

Amy Boone
[REDACTED]
[REDACTED]

Western Heights School District I-41
Western Heights Board of Education
Interim Superintendent Bradyn Savage
Board Members Robert Sharp
Linda Farley
Briana Flatley
Darrin Dunkin

Western Heights District Attorney Laura Holmes
Western Heights Board of Education President Robert Everman
Western Heights Board of Education Attorney Jerry Colclazier

Letter of Demand

To the above recipients,

We, Amy Boone, Penny Bradley, David Dunn, Magaly Rivas, Joe Cooper, Dawrenda Cooper, Jendra Cooper, LaCosta Herrion, Carol Wood, & Eddie Wood come today to make an official complaint and demand of remedy. Per Title 70-5-126, this is the first step to bringing civil actions against official(s) expending money on any unauthorized, unlawful, or fraudulent contract.

We contend that an unauthorized, unlawful, or fraudulent contract between Western Heights School District and Mannix Barnes did occur on 6/22/2021. There was no vote for the modification, change, or renewal of Mannix Barnes contract on the agenda or a recorded vote in the minutes that would allow the contract to be valid.

By the language in the contract of 2019 and 2021, and by established policy and statutes used prior, and presently within the district, the district failed to meet the lawful standards needed to expend the funds on the contract.

The events surrounding this contract are hazy, but what is clear is that the Western Heights Board of Education is either the victim of a rogue board president, board attorney, and superintendent in an attempt defraud the school district and Western Heights children and families of funds, or the Board of Education are the perpetrator of unlawful acts.

The Statutes

(Exhibit A)

Title 70-5-126 reads as follows:

Upon refusal, failure or neglect of the board of education of any school district, **after written demand made upon them by ten school district electors of such school district, or by the State Board of Education, either to return the money or to institute and diligently prosecute the proper proceedings at law or in equity for the recovery of any money or property belonging to such district, paid out or transferred by any officer thereof, in pursuance of any unauthorized, unlawful, fraudulent or void contract, made or attempted to be made by the board of education of any such school district**, or for the penalty provided in Section 70-5-125 of this title, any school district elector of the school district affected by such payment or transfer, may, in the name of the State of Oklahoma as plaintiff, institute and maintain any proper action at law or in equity which the board of education of the school district might institute and maintain, for the recovery of such property or for said penalty, for the benefit of the district, and any judgment thus obtained shall provide for payment of attorney fees and court costs to the prevailing party.

(Exhibit B)

Title 70-5-125 reads as follows:

A. Every member of the board of education or board of county commissioners who shall hereafter vote for the payment of any money or transfer of any property belonging to the school district in settlement of any claim known to such member to be fraudulent or void, or in pursuance of any unauthorized, unlawful or fraudulent contract or agreement made or attempted to be made, for any school district, by any officer or officers thereof, and every person having notice of the facts with whom such unauthorized, unlawful or fraudulent contract shall have been made, or to whom, or for whose benefit such money shall thereafter be paid, or such transfer of property shall be made, shall be liable in damage to all innocent persons in any manner injured thereby and shall be liable to the school district affected for double the amount of all sums of money so paid, and double the value of property so transferred, as a penalty to be recovered by civil suit brought by the board of education of such school district, or by any school district elector thereof, as provided in Section 70-5-126 of this title.

B. Any member of a board of education of a school district who votes for the payment of any money or transfers any property belonging to the school district in settlement of any claim known to such member to be fraudulent, void or in pursuance of any unauthorized, unlawful, or fraudulent contract or agreement made or attempted to be made for any such district shall be guilty of a misdemeanor. Every person having notice of the facts with whom any unauthorized, unlawful, or fraudulent contract shall have been made or to whom or for whose benefit such money or property shall have been or thereafter will be paid shall be guilty of a misdemeanor. Upon conviction of a misdemeanor described in this section, the person shall make full restitution of all monies and/or property misallocated and be punished by a fine of not less than One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for not to exceed one (1) year, or by both such fine and restitution and imprisonment and if such person is a member of a board of education, shall be removed from office pursuant to Section 1181 et seq. of Title 22 of the Oklahoma Statutes or Section 91 et seq. of Title 51 of the Oklahoma Statutes.

C. Such illegal payment of money shall include, but shall not be limited to, salaries or any compensation paid to any person for teaching or performing other services for the district when such person does not have a written contract required by law or does not hold a valid certificate as required by law or by rules and regulations of the State Board of Education for the subjects taught or services performed and which is valid for the entire time for which such person has been paid. Any person receiving an illegal payment knowing or having reasonable cause to believe such payment to be illegal shall be guilty of a misdemeanor and shall be subject to the punishment prescribed in subsection B of this section.

