with a fixed content unrelated to time, place and circumstances." * *Gilbert v. Homar*, 520 U.S. 924, 930, 117 S.Ct. 1807, 138 L.Ed.2d 120 (1997). "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." * *Id.* "Accordingly, resolution of the issue whether the administrative procedures provided here are constitutionally sufficient requires analysis of the governmental and private interests that are affected." *Mathews v. Eldridge*, 424 U.S. 319, 334, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). In *Loudermill*, the Supreme Court held that a "pretermination 'hearing' ... need not be elaborate," but "[t]he opportunity to present reasons, either in person or in writing, why the proposed action should not be taken, is a fundamental due process requirement." 470 U.S. at 545-46. "The tenured public employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story." *Id.* at 546. Moreover, "[t]he formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings." *Id.* at 545, and an opportunity to present his side of the story." *Id.* at 546.

In this case, the Respondents conducted a secret investigation, and before even notifying the Superintendent or the District of that investigation, proceeded to meet in secret and discuss the allegations and presumably, their future actions. Then, before even hearing the Superintendent's side of the story, they decide that the Superintendent and the District "have violated the law and regulations". Later, they put the District on probation, threaten to shut it down, all without a hearing of any kind. Later still, with less than a day's notice, they have another secret meeting that the Superintendent was not invited to, and then vote to "suspend" his license, after which they tell the District that they will shut them down if they don't immediately fire the suspended superintendent.

A. The Respondents Do Not Have the Legal Authority to Suspend the Superintendent's License:

Respondents lack the statutory authority to suspend the Superintendent's certificate. Therefore, any attempt by Respondents to do so is an *ultra vires* act that is unauthorized and beyond Respondents' power and authority. The Respondents' "powers and duties" are described in Title 70 O.S. §3-104. The prescribed powers regarding the licensure and certification of school superintendents are described in Section 3-104(A)(6):

*A. The supervision of the public school system of Oklahoma shall be vested in the State Board of Education and, subject to limitations otherwise provided by law, the State Board of Education shall: . . .

6. Have authority in matters pertaining to the licensure and certification of persons for instructional, supervisory and administrative positions and services in the public schools of the state subject to the provisions of Section 6-184 of this title, and shall formulate rules governing the issuance and revocation of certificates for superintendents of schools, principals, supervisors, librarians, clerical employees, school nurses, school bus drivers, visiting teachers, classroom teachers and for other personnel performing instructional, administrative and supervisory services, but not including members of boards of education and other employees who do not work directly with pupils, and may charge and collect reasonable fees for the issuance of such certificates (Emphasis added.)

a. the State Department of Education shall not issue a certificate to and shall revoke the certificate of any person who has been convicted

(Emphasis added.) As shown by the foregoing, Respondents have no authority to "suspend" a school superintendent's certification to be a school superintendent. At best, Respondents can formulate rules for the "revocation" of a superintendent's certification, but again, nothing gives Respondents the power to formulate rules for the "suspension" of a superintendent's certification. There is a distinct difference between a revocation and a suspension; a revocation is required to be preceded by notice and hearing, while at least in this case, a "summary suspension" apparently occurs after a secret meeting and without hearing the licensee's side of the story. The danger of a "summary suspension" is obvious: If

Respondents had this power, they would use it in the exact manner attempted, which is a clear violation of the Superintendent's due process rights.

Oklahoma's courts have repeatedly held that state agencies, such as Respondents, may only exercise the powers granted to them by statute and cannot expand those powers by their own authority. See generally, *Marley v. Cannon*, 1980 OK 147, 618 P.2d 401, 405; *Boydston v. State*, 1954 OK 327, 277 P.2d 138; and *Adams v. Professional Practices Commission*, 1974 OK 88, 524 P.2d 932. To sidestep this prohibition on their power to "suspend", Respondents rely upon the OAPA to clothe them with authority and power they do not otherwise possess. But the OAPA—which is an administrative procedures act for agencies in general—does not grant new or additional authority to agencies that the agencies don't otherwise possess from the statutes that created them. In other words, if an agency has no enumerated power to suspend a license, then the OAPA's procedures for emergency suspensions are simply not relevant.

Because Respondents, like most agencies, are bound by the protections afforded individuals by the OAPA, Respondents are required to follow the OAPA requirements for an "individual proceeding" such as those found at 75 O.S. §§309, 310, and 312, if Respondents seek to revoke a school superintendent's license. But under no circumstances does the OAPA create new powers or authority for Respondents. As stated above, those powers, which include the power to revoke—but not suspend—a superintendent's certificate, are described in 70 O.S. §3-104(A)(6)

If Respondents had the power to "suspend", which they don't, Respondents could rely upon the procedures provided in 75 O.S. §314 which allows for summary suspensions and/or emergency actions.¹¹ But here, Respondents were not given the power to suspend

¹¹ Provided of course that they follow the statutory requirements, which as set forth herein, they didn't.

by the state legislature. In any event, however, the rights of Respondents as well as those of Superintendent are protected by 75 O.S. §§309, 310, and 312, which allow for a due-process procedure in determining whether a school superintendent's license can be revoked. Respondents may attempt to argue that their own regulations—that is, the rules they have written for themselves, allow for suspension and not just revocation. (See OAC 210:1-5-6(e)) But as plainly stated in their own rules & regulations, the only way Respondents get to "suspension" is by an illicit reliance upon 75 O.S. §314 for authority not allowed them by the state legislature.

In summary, Respondents have no right to "suspend" a Superintendent's certificate. Instead, if Respondents seek to "revoke" the Superintendent's certificate, they must follow the OAPA requirements for an "individual proceeding" pursuant to Title 75 O.S. §§309, 310, and 312, before they revoke, not after.

B. Respondents Use the Term "Emergency" as a Pretext to Suspend the Superintendent Without Due Process:

It is well established that "an essential principle of due process is that a deprivation of life, liberty, or property be preceded by notice and opportunity for hearing appropriate to the nature of the case." * *Cleveland Bd. Of Ed. v. Loudermill*, 470 U.S. 532, 542, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985). However, in the instant case, Respondents devised and carried out a plan to strip the Superintendent of his constitutional due process protections and suspend him from his job, and therefore his livelihood, without any hearing at all. Respondents' plan involved using powers not granted to Respondents by Oklahoma Statutes, misuse of the OAPA and the OMA, and failing to follow their own rules and procedures.

On June 24, 2021, without legal notice to the Superintendent, and while in secret session, Respondents, through *ultra vires* powers, voted to "summarily suspend" the

Superintendent's teaching certificate. This fraudulent and *ultra vires* act violated Superintendent Barnes' due process rights and, according to Respondents, required Western Heights to "at a minimum, . . . place Mr. Barnes and his employment on suspension" (See Exhibit "B").

The act of suspending Superintendent Barnes' license was fraudulent because it was grounded on the false premise of an "EMERGENCY." Characterizing the act of suspending the Superintendent as an "emergency" was the only way Respondents could vote to suspend the Superintendent while in secret session and without proper and legal notice.

However, just labeling something as an "emergency" does not make it so. Specifically, Title 75 O.S. § 314(C)(2) provides:

"If the agency finds that **public health, safety, or welfare imperatively requires emergency action**, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined."

Title 75 O.S. § 314. Additionally, Respondents' own promulgated rules at OAC 210:1-5-6(e) provide as follows:

"Pursuant to 75 O.S. § 314.1, in the event the State Board of Education finds that **public health, safety, or welfare imperatively requires emergency action**, the State Board of Education may issue an emergency order summarily suspending a certificate pending an individual proceeding for revocation or other action. Such proceedings shall be promptly instituted and determined. **Such an order shall include specific findings of fact specifying the grounds for the emergency action.** Within three (3) business days of the issuance of the order by the Board, a copy of the order shall be sent to the holder of the certificate via certified or registered mail, delivery restricted to the certificate holder, with return receipt requested."

(Emphasis added.) Both Oklahoma Statutes and Respondents' own rules require that any emergency order include specific findings of fact specifying the grounds for the emergency action. Respondents' "Emergency Order", (attached as Exhibit "C"), is completely void of any "specific findings of fact specifying the grounds for the emergency action." In fact, Respondents' "Emergency Order" does not mention or address any type of emergency

situation much less "include specific findings of fact specifying the grounds for the emergency action." Instead, the "Emergency Order" goes on for thirty-three (33) pages bemoaning Superintendent Barnes' past education and work history, including in-depth discussions of his work at the Lupus Foundation of Oklahoma and Lucky Star Casinos. The so-called "Emergency Order" was in reality a "smear campaign" filled with false, irrelevant, and libelous tabloid accusations against the Superintendent, having little relevance to his license. The document also included detailed accounts of situations that have long since been resolved! There is absolutely no mention or identification of any issue or situation that includes "specific findings of fact specifying the grounds for the emergency action." And that is because there was simply **NO EMERGENCY!** But without the claim of emergency, Respondents would not have been able to come up with the cover they needed to suspend Superintendent Barnes' certificate in a secret meeting, without legal notice or fair hearing.

It is clear that Respondents' claim of "emergency" was nothing more than a pretext for their secret meeting with its predetermined outcome: suspend Superintendent Barnes without the messiness of allowing Superintendent Barnes to defend himself. Again, there was and is **NO EMERGENCY!**

In addition to Respondents' *ultra vires* act of suspending Superintendent Barnes' certificate, Respondents did not even follow the rules they are inappropriately hiding behind. The rule Respondents failed to follow this time was the rule of providing notice to Superintendent Barnes of the action Respondents took against him. Specifically, OAC 210-1-5-6(e) states in pertinent part:

"Within three (3) business days of the issuance of the order by the Board, a copy of the order shall be sent to the holder of the certificate via certified or registered mail, delivery restricted to the certificate holder, with return receipt requested."

Here, the certificate holder, Superintendent Barnes, was never sent any certified or registered mail containing a copy of the "Emergency Order"—not within three days or ever.

Rules are rules and though this may seem small, no rule requiring notice should ever be allowed to be ignored when it involves an individual's due process under the law.

PROPOSITION II

THE RESPONDENTS CANNOT LAWFULLY TAKE ACTION AGAINST THE DISTRICT UNTIL THE DISTRICT HAS HAD A FULL AND FAIR HEARING

The Respondents admit that they are agencies subject to the OAPA. (*Motion to Dismiss*, p.7.). The Respondents also concede that the Superintendent is entitled to an individual proceeding under the OAPA. (*Motion to Dismiss*, p.32 "pending an individual proceeding for revocation"). Not only is the action to revoke or suspend the Superintendent's license require an individual proceeding under the OAPA, any action to put the District on probation, or de-annex the District (effectively close the District and place its students in other districts) must be decided in an individual proceeding, also pursuant to the OAPA.

The requirement of an individual proceeding safeguards the due process and general fairness rights of those who are subject to the awesome power of state government. It is easy to see why the Respondents don't want to provide these protections. Title 75 O.S. §309 provides for detailed notice of all allegations, discovery, a full and fair hearing, and an unbiased decision-maker, all before the Respondents put the District on probation, and/or close the school district and move all the children to other Districts. Back in 2005, the Respondents unfairly, arbitrarily, and without due process made an "accountability determination" which adversely affected the District, a term¹⁷ based on previous federal legislation known as "No Child Left Behind Act of 2001". "No Child Left Behind" was a two edge sword; on the one hand it provided a small amount of funding to improve low

¹⁷ Placing schools and districts on the List was referred to as "accountability determinations" under the federal program and state procedures, a term that the Court of Appeals used in its opinion. *Western Heights Independent School District No. 1-41 of Oklahoma County v. State ex rel. Oklahoma State Department of Education*, 2007 OK CIV APP 92, ¶14, 169 P.3d 417.

performing schools on the List, but it also provided that if a school or district failed to improve, a variety of sanctions could be implemented by the Respondents, including loss of funding, closing of the schools and/or districts, and the loss of the teachers and Superintendent's licenses. *Id.* Accountability determinations in 2005 are one and the same as accreditation determinations in 2021, both can result in the potential closing of schools and districts and the revocation of Superintendent's licenses. Title 70 O.S. §3-104.4(D).¹³ The Respondents argued in both appeals exactly what they argue here, that accountability determinations are not "subject to any administrative appeal process, hearing requirement, or judicial review", and that the OAPA individual proceeding requirements simply did not apply. *Western Heights I, Id.* at ¶14, fn.2. Both Courts of Appeal disagreed with the Respondents, and both Courts held that the "School was entitled to the full processes required for agency actions under the [OAPA], including a hearing, before the Department [issued an accountability determination]". *Western Heights I, Id.* at ¶14, fn.2.

The District is entitled to a fair hearing and due process-like protections based on both the OAPA and caselaw, as well as the settled-law-of-the-case doctrine. The OAPA governs the delegation of rulemaking authority to executive agencies by the Oklahoma Legislature. 75 O.S. § 250.2. "It was the intent, purpose and object of the Legislature, in enacting it, to provide a uniform system of regulations concerning administrative procedures in and before, and judicial review of the actions of, all state boards, commissions, departments, authorities, bureaus and officers authorized by the Constitution or statutes to make 'rules' or to formulate 'orders' (as those terms are defined and used in the act) other than those specifically

¹³ "If one or more school sites fail to receive accreditation as required pursuant to this section or subsequently lose accreditation, the State Board of Education shall close the school and reassign the students to accredited schools within the district or shall annex the district to one or more other districts in which the students can be educated in accredited schools."

excepted, by the provisions of the act, from the operation thereof. *Trask v. Johnson*, 1969 OK 57, ¶ 12, 452 P.2d 575.

"Judicial review of agency/board orders is commenced in two ways: 1) pursuant to the Administrative Procedures Act (Act) which provides for review of final agency orders; or 2) circumvention of the statutory procedures only when there is a constitutional question, inadequate administrative relief, and threatened or impending irreparable injury." *Bowen v. State ex rel. Okla. Real Estate Appraiser Bd.*, 2011 OK 86, ¶ 12, 270 P.3d 133, 136-137; *State ex rel. Bd. Of Regents v. Lucas*, 2013 OK 14, 297 P.3d 378. As set forth herein, the Respondents have almost no administrative procedures to insure a uniform and fair decision, and the closing of these schools and the District certainly constitutes irreparable injury.

It is interesting to note that after the first appeal with the Respondents, where the Court affirmed the application of the OAPA and the right to an individual proceeding, the Respondents indicated in their pleadings that they "will amend its AYP [accountability determinations] appeal procedures to include a hearing". *Western Heights Independent School District No. 1-41 of Oklahoma County v. State ex rel. Oklahoma State Department of Education*, 2007 OK CIV APP 92, ¶19, 169 P.3d 417. Apparently the Respondents never got around to those amendments. Respondents argue the exact same argument here as they argued in 2007: "that the District is not entitled to a Patrick mandated individual hearing because the District had no "property interest like an employee has in continued employment". The Court said:

"The APA was found to apply to Department in *Patrick v. State ex rel. State Bd. of Educ.*, supra. Patrick was an appeal from a State Board of Education determination which imposed conditions on the appellant's continued certification as a school superintendent. Department seeks to distinguish Patrick because "no such property interest in the right to engage in a profession is present." In view of the substantial sanctions which may be imposed upon School under Department's School Accountability System, we do not agree. School was entitled to the full processes

required for agency actions under the APA, including a hearing, before Department finally determined School failed to make AYP.”

Rulings that were made in prior appeals are the law of the case. Once the court decides a question in a cause on appeal, that ruling governs in all subsequent proceedings.” *Cavett v. Paterson*, 1984 OK 59, ¶ 9, 688 P.2d 52, 56; *Western Heights Independent School District No. 1-41 of Oklahoma County v. State ex rel. Oklahoma State Department of Education*, 2007 OK CIV APP 92, ¶ 14, 169 P.3d 417. “Settled-law-of-the -case doctrine operates to bar re litigation of issues in a case that are finally settled by an appellate opinion or those the aggrieved party failed to raise on appeal.” *Patel v. OMH Med. Ctr., Inc.*, 1999 OK 33, ¶ 22, 987 P.2d 1185, 1195. The “doctrine is a rule of judicial economy designed to prevent an appellate court from twice having to deal with the same issue.” *Id.* The entitlement of an individual proceeding for the District is not only the law in Oklahoma, it is the law of this case, and must be followed.

Western Heights requests a preliminary injunction barring the Respondents from taking any action against the District until the District is allowed an individual proceeding before an impartial and unbiased decisionmaker¹⁴, and for such other and further relief that the Court finds fair and equitable.

PROPOSITION III

WESTERN HEIGHTS AND THE SUPERINTENDENT SATISFY THE REQUIREMENTS FOR A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION

A temporary injunction should be granted in the Court’s sound discretion based upon the following four factors:

1. Whether the plaintiff is likely to prevail upon the merits of the action;

¹⁴ Who is not likely to be Hoffmeister or the members of the State Board, who have already determined that the Superintendent and District violated state laws and regulations, and with respect to the Superintendent, suspended him based on the allegations in the *Application*.

2. Whether plaintiff will suffer irreparable harm in the absence of injunctive relief;
3. Whether the irreparable harm which would be suffered by plaintiff if injunctive relief is withheld outweighs irreparable harm which would be suffered by defendant if injunctive relief is granted; and
4. The public interest.

See generally 43 C.J.S. *Injunctions* § 17, and *Edwards v. Board of County Com'rs of Canadian County*, 2015 OK 58, ¶12, 378 P.3d 54, 58

In this case, Western Heights and the Superintendent will likely prevail on the merits of the action. Western Heights and Superintendent are entitled to the rights and protections of the OAPA and the OMA. See generally, *Western Heights Independent School District No. 1-41 of Oklahoma County v. State ex rel. Oklahoma State Department of Education*, 2007 OK CIV APP 92, 169 P.3d 417. And Respondents have refused and denied Western Heights and Superintendent with these rights and protections.

Western Heights and Superintendent will suffer irreparable harm if the temporary restraining order and the preliminary injunction are denied. There is a reason that the sudden loss of an experienced chief executive officer will adversely impact all aspects of even well operating organizations. Western Heights is a 3000+ students school district operating nine (9) school facilities and multiple support facilities, on multiple campuses. Western Heights has an annual budget of over \$29,000,000.00, and has 300-350 employees. Superintendent Barnes has managed all aspects of the District since he was hired in 2019, and his employer, the local Board of Education, who has supervised him during that entire time, believes his performance has been exemplary. Running a school district involves many aspects, including managing federal and state programs and grants, personnel, union negotiations, financial accounting services, student enrollment and transfers, construction and project management, legal issues and defense of suits,

transportation, maintenance, bonds and long term financing, and curriculum development, just to name a few. (See Exhibit "D", Affidavit of Asst. Superintendent Kim Race).

The forced removal of Superintendent Barnes places the responsibilities of the entire District on the Assistant Superintendent. (Exhibit "D"). As reflected on her Affidavit, while the Assistant Superintendent is a recognized expert on managing federal and state programs and grants, she has little experience in the other areas of managing the District. Further, the sudden loss of Superintendent Barnes causes immediate difficulties throughout the school financial system, as he is the sole signator on many of the financial accounts and reporting requirements for continued funding, money transfers, and federal and state certifications. (Exhibit "D"). It is the Assistant Superintendent's opinion that attempting to operate the District without the assistance and experience of Superintendent Barnes "is likely to cause irreparable harm to the District". (Exhibit "D").

As the third factor for granting injunctive relief, the threatened injury to Western Heights and Superintendent outweighs any potential injury to Respondents. The injury to Western Heights and Superintendent is described above, and is egregious and extreme in light of the fact that Respondents' apparent goal is to revoke the Superintendent's license and decertify Western Heights as a school district.

And finally, injunctive relief is the public interest. Western Heights has been a school district since the early 1960s, and serves approximately 3000 plus students at eight school sites that include a high school, a ninth grade center, a middle school, an intermediate center, four elementary schools, and a multi-cultural Heritage Center (dual language learner center). And as explained above, Western Heights cannot operate without its chosen Superintendent, the Superintendent who still has the trust and confidence of his employer, the local Board of Education.

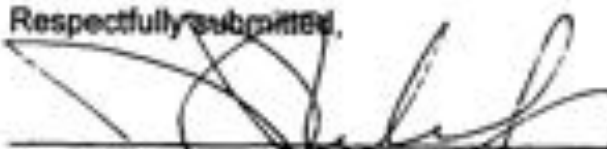
REQUEST FOR RELIEF

Western Heights and the Superintendent request the following injunctive relief:

1. That the Court issue a Temporary Restraining Order that prohibits Respondents from taking any further adverse action against Western Heights or the Superintendent, that the "summary suspension" of Superintendent's certificate be vacated, that the Superintendent be returned to all the rights and interests afforded to him prior to that suspension; and that the TRO remain in effect until such time as the Court may afford the parties a hearing;
2. That after a full and fair hearing, the Court issue a preliminary injunction that prohibits Respondents from taking any further adverse action against Western Heights or the Superintendent, that the summary suspension of Superintendent's certificate be vacated, that the Superintendent have all the rights and interests afforded to him prior to his suspension; that the parties be accorded individual proceedings pursuant to the OAPA before any further action is taken by Respondents; and that said preliminary injunction remain in effect until the conclusion of this litigation.
3. And for such other relief as may be just and equitable.

WHEREFORE, Petitioners request this Court to grant the injunctive relief as requested above, and for such other relief as is deemed proper and necessary.

Respectfully submitted,




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Oklahoma City, OK 73179
ATTORNEYS FOR PETITIONERS

CERTIFICATE OF SERVICE

This is to certify that on this 8th day of July, 2021, a true and correct copy of the above and foregoing was mailed, postage prepaid to:

Brad S. Clark, General Counsel
Oklahoma State Department of Education
Oklahoma State Board of Education
Joy Hoffmeister, Superintendent
2500 North Lincoln Boulevard
Oklahoma City, OK 73105



Jerry L. Colglazier

3. The Oklahoma Administrative Procedures Act, 75 O.S. § 250 *et seq.*, governs the State Board's administrative actions relating to teacher disciplinary matters. See 75 O.S. § 250.3(3). More specifically, 75 O.S. § 314(C)(2) provides:

If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.
See 75 O.S. § 314.

4. Further, 75 O.S. § 314.1 provides:

As authorized by or pursuant to law, if an agency finds that the public health, safety, or welfare imperatively requires emergency action, has promulgated administrative rules which provide for such action and incorporates a finding regarding the emergency in its order, emergency actions may be ordered pending the final outcome of proceedings instituted . . .

5. The Board's rule at OAC 210:1-5-6(e) provides:

Pursuant to 75 O.S. § 314.1, in the event the State Board of Education finds that public health, safety, or welfare imperatively requires emergency action, the State Board of Education may issue an emergency order summarily suspending a certificate pending an individual proceeding for revocation or other action. Such proceedings shall be promptly instituted and determined. Such an order shall include specific findings of fact specifying the grounds for the emergency action. Within three (3) business days of the issuance of the order by the Board, a copy of the order shall be sent to the holder of the certificate via certified or registered mail, delivery restricted to the certificate holder, with return receipt requested.

6. Oklahoma law and Board rules provide that a certificate shall be revoked for a "willful violation of a rule or regulation of the State Board of Education, a willful violation of any federal or state law . . . or for other proper cause." See 70 O.S. § 6-189(F); see also OAC 210:1-5-6(b).

7. The Board holds authority "in matters pertaining to the licensure and certification of persons for instructional, supervisory and administrative positions and services in the public schools of the state . . . and shall formulate rules governing the issuance and revocation of certificates for superintendents of schools . . ." See 70 O.S. § 3-104(6).

8. Barnes holds a valid Oklahoma teaching certificate (the "Certificate"), number 439247. See Certificate, attached as Exhibit "A".

9. Barnes is currently certified in the following areas: 1) Superintendent, Pre-K through Grade 12. *Id.*

10. A superintendent is the chief executive officer of an Oklahoma public school district (see 70 O.S. § 5-106) and, as such, is responsible for certifying the accuracy of data, reports, and other information submitted to state and federal educational authorities. For example, the Oklahoma state aid statutes provide that "[t]he State Board of Education shall revoke the certificate of any teacher, principal, or superintendent who knowingly or willfully violates any of the provisions of this article." See 70 O.S. § 18-116(F).

11. Barnes is currently employed as the Superintendent of Western Heights Public Schools (the "District"), holding this position since July 1, 2019. Prior to his employment as Superintendent of the District, Barnes served as a member of the District's board of education. Recently, the District board voted on June 14, 2021, to continue Barnes's employment contract. See Agenda of the June 14, 2021 District Board of Education meeting ("Agenda"), attached as Exhibit "B".

STATEMENT OF FACTS

I. Introduction

1. The District is comprised of nine (9) school sites and a student enrollment of approximately 2,596. In years prior, the District's student enrollment averaged approximately 3,400 students and demographics of the enrolled student population was as follows:

- A. >90% Economically Disadvantaged
- B. 35% English Learner
- C. 46% Hispanic
- D. 16% Black
- E. 23% White

2. Academic outcomes for students in the District have severely lagged those across the state. According to the State's statewide system of school accountability (the "School Report Card"), the District was among the lowest performing schools in the state for Academic Achievement, consistently maintains one of the highest Chronic Absenteeism rates in the state, nearly twenty-percent (20%) below the state average, and is among the bottom in the state in providing Postsecondary Opportunities for its students. Notably, each of these performance indicators are reflective the School Report Card and indicator data since 2019, when Barnes became the District's superintendent.

3. Moreover, six of the nine school sites in the District are federally designated for Support and Improvement. One site is federally designated for Comprehensive Support and Improvement ("CSI"), which means it is within the lowest five-percent (5%) of schools in the Oklahoma. See 20 U.S.C. § 6311(d). Further, five of these sites are federally designated as Additional Targeted Support and Improvement, which is the federal designation to identify schools in which any subgroup of students, on its own, would lead to identification for low-performance. *Id.*

4. Alarminglly, the preliminary data for the most recent school year evidences the academic outcomes are worse than before. See Preliminary Average Scale Score Reports, Grades 3-8, English Language Arts, Math and Science, attached as Exhibit "C."

5. In the course of conducting school accreditation and school support functions and other such duties, the State Department of Education has previously become aware of compliance problems and irregularities in the conduct of several District programs and operations under the superintendency of Mannix Barnes. On April 9, 2021, the Oklahoma State Board of Education ("Board") voted to update the public school accreditation status of Western Heights Public Schools

to "Accredited with Probation" and ordered corrective action within ninety (90) days pursuant to 70 O.S. §§ 3-104, 3-104.3, 3-104.4, and Oklahoma Administrative Code 210:35-3-201. In making its determination to assign a probationary accreditation status to the District, the Board cited the need for corrective action relating to special education, staff, benefits, finance, and leadership. See Minutes of the April 9, 2021, Special Meeting of the State Board of Education ("April 9 Board Minutes"), attached here as Exhibit "D".

6. Unfortunately, the compliance problems and irregularities are a pattern of Barnes's past, present, and likely future if not acted on. With thousands of schoolchildren under his supervision, millions of state and federal dollars under his control and authority as a function of superintendent duties and responsibilities, and being placed in a position of trust, the pattern of irregular behavior, lack of compliance and no confidence in lawfully and responsibly performing his duties has put the District at risk. The State Department of Education believes that such patterns and actions by Barnes must be suspended immediately so as to serve the interests of the District community's welfare, health, and safety.

II. History

7. While serving as a board member for the District, in April 2019, Barnes submitted to the Department his application to become certified superintendent in the State of Oklahoma. At the time, the District's current superintendent would not submit his resignation for another month, with an effective date just over thirty days from the date of submitting the resignation to the District.

8. In applying for his Certificate to be a certified superintendent, Barnes advised the Department that he had 3 degrees, including:

- A. Bachelors, Communications – University of Central Oklahoma - 1997
- B. Masters, Criminal Justice – University of Central Oklahoma – 1997
- C. Masters, Education Leadership – Southern Nazarene University – 2018

9. Further, Barnes represented the following among his skills and competencies in applying for his Certificate:

- A. Accounting & Financial Management
- B. Business Planning & Analysis
- C. Growth Strategy Development
- D. Public Relations & Media Affairs
- E. Contract Negotiations & Strategic Alliances
- F. Finance, Budgeting & Cost Management
- G. Policy & Procedure Development
- H. Government Regulations, Policy & Relations
- I. Human Resources Management

10. For his professional background, Barnes identified the following roles and responsibilities:

- A. Chief Executive Officer – Onefire Holding Company, LLC – August 2018 to Present – Jenks, Oklahoma
- B. General Manager – Lucky Star Casinos and Travel Centers – 2015 to 2018 – Concho, Oklahoma
- C. President and Chief Executive Officer – Lupus Foundation of Oklahoma, Inc. - 2011 to Present, Oklahoma City, Oklahoma
- D. Chief of Staff – Oklahoma Department of Labor – 2007 to 2011, Oklahoma City, Oklahoma.

Affiliations presented by Barnes included:

- A. Member and past Chairman – Oklahoma City Police Citizens Advisory Board – 2006 to Present
- B. Member – Western Heights Public School Board – 2013-Present
- C. Board Member – Lupus Foundation of America, Oklahoma Chapter, Inc. - 2003-2008
- D. Vice-Chairman – Oklahoma Workers Safety Policy Council – 2006-2011

11. During Barnes's time as Chief of Staff at the Oklahoma Department of Labor (ODOL), he was included as a named defendant in a terminated employee's federal lawsuit against the agency alleging retaliation for her political speech and affiliations. See *Allen v. Oklahoma*

Department of Labor (W.D. Okla. 2009), 2009 WL 10702951. In this 2009 action, former ODOL employee Laurie Allen argued that Barnes and then-Labor Commissioner Lloyd Fields took adverse employment actions against her due to her public support of the previous state labor commissioner and other Republicans. One witness testified that “both Defendants Barnes and Fields said in his presence that Plaintiff needed to go and they needed to get rid of all [the previous commissioner’s] supporters because they could not trust them.” *Id.*

12. Omitted from Barnes’s representations of prior education, professional employment, and affiliations was his expulsion from the University of Oklahoma College of Dentistry in 1993 for academic misconduct in connection with helping another student cheat. *See, e.g.*, “Candidate Was Expelled From OU, Record Show”, *The Oklahoman*, 18 August 1998 (<https://www.oklahoman.com/article/2623285/candidate-was-expelled-from-ou-records-show>). While Barnes challenged his expulsion on technical grounds, the Oklahoma Court of Civil Appeals ultimately confirmed the validity of the administrative hearing in which several students and at least one faculty member testified against him regarding academic misconduct. *See Barnes v. University of Oklahoma*, 891 P.2d 614, 1995 OK CIV APP 14.

13. With respect to his work experience with the Lupus Foundation of Oklahoma (“Lupus Foundation”), official records reveal that the organization last filed tax and organization documents in 2017. *See* 2017 Lupus Foundation of Oklahoma 990, attached as Exhibit “E.” Leading to the 2017 cessation of activity and reports being filed with the federal government, financial records show Barnes’s tenure leading the organization resulted in annual losses in amounts of \$5,100 in 2015, \$33,054 in 2016 and \$24,152 in 2017. At the time of its last report, the organization listed \$144,000 in assets. Further, according to records, Barnes is listed as the registered agent with a listed address of the current location of the Oklahoma Labor Commission.

See Oklahoma Secretary of State – Oklahoma Lupus Foundation, attached as Exhibit “F.” Despite official records of the Lupus Foundation showing the last filing of non-profit in 2017, Barnes resume states that he continued serving as its Executive Director through 2018 and into 2019. Further, Barnes resume states that he was simultaneously serving as the General Manager of Lucky Star Casinos and the Lupus Foundation in 2018 and 2019. Representing that his employment with Lucky Star Casinos consisted of “completely reorganized staffing from over 1300 employees to an efficient 658 to run all operations” and his work providing over 167 million in distributions (a 45% increase in revenue) to the Tribe, it seems unlikely that in 2018 and 2019, Barnes was simultaneously serving as the Executive Director of the Lupus Foundation, especially considering evidence now showing that the organization last reported activity in 2017.

14. Under Barnes’s leadership at Lucky Star Casinos, in 2016, an audit disclosed that the audit firm conducting the audit was “not able to obtain sufficient appropriate evidence to provide a basis for an audit opinion on the 2016 financial statements of the Lucky Star Casinos – Concho, Clifton, Hammon, Canton and Watonga and Lucky Star Casino Travel Center – Concho...[a]ccordingly we are unable to give an opinion as to whether the financial statements as a whole are fairly stated...[d]ue to the accounts affecting several areas of the balance sheet and income statement and the significant dollar amount related to the accounts we could not give an opinion on the financial statements as a whole because they may be materially misstated.” See 2016 Audit Disclaimer of Opinion, attached as Exhibit “G.” Further, the 2016 audit found instances of insufficient audit evidence, totaling \$314,735 for accounts not reconciled and a total of \$32,166,507 as a result of the inability to obtain documentation to verify fund balances. *Id.*

15. Also a part of the application for the Certificate, Barnes provided references, including Robert Everman. Everman has been identified as the current President of the District's Board of Education. Moreover, according to an April 2, 2019, letter, Everman was purportedly a Director on the Lupus Foundation's Board in 2019 and represented that Barnes had been employed by the Foundation since 2011. The 2009 federal court opinion in the labor action Barnes was named in characterizes Everman as "a good friend of Defendant Barnes." See *Allen v. Oklahoma Department of Labor* (W.D. Okla. 2009), 2009 WL 10702951. Additionally, Everman was identified by Barnes as the Chief Financial Officer for Lucky Star Casinos, during the time of Barnes serving as its General Manager. Barnes and Everman continued their relationship together serving on the District's Board of Education until Barnes's hiring by the District Board on July 1, 2019. See, e.g., "Superintendents' Critics Confront Western Heights School Board", News On 6, 29 October 2019 (<https://www.news6.com/story/5e346e51527dcf49dad6e080-superintendents-critics-confront-western-heights-school-board>)

16. With zero years of experience in a public school and therefore certainly without any experience as a public school administrator, the District hired Barnes as superintendent beginning August 1, 2019, at an annual base salary of \$220,000—one of the highest superintendent salaries in the state. See 2019 Barnes Superintendent contract ("2019 Contract"), attached as Exhibit "H"; see also Oklahoma's highest superintendent salaries as of 2019, listed in "OKCPS paying highest superintendent salary in Oklahoma with new bonus", *The Oklahoman*, 18 June 2019 (<https://www.oklahoman.com/article/5634173/okcps-paying-highest-superintendent-salary-in-oklahoma-with-new-bonus>). Benefits included in Barnes's 2019 employment contract included the following:

- A. Forty (40) vacation days each year, in addition to all school holidays, with the option to either collect payment from the District for unused vacation days at the end of each fiscal year, or carry any unused vacation days forward to the next year.
- B. Twenty (20) days of paid personal business leave each fiscal year, in addition to the forty (40) vacation days and all school holidays.
- C. Twenty (20) days of sick leave each year, twice what a certified teacher or administrator is entitled to by statute under 70 O.S. § 6-104, and double the ten (10) days the District's certified personnel receive under the last negotiated agreement executed in 2019. See Western Heights Public Schools Certified Employees Negotiated Agreement 2019-2020.
- D. Twenty (20) days of unpaid leave per year to engage in outside activities such as writing activities and speaking engagements, including activities for which compensation is received from an outside entity.
- E. A retention bonus of seventy-five thousand dollars (\$75,000) payable the last full week of June 2022, provided Barnes remain continuously employed as the District superintendent through that time.

Under his first employment contract as superintendent of a public school district, Barnes was authorized to be absent from duty for up to one hundred (100) working days per year as provided for in his leave clauses, receive full compensation at one of the highest superintendent salaries in the state, and be eligible for a \$75,000 bonus at the end of his third year of employment. See 2019 Contract"), attached as Exhibit "H"

17. Since the hiring and deployment of Barnes to run the District, the Department has received multiple complaints and concerns regarding disharmony in the Western Heights community due to Barnes's leadership, and has regularly encountered non-compliance in various requirements for public schools. District staff, parents/guardians of students, and community members alike have continued to allege problematic conduct by Barnes. Examples include:

III. Fire Code Violation

It is of extreme concern regarding student safety that on April 27, 2021, the Oklahoma City Fire Department discovered that Western Heights High School did not have a functional sprinkler system. The Fire Department issued the District a Notice of Violation with the penalty code "FC3-

Fire Code Violation", signed by Major Sunderman. See "Notice of Violation", attached to the Application as Exhibit "J".

The Fire Department was advised by school staff on or about April 27, 2021 that the sprinkler system in the majority of Western Heights High School's campus was known to be nonfunctional as of February 21, 2021, but that repairs had been delayed due to financial considerations, and that decisions about system maintenance and repair such as the sprinklers were escalated through the system and ultimately fell to the district superintendent Mannix Barnes¹. Students and staff members were placed in harm's way by being allowed to occupy the building without a fully functioning sprinkler system. Additionally, despite knowing about the dysfunctional sprinkler system, the District had plans to host outside guests in this dangerous environment during OU's Big Event volunteer day which was scheduled for April 10, 2021. See "Big Event Email", attached to the Application as Exhibit "K".

¹Notwithstanding the District's regularly available resources, the District has received \$17,779,545.15 in federal Covid-19 relief funds since April 2020. These funds may specifically be used by the District for purposes of improvements and repairs to school facilities, including safety systems such as fire prevention and protection. The Coronavirus Response and Relief Supplemental Appropriations ("CRRSA") Act ("ESSER II") and the American Rescue Plan ("ARP") ("ESSER III") contain identical language authorizing a Local Education Agency receiving funds thereunder for "[s]chool facility repairs and improvements to enable operation of schools to reduce risk of virus transmission and exposure to environmental health hazards, and to support student health needs." See Section 313(d)(13) of the CRRSA Act and Section 2001(e)(2)(O) of the ARP. Further, Barnes has misrepresented that funds available in the District have been reduced such that programs and staff reductions must occur. Notwithstanding this similar pattern that was evident in the claim for terminating employees while serving as Chief of Staff at the Oklahoma Department of Labor, and resulting litigation, these claims are inconsistent with reality. Stated otherwise, the District's total available funds for general operations in 2019 were \$33,296,487.76 and in 2020 were \$34,741,925.21. See District Revenue Comparison Report, attached to the Application as Exhibit "J." In addition to this increase, as noted above, federal COVID-19 emergency relief funds available to the District in 2020-21 add more than \$17.5 million to the District's ordinary available fund totals.

Major Sunderman notified school administrators that it is dangerous and illegal to have a non-working sprinkler system. The Notice of Violation issued April 27 required a Fire Watch to be implemented immediately in order for the school to remain open. The Fire Watch included hourly walk through inspections of the building until the system was functional. *Id.* During the April 27 conversation with District staff, the following exchanges occurred::

Fire Marshall:

..... people in the building, without a working sprinkler system. Period. I don't care about insurance. I don't care about anything else. I care about the safety of the kids and the people in this building and right now that's not happening

...

Fire Marshall:

what date did those break?

Staff Member:

February the 21st

Fire Marshall:

February 21st, and you haven't been able to get anyone out here since February 21st.

Staff Member:

No sir, I haven't tried because we didn't have kids in the building and I'm trying to get insurance money and well I'm stuck, I understand what you're telling me

Fire Marshall:

Ok, well, no, you're not stuck. It is illegal to have a non-working sprinkler system. Period. At all. Even without people here

....

Fire Marshall:

So we need to move any students in the affected areas of the non-sprinkler system and they need to be in a sprinkled area or we just need to go ahead and close the school.

Fire Marshall:

So he took pictures of the pictures I have, you can go back through and look at the carts themselves, they'll show you everything, so what, so who is making the decisions on when to fix these things and to not to?

Staff Member:

Admin over there, ****, the one you just talked to, and the Superintendent, Mannix

Fire Marshall:

Staff Member:

No ****, the one you just with, he is over all that

Fire Marshall:

Ok, so he's the one making the decisions either to or not to fix things?

Staff Member:

That is correct

Staff Member:

Mannix Barnes is the Superintendent so he is really gonna make the final decision, but **** brings it to him.

....

Fire Marshall:

So that's stuff that will get you put you in handcuffs, (yes) that will get you put in handcuffs, I will take you to county over that. There is no reason, what so ever, that this building was ever occupied with children especially...

Staff Member:

and the children did just start...we had them tutoring down in that area)

Fire Marshall

There shouldn't be kids in here....

IV. Child Nutrition

Also of urgent concern regarding student health and safety, the Department learned in early April 2020 that the District had chosen to suspend food services to students during the closure of school sites due to COVID-19 conditions, despite programs and support being in place to ensure students could continue to receive nutrition support during the pandemic. See, e.g., "Western Heights spars with state officials over ending meal service", *The Oklahoman*, 8 April 2020 (<https://www.oklahoman.com/article/5659613/mayor-disagrees-with-western-heights-food->

service-suspension). See also April 6, 2020, letter from Department General Counsel to District Counsel ("April 6 Letter"), attached as Exhibit "L".

Other Oklahoma school districts ensured uninterrupted meal service to their students during the pandemic, especially low-income students who rely on federal school lunch and breakfast programs, by providing access such as prepacked meals for students to eat offsite. The student population of Western Heights is approximately 90% low income, the demographic identified as most in need of nutrition assistance. *Id.* The District had stated in its Distance Learning Plan, filed with the State Department of Education on or about March 31, 2020, that "Food Service and Transportation will continue with feeding the students daily."

However, the District abruptly informed staff and parents in early April 2020 that the decision had been made not to provide any meals to students during the pandemic closure of the physical school sites. While Barnes claimed that the reason for the reversal was that District staff would not participate in food distribution to students unless the state provided them with PPE (personal protective equipment), this was refuted by Western Heights staff members who expressed to the Department and local media that they were ready and willing to help get meals to students as soon as possible. See "Western Heights School District to Bring Back Cancelled Child Nutrition Program Following Criticism", News 9, 7 April 2020 (<https://www.news9.com/story/Se987592cc9ea5695635cb39/western-heights-school-district-to-bring-back-cancelled-child-nutrition-program-following-criticism>).

The State Superintendent and the Department coordinated a partnership of local nonprofits to fill the gap providing meals to students while Western Heights had suspended its child nutrition services. The Department notified the District in a letter dated April 6, 2020, that there were potential accreditation and funding consequences if the District did not re-initiate meal services to

students, as well as implement instructional services to students through the distance learning plan it had delayed (see below at VI). *Id.* Ultimately, facing Department and Board intervention including potential accreditation and funding consequences, the District resumed meal service.

V. Distance Learning

In the sudden emergency scenario created by the COVID-19 pandemic, school districts had to plan appropriate measures for how to provide instruction and related supports to students without traditional face-to-face classroom interaction. Because not all districts were equipped to provide internet-capable devices and internet access to every student to enable fully virtual instruction, Oklahoma schools' distance learning plans were required to include considerations for how instruction would be delivered to students who did not have home internet access. See, e.g., Oklahoma Administrative Code 210:35-21-2(c)(1)(C), which codified the Department's guidance on equity in distance learning. While Western Heights represented in its distance learning plan filed with the Department that for students who did not have internet access "printed...packets will be mailed to the home" (see Distance Learning Plan at 4), the District delayed providing instruction to students for several days because it did not anticipate as many requests for printed materials as it received. See April 6 Letter.

VI. Special Education

While all schools and students faced difficulties during the COVID-19 school closures, students with disabilities and special education needs were particularly affected by the move to distance learning, and unlike most school districts Western Heights offered no in-person supports of any kind to students with disabilities. At the outset of the pandemic, the Department, Oklahoma Parents Center, Oklahoma Directors of Special Services and the IDEA Part B State Advisory Panel released a joint statement, providing in part:

despite the unprecedented challenge facing districts and families, that students with disabilities will be served by parties coming together to make decisions on how to provide services in a manner that ensures the health and safety of all parties and that allows for meaningful progress on IEP goals and educational standards.

One of our best resources during a time of crisis are the relationships built between schools, students, parents, and other community members. During this time, we encourage all parties to keep communication lines open and work together. Parents should continue to share information regarding their child's needs and to partner with and support their schools. Educational leaders should continue to lead with equity and share messages of hope and ability to provide services to students with disabilities in new ways. Educators should continue to partner with parents and do what they do best – provide differentiated instruction using a variety of accessible tools and resources. See "Joint Statement on Serving Students with Disabilities During the COVID-19 Outbreak" (<https://sde.ok.gov/sites/default/files/Joint%20Statement%20on%20Serving%20Students%20with%20Disabilities%20During%20the%20COVID-19%20Outbreak.pdf>).

Furthermore, to assist in these efforts, the Department provided guidance to school districts regarding the need to develop contingency plans for students with disabilities, ensuring such students maintained continuity and access to services that were provided to all students in the general education setting.

The staffing issues that have negatively affected the District (see IX below) appear to have had a particularly heavy impact on providing special education services to students with special needs. The impact on the District's special education students was an area of concern raised by several staff members, for example:

- A. Services were denied Severe/Profound students during the school year because we had no severe profound teacher who was assigned to them at the high school and who could provide grades for lessons. Services that were supposed to be provided per the IEP were never provided and no effort was made to hire a Severe/Profound teacher. Teachers were terminated without cause and no new teachers were hired to help Sped students.
- B. Our special education department in our district is hanging by a string. [Barnes] has fired the only severe/profound teacher we had at the high school without a replacement, he fired a deaf ed interpreter, and we have

had at least one other special education teacher quit without any new hires.
See Department's April 9 presentation to the State Board of Education,
attached as Exhibit "M".

VII. Alternative Education

Shortly after Barnes assumed administration of the District, the Department began receiving concerns regarding the continuation of the Western Heights alternative education program, a program every independent school district is required to maintain pursuant to 70 O.S. § 1210.568 in order to assist students at risk of not graduating with completing their education. In September 2019, the Department's alternative education support team and the District's then-director of the alternative education program discussed issues that had arisen for the Western Heights program under the incoming leadership of the new superintendent, Barnes. District staff reported that plans had been shared with them about potentially "cutting the alternative education program after December 2019 because of the budget cuts." See September 11, 2019 email from Missy Corn, Department Alternative Education specialist ("September 2019 Alternative Education Email"), attached as Exhibit "N". It is the Department's understanding that the District's current plan for delivering alternative education to at-risk students consists solely of requiring these students to use the online learning platform Edmentum, without providing District teachers or the direct supports school districts are required to provide for alternative education students. See FY 21 District Alternative Education Plan and Program Checklist, attached as Exhibit "O."

VIII. Federal Programs

Following the consolidated monitoring process for federal education programs, Western Heights was determined to be non-compliant for Fiscal Year 2020 in the timely submission of required documentation. See "FY2021 Consolidated Federal Programs Monitoring Report", attached as Exhibit "P".

Despite representing skills and competencies in financial management and budgeting, Barnes recent handling of emergency federal funds to mitigate effects and student impacts of COVID-19 reveals otherwise. Beginning in April 2020, the District was provided with emergency federal relief funds for the purpose of preparing for, responding to, and mitigating the impacts of COVID-19. With the initial allocation of relief funds ("ESSER I"), of which the District was allocated \$1,299,590.50, Barnes has submitted to the Department three claims for reimbursement totaling \$844,683.33. With the ESSER I funds, claims submitted by Barnes include one submitted on June 22, 2021, for \$278,765.48 for generator parts. See Claim, attached as Exhibit "Q." In total, Barnes had budgeted \$692,481.54 for generators to assist during the pandemic and when various storms in Oklahoma postpone learning for students and teachers when the power is out. See Barnes correspondence, dated November 3, 2020, attached as Exhibit "R."

Further, with respect to ESSER II and ESSER III provisions of emergency federal relief funds, the District has been allocated \$5,078,536.99 and \$11,398,647.09. In total, the emergency funds that have been allocated to the District total \$17,779,545.15. With ESSER I, II and/or III, the funds were available to make improvements and repairs to school facilities such as to ensure compliance with fire code and sprinkler systems so as to protect the health and safety of persons entering school facilities. This, however, Barnes failed to do. Further, the federal funds were available to reduce impacts of learning loss to students as a result of disruptions to learning caused by the pandemic, including extending the school year, increasing opportunities for learning, and increasing summer school programs. Again, Barnes has not increased such services with the federal fund claims submitted to OSDE. See Claims, attached as Exhibit "Q." In addition, whereas many school districts utilized the relief funds to retain staff and/or increase staffing, through incentives or recruitment efforts, Barnes has utterly failed to engage in such efforts. Simply, his

representations and demonstrations of competencies consistent with what was reflected on his application for the Certificate and the competencies required to maintain same have been noticeably vacant.

IX. Personnel

A. Support Personnel

Unlike other Oklahoma school districts, Western Heights Public Schools objected to continuing to pay its support (non-certified) employees while public sites were closed due to the COVID-19 pandemic emergency, despite provisions in law authorizing and encouraging school districts to do so. See CARES Act § 8003(d)(12); see also Executive Order ("EO 2020-07"). The letter from the Department that notified the District of the potential consequences for failure to provide instruction and nutrition services to students stated: "Given prior statements by District representatives and given the District's assurances and plain statements to the OSDE just five (5) days ago, OSDE fears the actual reason for the District's decision may instead be an effort to [] discontinue paying support personnel. This concern is bolstered by the District's prior resistance to paying these essential support personnel during the interruptions of services caused by COVID-19." See April 6 Letter, attached as Exhibit "L."

Directly impacting staff safety, Western Heights support employees notified the Department that during severe winter weather, with between 10 and 20 inches of snow falling over a 3-day period, impacting road travel on February 16, 2021, the District required support staff to report to work in icy conditions although certified employees were allowed to use a "snow day." See, e.g., "Winter Storm 2 Moves Through Oklahoma", News 9, 16 February 2021 (<https://www.news9.com/story/602bc26716d4fe0bd7a05d12/updates/-winter-storm-2->

moves-through-oklahoma). One of the individuals who contacted the Department in concern stated:

"My concern is with the way Superintendent Mannix Barnes at Western Heights Public Schools is handling his support personnel during this sever weather. [Name Redacted] has ben advised that all support personnel will need to report to work on Tuesday, February 16th but all certified personnel will be able to use a snow day. The support will need to use personal leave only if they choose not to report to work. ...If they do not have personal days to use and choose to not report, they will be considered 'AWOL' and will be docked pay for the day. ...I feel this can be life-threatening for the workers if they attempt to get on the roads. The students are completely virtual and have been all year, so I am not sure what the need would be for them to report to the building when all students, principals, teachers, etc. are home using a snow day."

See identity-redacted email ("Severe Weather Email") reproduced on page 27 of the Department's April 9 presentation to the State Board of Education, attached as Exhibit "M."

B. Teacher Contracts

For the last two school years, the District, under Barnes's leadership, is the only school district in the State of Oklahoma that collectively bargains with employees to not successfully negotiate employment agreements with the personnel bargaining unit in the school district. See Impasse, attached as Exhibit "S." Moreover, it is the Department's understanding that written teacher contracts for FY2021 were not executed by the District pursuant to 70 O.S. § 6-101.

C. Paycheck Withholdings and the District's Failure to Keep Employees' Elective Insurance Accounts Current

In May 2020, the Department began receiving communications from Western Heights staff who reported that they had been denied access to their American Fidelity accounts maintained by the District through payroll deductions pursuant to 70 O.S. § 26-104, because American Fidelity stated the accounts were in arrears. The staff reported that payroll deductions for the plans had continued to be taken out of their District paychecks, while the District had apparently failed to remit the withheld amounts to the insurance vendor—resulting in the affected employees being

denied access to their own accounts to pay for medical care. The Department made numerous requests to the District for information relating to the 70 O.S. § 26-104 paycheck deductions and associated payments to American Fidelity, an exchange Barnes was included in. See May 2020 emails between the Department and the District ("May 2020 Emails"), attached as Exhibit "T". After many requests by the Department, the District ultimately provided a letter from American Fidelity dated June 1, 2020, showing that as of that time the posting of payments due from Western Heights was complete for the months from 1/1/2019 through 3/1/2020—however, the seven (7) months from 9/1/2019 through 3/1/2020 are indicated on this document as having been "Rebill[ed]" prior to payment. See June 1, 2020, letter from American Fidelity to the District ("June 2020 American Fidelity Letter"), attached here as Exhibit "U".

In the Audit Finding Corrective Action Plan prepared by the District in response to the District's 2020 audit findings, Barnes attributed all payroll problems to the District's selected vendor and stated that "No corrective action [is] needed at this time because we switched back to the previous payroll vendor and everything is back to normal for FY2021." See "2020 Audit", attached as Exhibit "V", at 55. However, complaints and allegations regarding employee benefit accounts being in arrears have continued into Fiscal Year 2021, as recently as April 2021. See, e.g., March 2021 correspondence from American Fidelity notifying a District staff member of coverage termination due to nonpayment ("March 2021 Termination Letter"), attached as Exhibit "W"; screenshot of comment on the Department's Facebook page during the April 22, 2021 State Board of Education meeting ("Screenshot"), attached as Exhibit "X".

D. Staffing Levels

Under Barnes's tenure as Superintendent of the District, the District has seen an unprecedented departure of personnel. From the District's 2020 personnel report, the District certified that it had 494 employees, representative of 282 Certified Full-Time Equivalent (FTE) personnel and 212 Support FTE personnel. For 2021, the District certified to OSDE a total of 310 FTE personnel, representative of 199 Certified FTE and 111 Support FTE. In two years under Barnes, the District has sustained a staggering thirty-seven percent (37%) loss of staff.

During traditional months of school operations, a review of District board meeting agendas evidences fifty-four (54) certified instructional personnel have left employment with the District. Extrapolating these departures of certified teachers by years of experience reveals the following:

| 0 to 2 (years of experience) | 3 to 10 | 11 to 20 | 20+ |
|------------------------------|---------|----------|-------|
| 11 | 21 | 10 | 12 |
| 20.4% | 38.9% | 18.5% | 22.2% |

Most recently, at its June 14, 2021, meeting, the District agenda evidenced twenty-one (21) certified employee departures and one employee new hire.² In other words, a net loss of twenty (20) employees at one meeting is not sustainable and has furthered an unstable environment for the students, staff and larger District community since Barnes became the superintendent.

² Following the District's June 14, 2021 meeting, the Department requested a current personnel report (Certified and Support) for the District. On June 22, 2021, the District provided documents purporting to reflect its current Certified and Support staffing. Upon initial review, it appears the District is currently staffed at 192 Certified and 101 Support staff. Further, it appears the District intends to hire an additional 34 Certified personnel and 8 Support personnel for the 2021-22 school year.

X. Governance and Finance

Under Barnes Leadership, the district has consistently had governance and financial issues. Some of those issues include: School District Audit report for FY 2020. The Summary of Audit Results for Fiscal Year 2020, the most recent audit report available, "expresses an adverse opinion on the combined financial statements in conformity with generally accepted accounting principles and a qualified opinion for the omission of the general fixed asset account group on the combined financial statements in conformity with a regulatory basis of accounting prescribed by the Oklahoma Department of Education." See 2020 Audit, attached as Exhibit "V".

A. Findings in the 2020 Audit include:

1. As of June 30, 2020, "the District's accounting records were not properly reconciled with subsidiary records or school district bank accounts. The District treasurer had made numerous adjusting entries to the District's books in order to attempt to balance with bank records. These entries were made in lieu of clearing individual warrants/checks the way the software system is designed to work. Many checks cleared by adjusting entries were done in batches and in several instances checks were cleared twice." Id. The audit report further identifies the following journal entries necessary to balance District accounting and bank records:
2. \$18,276.78 in bank analysis charges that were not coded as general fund expenditures as required.
3. A direct wire transfer of \$240,000 to the school's "Teacher Retirement Clearing Account" in January 2020, and a direct wire transfer of \$46,000 in June 2020 to the same Teacher Retirement Account, that were never coded as general fund expenditures.
4. \$32,087.44 in Teacher Retirement System late penalties were not coded as general fund expenditures.
5. There was a \$614,408 wire transfer to the school's "IRS Account" in June 2020 that was made in error and had to be reversed.
6. \$169,006.80 in investment interest was not recorded as revenue.
7. Bank statements reflected \$144,837.97 of returned items which had to be reconciled.
8. The school's Activity Fund was not kept balanced and up to date, with 42% of deposits tested not made timely. The June 2020 reconciliation included \$1,204 of deposits in transit that were identical to previous

amounts, with no explanation available for these outstanding items. The auditor found that "[d]elayed deposits, receipting, accounting entries and bank reconciliations leave the District open to lost monies and/or inaccurate records."

9. The purposes of subaccounts and their associated revenues were not always included in school board approvals. *Id.*

XI. Disharmony

A. Concerns Reported By School Staff

Specific concerns and complaints about Barnes reported to the Department but not otherwise addressed in this Application are set forth below.

1. If one were to disagree or give feedback that is not in alignment to what they want, you are blacklisted and practically threatened with termination. As a result, teachers and principals are afraid to give their opinion when they know that will only get them in trouble or their suggestions ignored. The teachers are capable of doing everything that is thrown at them, however they have been working without a contract because Mannix Barnes refuses to come to a resolution with the negotiating team. Teachers are naturally worried and on edge all the time. A rather toxic environment to work in.
2. Our situation is dire for our students, our families, and for our teachers. Mr. Barnes has complete disdain for all of us and has made derogatory remarks to individuals about what he thinks about our families such as they are "dumb and poor".
3. As you probably also know, certified staff have never been issued a contract for this year. He has refused to negotiate with the teachers union and it has now gone to fact finding... He tells us there is no money for teacher step raises yet he continues to create positions at the administration building...
4. Our main concern at this moment is the children of our district. We haven't had face to face contact with our students in over a year. We are desperately worried about their nutrition, safety, mental health, and of course their academics.
5. We are in a high poverty area. Parents do not always have the funds to purchase the insurance for the equipment they are required to have to attend school. We have had more than one family that lost or broke their device. They are charged \$230. If they don't have that money, they don't get a new device and they get no educational services. ...We had one family that was homeless and lived in their car recently. Our administration did not care and we at the middle school provided a personal device to this mother to help her out.

6. It has been a positive experience to work in Western Heights with many children, especially those with special needs. Until the past two to three years, I have felt supported, appreciated, and secure as a teacher in the district. Unfortunately, it is no longer that way. I will retire after this school year, and many of my colleagues will find employment elsewhere. We have been discouraged as we have watched the rapid deterioration of our school district. See April 9, 2021, State Board PowerPoint, attached as Exhibit "M."

B. Concerns Reported by Parents and Community Members

1. I am a concerned parent of a children attending Western Heights School District. ...Our kids in Western Heights School District have been out of in school learning for a year now. According to the superintendent Mannix Barnes at the board meeting tonight he has no plans to allow our kids to come back to school unless he is forced to do so.
2. With the help of many volunteers we obtained more than enough signatures for a State investigative audit.
3. I am a concerned parent of children attending Western Heights School District. All the districts around me have done at least an a/b schedule and are transitioning back towards going full time....According to the superintendent Mannix Barnes at the board meeting tonight he has no plans to allow our kids to come back to school unless he is forced to do so....It is not right that many of the parents in our district are going to be forced to uproot our families and move out of this district just so our kids can get the quality education they deserve. *Id.*, see also "State Board examining accreditation of Western Heights schools", NonDoc 25 March 2021 (<https://nondoc.com/2021/03/25/state-board-accreditation-western-heights-schools/>).

The depth and breadth of substantiated concerns regarding District operations and programs under the superintendency of Mannix Barnes appear to be unprecedented in the institutional memory of the Department. Barnes has demonstrated willful noncompliance with legal requirements and professional responsibilities associated with serving as an Oklahoma public school superintendent, and a lack of willingness or ability to demonstrate the competencies required of a public school administrator. Based on the difficulty multiple State Department of Education program areas have experienced in administering education programs in Western Heights since Mannix Barnes has been the superintendent, the Department does not have

confidence that the District, or any school district under Barnes's administration, will appropriately meet its obligations to students, staff, and the community. As laid out above, Barnes has put students and staff at risk of emotional and physical harm due to acts and omissions such as: his inaction in ensuring Western Heights High School had a working sprinkler system to protect students and staff in the case of a fire; requiring support staff to report to work despite hazardous driving conditions; refusing to feed students during a global pandemic; not hiring enough staff to meet the academic and supervision needs of District students; and failing to ensure quality education services are equitably provided to all students. These outrageous failures of administrative responsibility—amongst other issues referenced in this Application—disrupt the public health, safety, and welfare of the Western Heights Community and require emergency action.

CONCLUSIONS OF LAW

1. The Board is vested with the general authority to provide for the health and safety of schoolchildren while under the jurisdiction of school authorities. See 70 O.S. § 3-104(17).

2. That Title 70 O.S. § 3-104(6) provides:

The supervision of the public school system of Oklahoma shall be vested in the State Board of Education and, subject to limitations otherwise provided by law, the State Board of Education shall...[h]ave authority in matters pertaining to the licensure and certification of persons for instructional, supervisory and administrative positions and services in the public schools of the state...and shall formulate rules governing the issuance and revocation of certificates. ...

3. The Oklahoma Administrative Procedures Act, 75 O.S. § 250 *et seq.*, governs the State Board's administrative actions relating to teacher disciplinary matters. See 75 O.S. § 250.3(3).

More specifically, 75 O.S. § 314(C)(2) provides:

If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

See 75 O.S. § 314.

4. Further, 75 O.S. § 314.1 provides:

As authorized by or pursuant to law, if an agency finds that the public health, safety, or welfare imperatively requires emergency action, has promulgated administrative rules which provide for such action and incorporates a finding regarding the emergency in its order, emergency actions may be ordered pending the final outcome of proceedings instituted

5. The Board's rule at OAC 210:1-5-6(e) provides:

Pursuant to 75 O.S. § 314.1, in the event the State Board of Education finds that public health, safety, or welfare imperatively requires emergency action, the State Board of Education may issue an emergency order summarily suspending a certificate pending an individual proceeding for revocation or other action. Such proceedings shall be promptly instituted and determined. Such an order shall include specific findings of fact specifying the grounds for the emergency action. Within three (3) business days of the issuance of the order by the Board, a copy of the order shall be sent to the holder of the certificate via certified or registered mail, delivery restricted to the certificate holder, with return receipt requested.

6. Oklahoma law and Board rules provide that a certificate shall be revoked for a "willful violation of a rule or regulation of the State Board of Education, a willful violation of any federal or state law....or for other proper cause." See 70 O.S. § 6-189(F); see also OAC 210:1-5-6(b).

7. Included in the administrative rules are the Standards of Performance and Conduct for Teachers at Title 210, Chapter 20, Subchapter 29. See OAC 210:20-29-1 through OAC 210:20-29-5.

8. The Board holds authority "in matters pertaining to the licensure and certification of persons for instructional, supervisory and administrative positions and services in the public schools of the state...and shall formulate rules governing the issuance and revocation of

certificates for superintendents of schools...." See 70 O.S. § 3-104(6). The professional competencies required for certification as an Oklahoma public school superintendent include, but are not limited to, the following administrative rule provisions:

a. General knowledge of educational administration and related skills

The candidate for licensure and certification as superintendent has, and can demonstrate, knowledge of:

- (1) Procedures for implementing policies to comply with state and federal regulations and legal requirements.
- (2) Political theory and the skills needed to build community support for district priorities and policies. ...

The candidate for licensure and certification as superintendent has, and can demonstrate, the abilities to:

- (1) Develop programs to build community support for the district.
- (2) Develop superintendent/board of education interpersonal and working relationships necessary to develop policies to guide the district.

See OAC 210:20-9-181.

b. Leadership knowledge and skills

The candidate for licensure and certification as principal/superintendent has, and can demonstrate, the skills to:

- (1) Facilitate the development of a written vision for the school/district and a well-developed educational philosophy and be able to market that vision and philosophy. ...
- (3) Facilitate the preparation of a comprehensive assessment of the school's climate and instructional programs with input from teachers, students, and parents. ...
- (8) Delegate authority and empower teachers to work as peers. ...
- (10) Build self-respect in staff and students.
- (11) Promote the value of understanding and celebrating school/community cultures.
- (12) Respect and encourage diversity among people and programs. ...
- (14) Facilitate cooperation among groups.

See OAC 210:20-9-182.

c. Abilities to put research and knowledge/findings into practice

The candidate for licensure and certification as superintendent has, and can

demonstrate the skills to:

- (5) Demonstrate the ability to work effectively with human diversity in a variety of settings, socioeconomic levels, exceptionalities, and cultural and ethnic backgrounds. ...

See OAC 210:20-9-183.

d. Application of knowledge of developmental levels and needs of students to meet educational needs of students

The candidate for licensure and certification as principal/superintendent has, and can demonstrate, the skills to:

- (1) Implement and maintain special education programs that communicate and fulfill the laws, policies, and regulations that govern these programs. ...
- (3) Foster a supportive school climate for students with disabilities, students of diverse cultural backgrounds, and students of varying developmental or socioeconomic levels through awareness, sensitivity, behavior, and active involvement in all aspects of the education process while assisting teachers in modifying instruction to facilitate the academic achievement of all students. ...
- (5) Promote instructional approaches that attend to learning differences, language differences, and diversity in the classroom and reflect acceptance and respect for all students. ...
- (9) Develop and facilitate student assistance programs for addressing the needs of at-risk children.

See OAC 210:20-9-184.

e. Human resource management and development/staff evaluation

The candidate for licensure and certification as principal/superintendent has, and can demonstrate, knowledge of:

- (8) Effective recruitment, selection, induction, compensation, and retention strategies regarding school personnel. ...
- (10) Financial, human, and material resources must be aligned to the goals of the school.

The candidate for licensure and certification as principal/superintendent has, and can demonstrate, the skills to:

- (1) Use a variety of evaluation and supervisory strategies.
- (2) Effectively use consultative and collaborative skills to work with staff members to develop their professional development plan.
- (3) Manage time effectively in order to be able to observe staff members

not only in the classroom but also in school activities, working with colleagues, conferencing with parents and engaging in professional growth activities.

See OAC 210:20-9-185.

f. Physical resources management; ensuring a safe, efficient, and effective learning environment

The administrators shall have knowledge and skills to manage the physical resources to ensure a safe, efficient, and effective learning environment. ...The candidate for licensure and certification as principal/superintendent has, and can demonstrate, knowledge of:

- (1) Principles and issues related to school facilities and operation.
- (2) Operational procedures at the school and district levels.
- (3) Principles and issues related to school safety and security. ...

The candidate for licensure and certification as principal/superintendent has, and can demonstrate, the skills to:

- (1) Operate the school plant, equipment, and support systems safely, efficiently, and effectively.
- (2) Initiate the development of operational procedures for support systems.

See 210:20-9-186.

g. Management of financial and business operations

The candidate for licensure and certification as superintendent has, and can demonstrate, knowledge of:

- (1) Budget development and data analysis.
- (2) Applicable regulations and laws governing financial management.
- (3) Principles of public school financial management.
- (4) Management procedures. ...

The candidate for licensure and certification as superintendent has, and can demonstrate, the skills to:

- (5) Involve appropriate staff, faculty, and public in the budget development process.
- (6) Utilize assistance of specialized personnel such as the school auditor, accountant, treasurer and other financial advisers.
- (7) Allocate funds appropriately to meet instructional priorities.

See 210:20-9-187.

h. Principles of ethical leadership

Educational leaders should set the tone for how employees and students interact with one another and with members of the school, district, and larger community. The leader's contacts with students, parents, and employees must reflect concern of other as well as for the organization and the position. ...

The candidate for principal/superintendent will:

- (1) have a respect for the rights of others with regard to confidentiality and dignity and engage in honest interactions.
- (2) know how to combine impartiality, sensitivity to student diversity, and ethical considerations in their interactions with others.
- (3) know how to make and explain decisions based upon ethical and legal principles.

See 210:20-9-188.

9. The Board's rules provide that "[t]eachers are charged with the education of the youth of this State. In order to perform effectively, teachers must demonstrate a belief in the worth and dignity of each human being, recognizing the supreme importance of the pursuit of truth, devotion to excellence, and the nurture of democratic principles." See OAC 210:20-29-1(b). Through their conduct, teachers must demonstrate the respect of their students, such being a responsibility that is inherent in the profession. See OAC 210:20-29-2. Public school administrators are considered "teachers" in the context of statutes and regulations applicable to certification matters. See 70 O.S. § 1-116(1).

10. A teacher shall "strive to help each student realize his or her potential as a worthy and effective member of society." See OAC 210:20-29-3. In fulfillment of the obligations to the student, a teacher shall:

- a. make reasonable effort to protect the student from conditions harmful to learning or to health and safety
- b. not intentionally expose the student to embarrassment or disparagement.
Id.

11. Additionally, the Board's rules, at OAC 210:20-29-4, provide:

- a. The teaching profession is vested by the public with a trust and responsibility requiring the highest ideals of professional service.
- b. In order to assure that the quality of the services of the teaching profession meets the expectations of the State and its citizens, the teacher shall exert every effort to raise professional standards, fulfill professional responsibilities with honor and integrity, promote a climate that encourages the exercise of professional judgment, achieve conditions which attract persons worthy of the trust to careers in education, and assist in preventing the practice of the profession by unqualified persons.

12. It has been held by Oklahoma courts that "a teacher...in the public school system is regarded by the public and pupils in the light of an exemplar, whose words and actions are likely to be followed by the children coming under her care and protection." *Vaughn v. Board of Bar Examiners for the Oklahoma Bar Association*, 1988 OK 87, 759 P.2d 1026, 1030. The teaching profession, not unlike the legal profession, imposes a code of ethics upon its members. *Id.*

13. Based upon the information and evidence presented, and the foregoing authority, proper cause exists to suspend the Teaching Certificate and certification number 439247 of Mannix Barnes.

14. Board rules further provide that upon the filing of an application to suspend and/or revoke a certificate, the Board, at its discretion, may utilize a hearing officer to conduct the hearing and such individual shall be appointed by the Chairperson of the Board. See OAC 210:1-5-6(f)(1).

WHEREFORE, the Oklahoma State Department of Education requests that the State Board of Education suspend the teaching certificate and certification number of Respondent, Mannix Barnes, pending an individual proceeding for revocation or other action, that the State Board of Education, or its designee, set a time and date for hearing on proceedings to revoke Respondent's

teaching certification and certification number, and that the teaching certificate and certification number of Respondent be revoked, effective August 2, 2021 or thereafter as determined by the Board.

Respectfully Submitted,

Brad Clark

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ATTORNEYS FOR APPLICANT

OKLAHOMA STATE BOARD OF EDUCATION
ADMINISTRATIVE COMPLAINT

STATE OF OKLAHOMA, ex. rel.
STATE DEPARTMENT OF EDUCATION,

Applicant,

vs.

MANNIX BARNES,

Respondent.

2021-10

EMERGENCY ORDER

On this 24th day of June, 2021, came on for consideration the Application for Emergency Order to Summarily Suspend Teaching Certification (the "Application") of Mannix Barnes.

JURISDICTION AND VENUE

1. The Board is vested with the general authority to provide for the health and safety of schoolchildren while under the jurisdiction of school authorities. See 70 O.S. § 3-104(17).

2. Title 70 O.S. § 3-104(6) provides:

The supervision of the public school system of Oklahoma shall be vested in the State Board of Education and, subject to limitations otherwise provided by law, the State Board of Education shall...[h]ave authority in matters pertaining to the licensure and certification of persons for instructional, supervisory and administrative positions and services in the public schools of the state...and shall formulate rules governing the issuance and revocation of certificates. ...

3. The Oklahoma Administrative Procedures Act, 75 O.S. § 250 *et seq.*, governs the State Board's administrative actions relating to teacher disciplinary matters. See 75 O.S. § 250.3(3).

More specifically, 75 O.S. § 314(C)(2) provides:

If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.
See 75 O.S. § 314.

4. Further, 75 O.S. § 314.1 provides:

As authorized by or pursuant to law, if an agency finds that the public health, safety, or welfare imperatively requires emergency action, has promulgated administrative rules which provide for such action and incorporates a finding regarding the emergency in its order, emergency actions may be ordered pending the final outcome of proceedings instituted . . .

5. The Board's rule at OAC 210:1-5-6(c) provides:

Pursuant to 75 O.S. § 314.1, in the event the State Board of Education finds that public health, safety, or welfare imperatively requires emergency action, the State Board of Education may issue an emergency order summarily suspending a certificate pending an individual proceeding for revocation or other action. Such proceedings shall be promptly instituted and determined. Such an order shall include specific findings of fact specifying the grounds for the emergency action. Within three (3) business days of the issuance of the order by the Board, a copy of the order shall be sent to the holder of the certificate via certified or registered mail, delivery restricted to the certificate holder, with return receipt requested.

6. Oklahoma law and Board rules provide that a certificate shall be revoked for a "willful violation of a rule or regulation of the State Board of Education, a willful violation of any federal or state law...or for other proper cause." See 70 O.S. § 6-189(F); see also OAC 210:1-5-6(b).

7. The Board holds authority "in matters pertaining to the licensure and certification of persons for instructional, supervisory and administrative positions and services in the public schools of the state...and shall formulate rules governing the issuance and revocation of certificates for superintendents of schools..." See 70 O.S. § 3-104(6).

8. Barnes holds a valid Oklahoma teaching certificate (the "Certificate"), number 439247. See Certificate, attached to the Application as Exhibit "A".

9. Barnes is currently certified in the following areas: 1) Superintendent, Pre-K through Grade 12. *Id*

10. A superintendent is the chief executive officer of an Oklahoma public school district (see 70 O.S. § 5-106) and, as such, is responsible for certifying the accuracy of data, reports, and other information submitted to state and federal educational authorities. For example, the Oklahoma state aid statutes provide that “[t]he State Board of Education shall revoke the certificate of any teacher, principal, or superintendent who knowingly or willfully violates any of the provisions of this article.” See 70 O.S. § 18-116(F).

11. Barnes is currently employed as the Superintendent of Western Heights Public Schools (the “District”), holding this position since August 1, 2019. Prior to his employment as Superintendent of the District, Barnes served as a member of the District’s board of education. Recently, the District board voted on June 14, 2021, to continue Barnes’s employment contract. See Agenda of the June 14, 2021 District Board of Education meeting (“Agenda”), attached to the Application as Exhibit “B”.

STATEMENT OF FACTS

I. Introduction

1. The District is comprised of nine (9) school sites and a student enrollment of approximately 2,596. In years prior, the District’s student enrollment averaged approximately 3,400 students and demographics of the enrolled student population was as follows:

- A. >90% Economically Disadvantaged
- B. 35% English Learner
- C. 46% Hispanic
- D. 16% Black
- E. 23% White

2. Academic outcomes for students in the District have severely lagged those across the state. According to the State’s statewide system of school accountability (the “School Report Card”), the District was among the lowest performing schools in the state for Academic

Achievement, consistently maintains one of the highest Chronic Absenteeism rates in the state, nearly twenty-percent (20%) below the state average, and is among the bottom in the state in providing Postsecondary Opportunities for its students. Notably, each of these performance indicators are reflective the School Report Card and indicator data since 2019, when Barnes became the District's superintendent.

3. Moreover, six of the nine school sites in the District are federally designated for Support and Improvement. One site is federally designated for Comprehensive Support and Improvement ("CSI"), which means it is within the lowest five percent (5%) of schools in Oklahoma. See 20 U.S.C. § 6311(d). Further, five of these sites are federally designated as Additional Targeted Support and Improvement ("ATSI"), which is the federal designation to identify schools in which the assessment outcomes of any subgroup of students, on its own, would lead to identification for low performance. *Id.*

4. Alarming, the preliminary data for the most recent school year evidences that academic outcomes are worse than before. See Preliminary Average Scale Score Reports, Grades 3-8, English Language Arts, Math and Science, attached to the Application as Exhibit "C."

5. In the course of conducting school accreditation and school support functions and other such duties, the State Department of Education has previously become aware of compliance problems and irregularities in the conduct of several District programs and operations under the superintendency of Mannix Barnes. On April 9, 2021, the Oklahoma State Board of Education ("Board") voted to update the public school accreditation status of Western Heights Public Schools to "Accredited with Probation" and ordered corrective action within ninety (90) days pursuant to 70 O.S. §§ 3-104, 3-104.3, 3-104.4, and Oklahoma Administrative Code 210:35-3-201. In making its determination to assign a probationary accreditation status to the District, the Board cited the

need for corrective action relating to special education, staff, benefits, finance, and leadership. See Minutes of the April 9, 2021, Special Meeting of the State Board of Education ("April 9 Board Minutes"), attached to the Application as Exhibit "D".

6. Unfortunately, the compliance problems and irregularities are a pattern of Barnes's past, present, and likely future if not acted on. With thousands of schoolchildren under his supervision, millions of state and federal dollars under his control and authority as a function of superintendent duties and responsibilities, and being placed in a position of trust, the pattern of irregular behavior, lack of compliance and no confidence in lawfully and responsibly performing his duties has put the District at risk. The State Department of Education believes that such patterns and actions by Barnes must be suspended immediately so as to serve the interests of the District community's welfare, health, and safety.

II. History

7. While serving as a board member for the District, in April 2019, Barnes submitted to the Department his application to become certified as a public school superintendent in the State of Oklahoma. At the time, the District's current superintendent would not submit his resignation for another month, with an effective date just over thirty days from the date of submitting the resignation to the District.

8. In applying for his Certificate to be a certified superintendent, Barnes advised the Department that he had 3 degrees, including:

- A. Bachelors, Communications – University of Central Oklahoma - 1997
- B. Masters, Criminal Justice – University of Central Oklahoma – 1997
- C. Masters, Education Leadership – Southern Nazarene University – 2018

9. Further, Barnes represented the following among his skills and competencies in applying for his Certificate:

- A. Accounting & Financial Management
- B. Business Planning & Analysis
- C. Growth Strategy Development
- D. Public Relations & Media Affairs
- E. Contract Negotiations & Strategic Alliances
- F. Finance, Budgeting & Cost Management
- G. Policy & Procedure Development
- H. Government Regulations, Policy & Relations
- I. Human Resources Management

10. For his professional background, Barnes identified the following roles and responsibilities:

- A. Chief Executive Officer – Onefire Holding Company, LLC – August 2018 to Present – Jenks, Oklahoma
- B. General Manager – Lucky Star Casinos and Travel Centers – 2015 to 2018 – Concho, Oklahoma
- C. President and Chief Executive Officer – Lupus Foundation of Oklahoma, Inc. - 2011 to Present, Oklahoma City, Oklahoma
- D. Chief of Staff – Oklahoma Department of Labor – 2007 to 2011, Oklahoma City, Oklahoma.

Affiliations presented by Barnes included:

- A. Member and past Chairman – Oklahoma City Police Citizens Advisory Board – 2006 to Present
- B. Member – Western Heights Public School Board – 2013-Present
- C. Board Member – Lupus Foundation of America, Oklahoma Chapter, Inc. - 2003-2008
- D. Vice-Chairman – Oklahoma Workers Safety Policy Council – 2006-2011

11. During Barnes's time as Chief of Staff at the Oklahoma Department of Labor (ODOL), he was included as a named defendant in a terminated employee's federal lawsuit against the agency alleging retaliation for her political speech and affiliations. See *Allen v. Oklahoma Department of Labor* (W.D. Okla. 2009), 2009 WL 10702951. In this 2009 action, former ODOL employee Laurie Allen argued that Barnes and then-Labor Commissioner Lloyd Fields took

adverse employment actions against her due to her public support of the previous state labor commissioner and other Republicans. One witness testified that "both Defendants Barnes and Fields said in his presence that Plaintiff needed to go and they needed to get rid of all [the previous commissioner's] supporters because they could not trust them." *Id.*

12. Omitted from Barnes's representations of prior education, professional employment, and affiliations was his expulsion from the University of Oklahoma College of Dentistry in 1993 for academic misconduct in connection with helping another student cheat. See, e.g., "Candidate Was Expelled From OU, Record Show", *The Oklahoman*, 18 August 1998 (<https://www.oklahoman.com/article/2623285/candidate-was-expelled-from-ou-records-show>). While Barnes challenged his expulsion on technical grounds, the Oklahoma Court of Civil Appeals ultimately confirmed the validity of the administrative hearing in which several students and at least one faculty member testified against him regarding academic misconduct. See *Barnes v. University of Oklahoma*, 891 P.2d 614, 1995 OK CIV APP 14.

13. With respect to his work experience with the Lupus Foundation of Oklahoma ("Lupus Foundation"), official records reveal that the organization last filed tax and organization documents in 2017. See 2017 Lupus Foundation of Oklahoma 990, attached to the Application as Exhibit "E." Leading to the 2017 cessation of activity and reports being filed with the federal government, financial records show Barnes's tenure leading the organization resulted in annual losses in amounts of \$5,100 in 2015, \$33,054 in 2016 and \$24,152 in 2017. At the time of its last report, the organization listed \$144,000 in assets. Further, according to records, Barnes is listed as the registered agent with a listed address of the current location of the Oklahoma Labor Commission. See Oklahoma Secretary of State - Oklahoma Lupus Foundation, attached to the Application as Exhibit "F." Despite official records of the Lupus Foundation showing the last

filing of non-profit in 2017, Barnes resume states that he continued serving as its Executive Director through 2018 and into 2019. Further, Barnes resume states that he was simultaneously serving as the General Manager of Lucky Star Casinos and the Lupus Foundation in 2018 and 2019. Representing that his employment with Lucky Star Casinos consisted of "completely reorganized staffing from over 1300 employees to an efficient 658 to run all operations" and his work providing over 167 million in distributions (a 45% increase in revenue) to the Tribe, it seems unlikely that in 2018 and 2019, Barnes was simultaneously serving as the Executive Director of the Lupus Foundation, especially considering evidence now showing that the organization last reported activity in 2017.

14. Under Barnes's leadership at Lucky Star Casinos, in 2016, an audit disclosed that the audit firm conducting the audit was "not able to obtain sufficient appropriate evidence to provide a basis for an audit opinion on the 2016 financial statements of the Lucky Star Casinos – Concho, Clinton, Hammon, Canton and Watonga and Lucky Star Casino Travel Center – Concho...[a]ccordingly we are unable to give an opinion as to whether the financial statements as a whole are fairly stated...[d]ue to the accounts affecting several areas of the balance sheet and income statement and the significant dollar amount related to the accounts we could not give an opinion on the financial statements as a whole because they may be materially misstated." See 2016 Audit Disclaimer of Opinion, attached to the Application as Exhibit "G." Further, the 2016 audit found instances of insufficient audit evidence, totaling \$314,735 for accounts not reconciled and a total of \$32,166,507 as a result of the inability to obtain documentation to verify fund balances. *Id.*

15. Also a part of the application for the Certificate, Barnes provided references, including Robert Everman. Everman has been identified as the current President of the District's Board of Education. Moreover, according to an April 2, 2019, letter, Everman was purportedly a Director on the Lupus Foundation's Board in 2019 and represented that Barnes had been employed by the Foundation since 2011. The 2009 federal court opinion in the labor action Barnes was named in characterizes Everman as "a good friend of Defendant Barnes." See *Allen v. Oklahoma Department of Labor* (W.D. Okla. 2009), 2009 WL 10702951. Additionally, Everman was identified by Barnes as the Chief Financial Officer for Lucky Star Casinos, during the time of Barnes serving as its General Manager. Barnes and Everman continued their relationship together serving on the District's Board of Education until Barnes's hiring by the District Board on July 1, 2019. See, e.g., "Superintendents' Critics Confront Western Heights School Board", News On 6, 29 October 2019 (<https://www.news6.com/story/Sc346e51527def49dad6e080/superintendents-critics-confront-western-heights-school-board>)

16. With zero years of experience in a public school and therefore certainly without any experience as a public school administrator, the District hired Barnes as superintendent beginning August 1, 2019, at an annual base salary of \$220,000—one of the highest superintendent salaries in the state. See 2019 Barnes Superintendent contract ("2019 Contract"), attached to the Application as Exhibit "H"; see also Oklahoma's highest superintendent salaries as of 2019, listed in "OKCPS paying highest superintendent salary in Oklahoma with new bonus", *The Oklahoman*, 18 June 2019 (<https://www.oklahoman.com/article/S634173/okcps-paying-highest-superintendent-salary-in-oklahoma-with-new-bonus>). Benefits included in Barnes's 2019 employment contract included the following:

- A. Forty (40) vacation days each year, in addition to all school holidays, with the option to either collect payment from the District for unused vacation days at the end of each fiscal year, or carry any unused vacation days forward to the next year.
- B. Twenty (20) days of paid personal business leave each fiscal year, in addition to the forty (40) vacation days and all school holidays.
- C. Twenty (20) days of sick leave each year, twice what a certified teacher or administrator is entitled to by statute under 70 O.S. § 6-104, and double the ten (10) days the District's certified personnel receive under the last negotiated agreement executed in 2019. See Western Heights Public Schools Certified Employees Negotiated Agreement 2019-2020.
- D. Twenty (20) days of unpaid leave per year to engage in outside activities such as writing activities and speaking engagements, including activities for which compensation is received from an outside entity.
- E. A retention bonus of seventy-five thousand dollars (\$75,000) payable the last full week of June 2022, provided Barnes remain continuously employed as the District superintendent through that time.

Under his first employment contract as superintendent of a public school district, Barnes was authorized to be absent from duty for up to one hundred (100) working days per year as provided for in his leave clauses, receive full compensation at one of the highest superintendent salaries in the state, and be eligible for a \$75,000 bonus at the end of his third year of employment. See 2019 Contract"), attached to the Application as Exhibit "H".

17. Since the hiring and deployment of Barnes to run the District, the Department has received multiple complaints and concerns regarding disharmony in the Western Heights community due to Barnes's leadership, and has regularly encountered non-compliance in various requirements for public schools. District staff, parents/guardians of students, and community members alike have continued to allege problematic conduct by Barnes. Examples include:

III. Fire Code Violation

It is of extreme concern regarding student safety that on April 27, 2021, the Oklahoma City Fire Department discovered that Western Heights High School did not have a functional sprinkler system. The Fire Department issued the District a Notice of Violation with the penalty code "FC3-

Fire Code Violation", signed by Major Sunderman. See "Notice of Violation", attached to the Application as Exhibit "I".

The Fire Department was advised by school staff on or about April 27, 2021 that the sprinkler system in the majority of Western Heights High School's campus was known to be nonfunctional as of February 21, 2021, but that repairs had been delayed due to financial considerations, and that decisions about system maintenance and repair such as the sprinklers were escalated through the system and ultimately fell to the district superintendent Mannix Barnes¹. Students and staff members were placed in harm's way by being allowed to occupy the building without a fully functioning sprinkler system. Additionally, despite knowing about the dysfunctional sprinkler system, the District had plans to host outside guests in this dangerous environment during OU's Big Event volunteer day which was scheduled for April 10, 2021. See "Big Event Email", attached to the Application as Exhibit "K".

¹Notwithstanding the District's regularly available resources, the District has received \$17,779,545.15 in federal Covid-19 relief funds since April 2020. These funds may specifically be used by the District for purposes of improvements and repairs to school facilities, including safety systems such as fire prevention and protection. The Coronavirus Response and Relief Supplemental Appropriations ("CRRSA") Act ("ESSER II") and the American Rescue Plan ("ARP") ("ESSER III") contain identical language authorizing a Local Education Agency receiving funds thereunder for "[s]chool facility repairs and improvements to enable operation of schools to reduce risk of virus transmission and exposure to environmental health hazards, and to support student health needs." See Section 313(d)(13) of the CRRSA Act and Section 2001(e)(2)(O) of the ARP. Further, Barnes has misrepresented that funds available in the District have been reduced such that programs and staff reductions must occur. Notwithstanding this similar pattern that was evident in the claim for terminating employees while serving as Chief of Staff at the Oklahoma Department of Labor, and resulting litigation, these claims are inconsistent with reality. Stated otherwise, the District's total available funds for general operations in 2019 were \$33,296,487.76 and in 2020 were \$34,741,925.21. See District Revenue Comparison Report, attached to the Application as Exhibit "J." In addition to this increase, as noted above, federal COVID-19 emergency relief funds available to the District in 2020-21 add more than \$17.5 million to the District's ordinary available fund totals.

Major Sunderman notified school administrators that it is dangerous and illegal to have a non-working sprinkler system. The Notice of Violation issued April 27 required a Fire Watch to be implemented immediately in order for the school to remain open. The Fire Watch included hourly walk through inspections of the building until the system was functional. *Id.* During the April 27 conversation with District staff, the following exchanges occurred:

Fire Marshall:

..... people in the building, without a working sprinkler system, Period. I don't care about insurance, I don't care about anything else. I care about the safety of the kids and the people in this building and right now that's not happening

...

Fire Marshall:

what date did those break?

Staff Member:

February the 21st

Fire Marshall:

February 21st, and you haven't been able to get anyone out here since February 21st.

Staff Member:

No sir, I haven't tried because we didn't have kids in the building and I'm trying to get insurance money and well I'm stuck, I understand what you're telling me

Fire Marshall:

Ok, well, no, you're not stuck. It is illegal to have a non-working sprinkler system. Period .At all. Even without people here

....

Fire Marshall:

So we need to move any students in the affected areas of the non-sprinkler system and they need to be in a sprinkled area or we just need to go ahead and close the school.

Fire Marshall:

So he took pictures of the pictures I have, you can go back through and look at the carts themselves, they'll show you everything, so what, so who is making the decisions on when to fix these things and to not to?

Staff Member:

Admin over there, ****, the one you just talked to, and the Superintendent, Mannix

Fire Marshall:

****?

Staff Member:

No ****, the one you just with, he is over all that

Fire Marshall:

Ok, so he's the one making the decisions either to or not to fix things?

Staff Member:

That is correct

Staff Member:

Mannix Barnes is the Superintendent so he is really gonna make the final decision, but **** brings it to him.

Fire Marshall:

So that's stuff that will get you put you in handcuffs, (yes) that will get you put in handcuffs, I will take you to county over that. There is no reason, what so ever, that this building was ever occupied with children especially...

Staff Member:

and the children did just start...we had them tutoring down in that area)

Fire Marshall

There shouldn't be kids in here....

IV. Child Nutrition

Also of urgent concern regarding student health and safety, the Department learned in early April 2020 that the District had chosen to suspend food services to students during the closure of school sites due to COVID-19 conditions, despite programs and support being in place to ensure students could continue to receive nutrition support during the pandemic. See, e.g., "Western Heights spars with state officials over ending meal service", *The Oklahoman*, 8 April 2020 (<https://www.oklahoman.com/article/5659613/mayor-disagrees-with-western-heights-food->

service-suspension). See also April 6, 2020, letter from Department General Counsel to District Counsel ("April 6 Letter"), attached to Application as Exhibit "L".

Other Oklahoma school districts ensured uninterrupted meal service to their students during the pandemic, especially low-income students who rely on federal school lunch and breakfast programs, by providing access such as prepacked meals for students to eat offsite. The student population of Western Heights is approximately 90% low income, the demographic identified as most in need of nutrition assistance. *Id.* The District had stated in its Distance Learning Plan, filed with the State Department of Education on or about March 31, 2020, that "Food Service and Transportation will continue with feeding the students daily."

However, the District abruptly informed staff and parents in early April 2020 that the decision had been made not to provide any meals to students during the pandemic closure of the physical school sites. While Barnes claimed that the reason for the reversal was that District staff would not participate in food distribution to students unless the state provided them with PPE (personal protective equipment), this was refuted by Western Heights staff members who expressed to the Department and local media that they were ready and willing to help get meals to students as soon as possible. See "Western Heights School District to Bring Back Cancelled Child Nutrition Program Following Criticism", News 9, 7 April 2020 (<https://www.news9.com/story/5e987592cc9ea5695635cb39/western-heights-school-district-to-bring-back-cancelled-child-nutrition-program-following-criticism>).

The State Superintendent and the Department coordinated a partnership of local nonprofits to fill the gap providing meals to students while Western Heights had suspended its child nutrition services. The Department notified the District in a letter dated April 6, 2020, that there were potential accreditation and funding consequences if the District did not re-initiate meal services to

students, as well as implement instructional services to students through the distance learning plan it had delayed (see below at VI). *Id.* Ultimately, facing Department and Board intervention including potential accreditation and funding consequences, the District resumed meal service.

V. Distance Learning

In the sudden emergency scenario created by the COVID-19 pandemic, school districts had to plan appropriate measures for how to provide instruction and related supports to students without traditional face-to-face classroom interaction. Because not all districts were equipped to provide internet-capable devices and internet access to every student to enable fully virtual instruction, Oklahoma schools' distance learning plans were required to include considerations for how instruction would be delivered to students who did not have home internet access. See, e.g., Oklahoma Administrative Code 210:35-21-2(c)(1)(C), which codified the Department's guidance on equity in distance learning. While Western Heights represented in its distance learning plan filed with the Department that for students who did not have internet access "printed...packets will be mailed to the home" (see Distance Learning Plan at 4), the District delayed providing instruction to students for several days because it did not anticipate as many requests for printed materials as it received. See April 6 Letter, attached to the Application as Exhibit "L."

VI. Special Education

While all schools and students faced difficulties during the COVID-19 school closures, students with disabilities and special education needs were particularly affected by the move to distance learning, and unlike most school districts Western Heights offered no in-person supports of any kind to students with disabilities. At the outset of the pandemic, the Department, Oklahoma Parents Center, Oklahoma Directors of Special Services and the IDEA Part B State Advisory Panel released a joint statement, providing in part:

despite the unprecedented challenge facing districts and families, that students with disabilities will be served by parties coming together to make decisions on how to provide services in a manner that ensures the health and safety of all parties and that allows for meaningful progress on IEP goals and educational standards.

...

One of our best resources during a time of crisis are the relationships built between schools, students, parents, and other community members. During this time, we encourage all parties to keep communication lines open and work together. Parents should continue to share information regarding their child's needs and to partner with and support their schools. Educational leaders should continue to lead with equity and share messages of hope and ability to provide services to students with disabilities in new ways. Educators should continue to partner with parents and do what they do best – provide differentiated instruction using a variety of accessible tools and resources. See "Joint Statement on Serving Students with Disabilities During the COVID-19 Outbreak" (<https://sde.ok.gov/sites/default/files/Joint%20Statement%20on%20Serving%20Students%20with%20Disabilities%20During%20the%20COVID-19%20Outbreak.pdf>).

Furthermore, to assist in these efforts, the Department provided guidance to school districts regarding the need to develop contingency plans for students with disabilities, ensuring such students maintained continuity and access to services that were provided to all students in the general education setting.

The staffing issues that have negatively affected the District (see IX below) appear to have had a particularly heavy impact on providing special education services to students with special needs. The impact on the District's special education students was an area of concern raised by several staff members, for example:

- A. Services were denied Severe/Profound students during the school year because we had no severe profound teacher who was assigned to them at the high school and who could provide grades for lessons. Services that were supposed to be provided per the IEP were never provided and no effort was made to hire a Severe/Profound teacher. Teachers were terminated without cause and no new teachers were hired to help Sped students.
- B. Our special education department in our district is hanging by a string. [Barnes] has fired the only severe/profound teacher we had at the high school without a replacement, he fired a deaf ed interpreter, and we have

had at least one other special education teacher quit without any new hires. See Department's April 9 presentation to the State Board of Education, attached to the Application as Exhibit "M".

VII. Alternative Education

Shortly after Barnes assumed administration of the District, the Department began receiving concerns regarding the continuation of the Western Heights alternative education program, a program every independent school district is required to maintain pursuant to 70 O.S. § 1210.568 in order to assist students at risk of not graduating with completing their education. In September 2019, the Department's alternative education support team and the District's then-director of the alternative education program discussed issues that had arisen for the Western Heights program under the incoming leadership of the new superintendent, Barnes. District staff reported that plans had been shared with them about potentially "cutting the alternative education program after December 2019 because of the budget cuts." See September 11, 2019 email from Missy Corn, Department Alternative Education specialist ("September 2019 Alternative Education Email"), attached to the Application as Exhibit "N". It is the Department's understanding that the District's current plan for delivering alternative education to at-risk students consists solely of requiring these students to use the online learning platform Edmentum, without providing District teachers or the direct supports school districts are required to provide for alternative education students. See FY 21 District Alternative Education Plan and Program Checklist, attached to the Application as Exhibit "O."

VIII. Federal Programs

Following the consolidated monitoring process for federal education programs, Western Heights was determined to be non-compliant for Fiscal Year 2020 in the timely submission of required documentation. See "FY2021 Consolidated Federal Programs Monitoring Report", attached to the Application as Exhibit "P".

Despite representing skills and competencies in financial management and budgeting, Barnes's recent handling of emergency federal funds to mitigate effects and student impacts of COVID-19 reveals otherwise. Beginning in April 2020, the District was provided with emergency federal relief funds for the purpose of preparing for, responding to, and mitigating the impacts of COVID-19. With the initial allocation of relief funds ("ESSER I"), of which the District was allocated \$1,299,590.50, Barnes has submitted to the Department three claims for reimbursement totaling \$844,683.33. With the ESSER I funds, claims submitted by Barnes include one submitted on June 22, 2021, for \$278,765.48 for generator parts. See Claim, attached to the Application as Exhibit "Q." In total, Barnes had budgeted \$692,481.54 for generators to assist during the pandemic and when various storms in Oklahoma postpone learning for students and teachers when the power is out. See Barnes correspondence, dated November 3, 2020, attached to the Application as Exhibit "R."

Further, with respect to ESSER II and ESSER III provisions of emergency federal relief funds, the District has been allocated \$5,078,536.99 and \$11,398,647.09. In total, the emergency funds that have been allocated to the District total \$17,779,545.15. With ESSER I, and/or II, the funds were available to make improvements and repairs to school facilities such as to ensure compliance with fire code and sprinkler systems so as to protect the health and safety of persons entering school facilities. This, however, Barnes failed to do. Further, the federal funds were

available to reduce impacts of learning loss to students as a result of disruptions to learning caused by the pandemic, including extending the school year, increasing opportunities for learning, and increasing summer school programs. Again, Barnes has not increased such services with the federal fund claims submitted to OSDE. See Claims, attached to the Application as Exhibit "Q." In addition, whereas many school districts utilized the relief funds to retain staff and/or increase staffing, through incentives or recruitment efforts, Barnes has utterly failed to engage in such efforts. Simply, his representations and demonstrations of competencies consistent with what was reflected on his application for the Certificate and the competencies required to maintain same have been noticeably vacant.

IX. Personnel

A. Support Personnel

Unlike other Oklahoma school districts, Western Heights Public Schools objected to continuing to pay its support (non-certified) employees while public sites were closed due to the COVID-19 pandemic emergency, despite provisions in law authorizing and encouraging school districts to do so. See CARES Act § 8003(d)(12); see also Executive Order ("EO 2020-07"). The letter from the Department that notified the District of the potential consequences for failure to provide instruction and nutrition services to students stated: "Given prior statements by District representatives and given the District's assurances and plain statements to the OSDE just five (5) days ago, OSDE fears the actual reason for the District's decision may instead be an effort to [] discontinue paying support personnel. This concern is bolstered by the District's prior resistance to paying these essential support personnel during the interruptions of services caused by COVID-19." See April 6 Letter, attached to the Application as Exhibit "L."

Directly impacting staff safety, Western Heights support employees notified the Department that during severe winter weather, with between 10 and 20 inches of snow falling over a 3-day period and impacting road travel on February 16, 2021, the District required support staff to report to work in icy conditions although certified employees were allowed to use a "snow day." See, e.g., "Winter Storm 2 Moves Through Oklahoma", News 9, 16 February 2021 (<https://www.news9.com/story/602bc26716dafc0bd7a05d12/updates:-winter-storm-2-moves-through-oklahoma>). One of the individuals who contacted the Department in concern stated:

"My concern is with the way Superintendent Mannix Barnes at Western Heights Public Schools is handling his support personnel during this sever weather. [Name Redacted] has ben advised that all support personnel will need to report to work on Tuesday, February 16th but all certified personnel will be able to use a snow day. The support will need to use personal leave only if they choose not to report to work. ...If they do not have personal days to use and choose to not report, they will be considered 'AWOL' and will be docked pay for the day. ...I feel this can be life-threatening for the workers if they attempt to get on the roads. The students are completely virtual and have been all year, so I am not sure what the need would be for them to report to the building when all students, principals, teachers, etc. are home using a snow day."

See identity-redacted email ("Severe Weather Email") reproduced on page 27 of the Department's April 9 presentation to the State Board of Education, attached to the Application as Exhibit "M."

B. Teacher Contracts

For the last two school years, the District, under Barnes's leadership, is the only school district in the State of Oklahoma that collectively bargains with employees to not successfully negotiate employment agreements with the personnel bargaining unit in the school district. See Impasse, attached to the Application as Exhibit "S." Moreover, it is the Department's understanding that written teacher contracts for FY2021 were not executed by the District pursuant to 70 O.S. § 6-101.

C. Paycheck Withholdings and the District's Failure to Keep Employees' Elective Insurance Accounts Current

In May 2020, the Department began receiving communications from Western Heights staff who reported that they had been denied access to their American Fidelity accounts maintained by the District through payroll deductions pursuant to 70 O.S. § 26-104, because American Fidelity stated the accounts were in arrears. The staff reported that payroll deductions for the plans had continued to be taken out of their District paychecks, while the District had apparently failed to remit the withheld amounts to the insurance vendor—resulting in the affected employees being denied access to their own accounts to pay for medical care. The Department made numerous requests to the District for information relating to the 70 O.S. § 26-104 paycheck deductions and associated payments to American Fidelity, an exchange Barnes was included in. See May 2020 emails between the Department and the District (“May 2020 Emails”), attached to the Application as Exhibit “T”. After many requests by the Department, the District ultimately provided a letter from American Fidelity dated June 1, 2020, showing that as of that time the posting of payments due from Western Heights was complete for the months from 1/1/2019 through 3/1/2020—however, the seven (7) months from 9/1/2019 through 3/1/2020 are indicated on this document as having been “Rebill[ed]” prior to payment. See June 1, 2020, letter from American Fidelity to the District (“June 2020 American Fidelity Letter”), attached to the Application as Exhibit “U”.

In the Audit Finding Corrective Action Plan prepared by the District in response to the District’s 2020 audit findings, Barnes attributed all payroll problems to the District’s selected vendor and stated that “No corrective action [is] needed at this time because we switched back to the previous payroll vendor and everything is back to normal for FY2021.” See “2020 Audit”, attached to the Application as Exhibit “V”, at 55. However, complaints and allegations regarding employee benefit accounts being in arrears have continued into Fiscal Year 2021, as recently as

April 2021. See, e.g., March 2021 correspondence from American Fidelity notifying a District staff member of coverage termination due to nonpayment ("March 2021 Termination Letter"), attached to the Application as Exhibit "W"; screenshot of comment on the Department's Facebook page during the April 22, 2021 State Board of Education meeting ("Screenshot"), attached to the Application as Exhibit "X".

D. Staffing Levels

Under Barnes's tenure as Superintendent of the District, the District has seen an unprecedented departure of personnel. From the District's 2020 personnel report, the District certified that it had 494 employees, representative of 282 Certified Full-Time Equivalent (FTE) personnel and 212 Support FTE personnel. For 2021, the District certified to OSDE a total of 310 FTE personnel, representative of 199 Certified FTE and 111 Support FTE. In two years under Barnes, the District has sustained a staggering thirty-seven percent (37%) loss of staff.

During traditional months of school operations, a review of District board meeting agendas evidences fifty-four (54) certified instructional personnel have left employment with the District. Extrapolating these departures of certified teachers by years of experience reveals the following:

| 0 to 2 (years of experience) | 3 to 10 | 11 to 20 | 20+ |
|------------------------------|---------|----------|-------|
| 11 | 21 | 10 | 12 |
| 20.4% | 38.9% | 18.5% | 22.2% |

Most recently, at its June 14, 2021, meeting, the District agenda evidenced twenty-one (21) certified employee departures and one employee new hire.² In other words, a net loss of twenty (20) employees at one meeting is not sustainable and has furthered an unstable environment for the students, staff and larger District community since Barnes became the superintendent.

X. Governance and Finance

Under Barnes Leadership, the district has consistently had governance and financial issues. Some of those issues include: School District Audit report for FY 2020. The Summary of Audit Results for Fiscal Year 2020, the most recent audit report available, "expresses an adverse opinion on the combined financial statements in conformity with generally accepted accounting principles and a qualified opinion for the omission of the general fixed asset account group on the combined financial statements in conformity with a regulatory basis of accounting prescribed by the Oklahoma Department of Education." See 2020 Audit, attached to the Application as Exhibit "V".

A. Findings in the 2020 Audit include:

1. As of June 30, 2020, "the District's accounting records were not properly reconciled with subsidiary records or school district bank accounts. The District treasurer had made numerous adjusting entries to the District's books in order to attempt to balance with bank records. These entries were made in lieu of clearing individual warrants/checks the way the software system is designed to work. Many checks cleared by adjusting entries were done in batches and in several instances checks were cleared twice." *Id.* The audit report further identifies the following journal entries necessary to balance District accounting and bank records:
2. \$18,276.78 in bank analysis charges that were not coded as general fund expenditures as required.

² Following the District's June 14, 2021 meeting, the Department requested a current personnel report (Certified and Support) for the District. On June 22, 2021, the District provided documents purporting to reflect its current Certified and Support staffing. Upon initial review, it appears the District is currently staffed at 192 Certified and 101 Support staff. Further, it appears the District intends to hire an additional 34 Certified personnel and 8 Support personnel for the 2021-22 school year.

3. A direct wire transfer of \$240,000 to the school's "Teacher Retirement Clearing Account" in January 2020, and a direct wire transfer of \$46,000 in June 2020 to the same Teacher Retirement Account, that were never coded as general fund expenditures.
4. \$32,087.44 in Teacher Retirement System late penalties were not coded as general fund expenditures.
5. There was a \$614,408 wire transfer to the school's "IRS Account" in June 2020 that was made in error and had to be reversed.
6. \$169,006.80 in investment interest was not recorded as revenue.
7. Bank statements reflected \$144,837.97 of returned items which had to be reconciled.
8. The school's Activity Fund was not kept balanced and up to date, with 42% of deposits tested not made timely. The June 2020 reconciliation included \$1,204 of deposits in transit that were identical to previous amounts, with no explanation available for these outstanding items. The auditor found that "[d]elayed deposits, receipting, accounting entries and bank reconciliations leave the District open to lost monies and/or inaccurate records."
9. The purposes of subaccounts and their associated revenues were not always included in school board approvals. *Id.*

XI. Disharmony

A. Concerns Reported By School Staff

Specific concerns and complaints about Barnes reported to the Department but not otherwise addressed in the Application are set forth below.

1. If one were to disagree or give feedback that is not in alignment to what they want, you are blacklisted and practically threatened with termination. As a result, teachers and principals are afraid to give their opinion when they know that will only get them in trouble or their suggestions ignored. The teachers are capable of doing everything that is thrown at them, however they have been working without a contract because Mannix Barnes refuses to come to a resolution with the negotiating team. Teachers are naturally worried and on edge all the time. A rather toxic environment to work in.
2. Our situation is dire for our students, our families, and for our teachers. Mr. Barnes has complete disdain for all of us and has made derogatory remarks to individuals about what he thinks about our families such as they are "dumb and poor".
3. As you probably also know, certified staff have never been issued a contract for this year. He has refused to negotiate with the teachers union and it has now gone to fact finding... He tells us there is no money for

teacher step raises yet he continues to create positions at the administration building...

4. Our main concern at this moment is the children of our district. We haven't had face to face contact with our students in over a year. We are desperately worried about their nutrition, safety, mental health, and of course their academics.
5. We are in a high poverty area. Parents do not always have the funds to purchase the insurance for the equipment they are required to have to attend school. We have had more than one family that lost or broke their device. They are charged \$230. If they don't have that money, they don't get a new device and they get no educational services. ...We had one family that was homeless and lived in their car recently. Our administration did not care and we at the middle school provided a personal device to this mother to help her out.
6. It has been a positive experience to work in Western Heights with many children, especially those with special needs. Until the past two to three years, I have felt supported, appreciated, and secure as a teacher in the district. Unfortunately, it is no longer that way. I will retire after this school year, and many of my colleagues will find employment elsewhere. We have been discouraged as we have watched the rapid deterioration of our school district. See April 9, 2021, State Board PowerPoint, attached to the Application as Exhibit "M."

B. Concerns Reported by Parents and Community Members

1. I am a concerned parent of a children attending Western Heights School District. ...Our kids in Western Heights School District have been out of in school learning for a year now. According to the superintendent Mannix Barnes at the board meeting tonight he has no plans to allow our kids to come back to school unless he is forced to do so.
2. With the help of many volunteers we obtained more than enough signatures for a State investigative audit.
3. I am a concerned parent of children attending Western Heights School District. All the districts around me have done at least an a/b schedule and are transitioning back towards going full time...According to the superintendent Mannix Barnes at the board meeting tonight he has no plans to allow our kids to come back to school unless he is forced to do so....It is not right that many of the parents in our district are going to be forced to uproot our families and move out of this district just so our kids can get the quality education they deserve. *Id.*, see also "State Board examining accreditation of Western Heights schools", NonDoc 25 March 2021 (<https://nondoc.com/2021/03/25/state-board-accreditation-western-heights-schools/>).

The depth and breadth of substantiated concerns regarding District operations and programs under the superintendency of Mannix Barnes appear to be unprecedented in the institutional memory of the Department. Barnes has demonstrated willful noncompliance with legal requirements and professional responsibilities associated with serving as an Oklahoma public school superintendent, and a lack of willingness or ability to demonstrate the competencies required of a public school administrator. Based on the difficulty multiple State Department of Education program areas have experienced in administering education programs in Western Heights since Mannix Barnes has been the superintendent, the Department does not have confidence that the District, or any school district under Barnes's administration, will appropriately meet its obligations to students, staff, and the community. As laid out above, Barnes has put students and staff at risk of emotional and physical harm due to acts and omissions such as: his inaction in ensuring Western Heights High School had a working sprinkler system to protect students and staff in the case of a fire; requiring support staff to report to work despite hazardous driving conditions; refusing to feed students during a global pandemic; not hiring enough staff to meet the academic and supervision needs of District students; and failing to ensure quality education services are equitably provided to all students. These outrageous failures of administrative responsibility amongst other issues referenced in this Application disrupt the public health, safety, and welfare of the Western Heights Community and require emergency action.

CONCLUSIONS OF LAW

1. The Board is vested with the general authority to provide for the health and safety of schoolchildren while under the jurisdiction of school authorities. See 70 O.S. § 3-104(17).

2. That Title 70 O.S. § 3-104(6) provides:

The supervision of the public school system of Oklahoma shall be vested in the State Board of Education and, subject to limitations otherwise provided by law, the State Board of Education shall...[h]ave authority in matters pertaining to the licensure and certification of persons for instructional, supervisory and administrative positions and services in the public schools of the state...and shall formulate rules governing the issuance and revocation of certificates. ...

3. The Oklahoma Administrative Procedures Act, 75 O.S. § 250 *et seq.*, governs the State Board's administrative actions relating to teacher disciplinary matters. See 75 O.S. § 250.3(3). More specifically, 75 O.S. § 314(C)(2) provides:

If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.
See 75 O.S. § 314.

4. Further, 75 O.S. § 314.1 provides:

As authorized by or pursuant to law, if an agency finds that the public health, safety, or welfare imperatively requires emergency action, has promulgated administrative rules which provide for such action and incorporates a finding regarding the emergency in its order, emergency actions may be ordered pending the final outcome of proceedings instituted ...

5. The Board's rule at OAC 210:1-5-6(e) provides:

Pursuant to 75 O.S. § 314.1, in the event the State Board of Education finds that public health, safety, or welfare imperatively requires emergency action, the State Board of Education may issue an emergency order summarily suspending a certificate pending an individual proceeding for revocation or other action. Such proceedings shall be promptly instituted and determined. Such an order shall include specific findings of fact specifying the grounds for the emergency action. Within three (3) business days of the issuance of the order by the Board, a copy of the order shall be sent to the holder of the certificate via certified or registered mail, delivery restricted to the certificate holder, with return receipt requested.

6. Oklahoma law and Board rules provide that a certificate shall be revoked for a "willful violation of a rule or regulation of the State Board of Education, a willful violation of any federal or state law...or for other proper cause." See 70 O.S. § 6-189(F); see also OAC 210:1-5-6(b).

7. Included in the administrative rules are the Standards of Performance and Conduct for Teachers at Title 210, Chapter 20, Subchapter 29. See OAC 210:20-29-1 through OAC 210:20-29-5.

8. The Board holds authority "in matters pertaining to the licensure and certification of persons for instructional, supervisory and administrative positions and services in the public schools of the state...and shall formulate rules governing the issuance and revocation of certificates for superintendents of schools..." See 70 O.S. § 3-104(6). The professional competencies required for certification as an Oklahoma public school superintendent include, but are not limited to, the following administrative rule provisions:

a. General knowledge of educational administration and related skills

The candidate for licensure and certification as superintendent has, and can demonstrate, knowledge of:

- (1) Procedures for implementing policies to comply with state and federal regulations and legal requirements.
- (2) Political theory and the skills needed to build community support for district priorities and policies. ...

The candidate for licensure and certification as superintendent has, and can demonstrate, the abilities to:

- (1) Develop programs to build community support for the district.
- (2) Develop superintendent/board of education interpersonal and working relationships necessary to develop policies to guide the district.

See OAC 210:20-9-181.

b. Leadership knowledge and skills

The candidate for licensure and certification as principal/superintendent has, and can demonstrate, the skills to:

(1) Facilitate the development of a written vision for the school/district and a well-developed educational philosophy and be able to market that vision and philosophy. ...

(3) Facilitate the preparation of a comprehensive assessment of the school's climate and instructional programs with input from teachers, students, and parents. ...

(8) Delegate authority and empower teachers to work as peers. ...

(10) Build self-respect in staff and students.

(11) Promote the value of understanding and celebrating school/community cultures.

(12) Respect and encourage diversity among people and programs. ...

(14) Facilitate cooperation among groups.

See OAC 210:20-9-182.

c. Abilities to put research and knowledge/findings into practice

The candidate for licensure and certification as superintendent has, and can demonstrate the skills to:

(5) Demonstrate the ability to work effectively with human diversity in a variety of settings, socioeconomic levels, exceptionalities, and cultural and ethnic backgrounds. ...

See OAC 210:20-9-183.

d. Application of knowledge of developmental levels and needs of students to meet educational needs of students

The candidate for licensure and certification as principal/superintendent has, and can demonstrate, the skills to:

(1) Implement and maintain special education programs that communicate and fulfill the laws, policies, and regulations that govern these programs. ...

(3) Foster a supportive school climate for students with disabilities, students of diverse cultural backgrounds, and students of varying developmental or socioeconomic levels through awareness, sensitivity, behavior, and active involvement in all aspects of the education process while assisting teachers in modifying instruction to facilitate the academic achievement of all students. ...

(5) Promote instructional approaches that attend to learning differences, language differences, and diversity in the classroom and reflect acceptance and respect for all students. ...

(9) Develop and facilitate student assistance programs for addressing the needs of at-risk children.

See OAC 210:20-9-184.

e. Human resource management and development/staff evaluation

The candidate for licensure and certification as principal/superintendent has, and can demonstrate, knowledge of:

- (8) Effective recruitment, selection, induction, compensation, and retention strategies regarding school personnel. ...
- (10) Financial, human, and material resources must be aligned to the goals of the school.

The candidate for licensure and certification as principal/superintendent has, and can demonstrate, the skills to:

- (1) Use a variety of evaluation and supervisory strategies.
- (2) Effectively use consultative and collaborative skills to work with staff members to develop their professional development plan.
- (3) Manage time effectively in order to be able to observe staff members not only in the classroom but also in school activities, working with colleagues, conferencing with parents and engaging in professional growth activities.

See OAC 210:20-9-185.

f. Physical resources management; ensuring a safe, efficient, and effective learning environment

The administrators shall have knowledge and skills to manage the physical resources to ensure a safe, efficient, and effective learning environment. ...The candidate for licensure and certification as principal/superintendent has, and can demonstrate, knowledge of:

- (1) Principles and issues related to school facilities and operation.
- (2) Operational procedures at the school and district levels.
- (3) Principles and issues related to school safety and security.

The candidate for licensure and certification as principal/superintendent has, and can demonstrate, the skills to:

- (1) Operate the school plant, equipment, and support systems safely, efficiently, and effectively.
- (2) Initiate the development of operational procedures for support systems.

See 210:20-9-186.

g. Management of financial and business operations

The candidate for licensure and certification as superintendent has, and can demonstrate, knowledge of:

- (1) Budget development and data analysis.
- (2) Applicable regulations and laws governing financial management.
- (3) Principles of public school financial management.
- (4) Management procedures. ...

The candidate for licensure and certification as superintendent has, and can demonstrate, the skills to:

- (5) Involve appropriate staff, faculty, and public in the budget development process.
- (6) Utilize assistance of specialized personnel such as the school auditor, accountant, treasurer and other financial advisers.
- (7) Allocate funds appropriately to meet instructional priorities.

See 210:20-9-187.

h. Principles of ethical leadership

Educational leaders should set the tone for how employees and students interact with one another and with members of the school, district, and larger community. The leader's contacts with students, parents, and employees must reflect concern of other as well as for the organization and the position. ...

The candidate for principal/superintendent will:

- (1) have a respect for the rights of others with regard to confidentiality and dignity and engage in honest interactions.
- (2) know how to combine impartiality, sensitivity to student diversity, and ethical considerations in their interactions with others.
- (3) know how to make and explain decisions based upon ethical and legal principles.

See 210:20-9-188.

9. The Board's rules provide that "[t]eachers are charged with the education of the youth of this State. In order to perform effectively, teachers must demonstrate a belief in the worth and dignity of each human being, recognizing the supreme importance of the pursuit of truth, devotion to excellence, and the nurture of democratic principles." See OAC 210:20-29-1(b). Through their

conduct, teachers must demonstrate the respect of their students, such being a responsibility that is inherent in the profession. See OAC 210:20-29-2. Public school administrators are considered "teachers" in the context of statutes and regulations applicable to certification matters. See 70 O.S. § 1-116(1).

10. A teacher shall "strive to help each student realize his or her potential as a worthy and effective member of society." See OAC 210:20-29-3. In fulfillment of the obligations to the student, a teacher shall:

- a. make reasonable effort to protect the student from conditions harmful to learning or to health and safety
- b. not intentionally expose the student to embarrassment or disparagement.
Id.

11. Additionally, the Board's rules, at OAC 210:20-29-4, provide:

- a. The teaching profession is vested by the public with a trust and responsibility requiring the highest ideals of professional service.
- b. In order to assure that the quality of the services of the teaching profession meets the expectations of the State and its citizens, the teacher shall exert every effort to raise professional standards, fulfill professional responsibilities with honor and integrity, promote a climate that encourages the exercise of professional judgment, achieve conditions which attract persons worthy of the trust to careers in education, and assist in preventing the practice of the profession by unqualified persons.

12. It has been held by Oklahoma courts that "a teacher...in the public school system is regarded by the public and pupils in the light of an exemplar, whose words and actions are likely to be followed by the children coming under her care and protection." *Vaughn v. Board of Bar Examiners for the Oklahoma Bar Association*, 1988 OK 87, 759 P.2d 1026, 1030. The teaching profession, not unlike the legal profession, imposes a code of ethics upon its members. *Id.*

13. Based upon the information and evidence presented, and the foregoing authority, proper cause exists to suspend the Teaching Certificate and certification number 439247 of Mannix Barnes.

14. Board rules further provide that upon the filing of an application to suspend and/or revoke a certificate, the Board, at its discretion, may utilize a hearing officer to conduct the hearing and such individual shall be appointed by the Chairperson of the Board. See OAC 210:1-5-6(f)(1).

WHEREFORE, in light of the foregoing, and after due consideration of the evidence and matters officially presented, the Board hereby finds that the public health, safety, or welfare imperatively requires emergency action such that good cause exists for the Application and that the Application should be granted. As such, effective immediately, the Oklahoma Teaching Certificate of Mannix Barnes is hereby suspended pending an individual proceeding for revocation or other action, effective August 2, 2021 or thereafter as determined by the Board.

IT IS SO ORDERED.



Joy Hofmeister
Chairperson
Oklahoma State Board Education



OKLAHOMA STATE
DEPARTMENT of EDUCATION

VIA E-MAIL WITH CERTIFIED U.S. MAIL TO FOLLOW

Western Heights Board of Education
c/o Robert Everman, President
8401 SW 44th Street
Oklahoma City, OK 73179
coachmok@aol.com

Dear Mr. Everman,

On June 24, 2021, the Oklahoma State Board of Education (the "State Board") was presented with and considered the Application for Emergency Order to Summarily Suspend and Revoke (the "Application") the Oklahoma educator certificate of Mannix Barnes (the "Certificate"). As you are aware, a copy of the Application was previously provided to you in your capacity as President of the Western Heights Public Schools board of education (the "District Board"). As such, and consistent therewith, I am writing to provide you with official notification that the State Board voted to enter an Emergency Order to suspend the Certificate. See Emergency Order, attached; see also Oklahoma Administrative Code ("OAC") 210:1-5-6.

Though the District Board was previously made aware of the Application and the State Board's action to issue the Emergency Order on June 24, the District Board's inaction in response to these matters, including the District Board's meeting on June 28, compel the Oklahoma State Department of Education (the "OSDE") to provide you with notice of the requirements of a local school board when an educator certificate has been suspended. Currently, Oklahoma law provides that "it shall be unlawful for any person to serve...as classroom teacher or other instructional supervisory or administrative employee of a school district unless the person holds a valid certificate of qualification." 70 O.S. § 6-108. In addition, the statutes governing public school districts provide that it is unlawful for a school district to employ "any person to perform services for the district unless the person holds a valid certificate of qualification." 70 O.S. § 6-107; see also *Guthrie v. School Dist. No. 1-10*, 1998 OK CIV AP 47, 958, P.2d 802 (relating to inapplicability of the Oklahoma Teacher Due Process Act). As such, these currently effective laws would place a responsibility on the District Board to terminate Mr. Barnes employment as a result of the current invalidity. However, effective July 1, 2021, Oklahoma law will provide as follows:

A teacher¹ whose certificate was suspended by the State Board of Education pursuant to Section 3-104 of this title and Sections 314 and 314.1 of Title 75 of the

¹ "Teacher" is defined pursuant to 70 O.S. § 1-116 as any person who is employed to serve as district superintendent...[and] shall not be deemed qualified unless the person holds a valid

EXHIBIT
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OKLAHOMA STATE
DEPARTMENT of EDUCATION

Oklahoma Statutes shall be placed on suspension pursuant to the provisions of Section 6-101.29 of this title while proceedings for revocation or other action are pending before the State Board of Education. The provisions of this subsection shall not preclude the initiation of due process procedures in accordance with Section 6-101.20 et. seq of this title.

See Senate Bill 13 (2021), effective July 1, 2021 at 70 O.S. § 6-101(L).

As such, for purposes of the Emergency Order, the District Board is, at a minimum, required to place Mr. Barnes and his employment on suspension pending the proceedings to revoke the Certificate. Please provide my office with confirmation that this has taken place within five (5) business days of today's date. Should the District Board not take action consistent with the Emergency Order and the requirements in Oklahoma law, the OSDE and/or State Board will pursue any and all legal remedies to ensure the District Board's compliance with the law.

Should you have any questions or wish to further discuss these matters, please do not hesitate to contact me.

Sincerely,

Brad Clark
General Counsel

Cc: Honorable Members, State Board of Education
Jerry Colclazier, Attorney for the District Board

certificate issued by and in accordance with the rules of the State Board of Education...to perform the particular services for which the person is employed. 70 O.S. § 1-116(1); see also OAC 210-1-5-6(a).