(Exhibit C)

Title 70-5-117 Powers and Duties - Rules and Regulations Subsection A & Subsection A Paragraph 15 reads as follows:

Subsection A

The board of education of each school district shall have power to:

.....

Subsection A Paragraph 15

Contract with and fix the duties and compensation of physicians, dentists, optometrists, nurses, attorneys, **superintendents**, principals, teachers, bus drivers, janitors, and other necessary employees of the district;

.....

(Exhibit D)

Title 5-118 - Meetings of Boards of Education of School Districts

.....

All meetings of the boards of education shall be public meetings, and in all such meetings the vote of each member must be publicly cast and recorded. Executive sessions will be permitted only for the purpose of discussing the employment, hiring, appointment, promotion, demotion, disciplining, or resignations of any or all of the employees or volunteers of the school district, and for the purpose of discussing negotiations concerning employees and representatives of employee groups, and for the purpose of hearing evidence and discussing the expulsion or suspension of a student or students only when requested by the student involved or his or her parent, attorney, or legal guardian; provided, **however, that any vote or action thereon must be taken in a public meeting with the vote of each member publicly cast and recorded.** It is required that the board of education shall provide notice to the student, his or her parent, attorney or legal guardian that said student is entitled to an executive session regarding the discussion of expulsion or suspension of said student.

Any action taken in violation of the provisions of this act shall be invalid.

.....

(Exhibit E)

Title 70-5-110 - Instruction for New and Incumbent Board Members – Expenses Paragraph B

B. When an incumbent of a district board of education files a notification and declaration of candidacy for reelection to the district board of education, the member shall be required to agree and pledge in writing that upon reelection the member will complete six (6) hours of instruction, within fifteen (15) months of election, including one (1) hour of instruction in school finance, one (1) hour of instruction in the Oklahoma Open Records Act and the Oklahoma Open Meeting Act and one (1) hour of instruction in ethics. The remaining hours may be satisfied by attending a workshop, class or seminar addressing the education issues set forth in subsection A of this section.

(Exhibit F)

Title 25-8-311 Open Meeting Act Public Bodies

Notice Subsection B Paragraph 2 subsection B states below:

1. All agendas required pursuant to the provisions of this section shall identify all items of business to be transacted by a public body at a meeting including, but not limited to, any proposed executive session for the purpose of engaging in deliberations or rendering a final or intermediate decision in an individual proceeding prescribed by the Administrative Procedures Act.
2. **If a public body proposes to conduct an executive session, the agenda shall:**
 - a. contain sufficient information for the public to ascertain that an executive session will be proposed,
 - b. identify the items of business and purposes of the executive session, and**
 - c. state specifically the provision of Section 307 of this title authorizing the executive session.

(Exhibit G)

Title 25-8-313 - Actions Taken in Willful Violation of Act

Any action taken in willful violation of this act shall be invalid.

The Contract

The 2019 contract clearly directs on how to modify, change, or renew the contract. (See Exhibit H)

This Contract contains the entire agreement between the District and Superintendent as of August 1, 2019. All prior agreements and understandings, whether written or oral, pertaining to the District's employment of Superintendent are fully abrogated and of no further force and effect from and after August 1, 2019. Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Contract, Superintendent and District agree that in case of any uncertainty or any ambiguity of any language in this Contract, all of the provisions of this Contract shall be interpreted in accordance the dictates of Title 15, Section 170 of the Oklahoma Statutes as to a contract between a public body and a private party. The omission from this Contract of a term or provision contained in an earlier draft of this Contract shall have no evidentiary significance regarding the contractual intent of the parties. **The terms, conditions and provisions of this Contract may mutually be changed by the parties if such changes are reduced to writing and signed by both parties. No modifications or changes to this Contract will be binding upon the District unless the changes/modifications are approved by a majority vote of a quorum of District's Board of Education at a regular meeting as an agenda item for that meeting.**

This is again echoed in the 2021 contract. (See Exhibit I)

This Contract contains the entire agreement between the District and Superintendent as of July 1, 2021. All prior agreements and understandings, whether written or oral, pertaining to the District's employment of Superintendent are fully abrogated and of no further force and effect from and after July 1, 2021. Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Contract, Superintendent and District agree that in case of any uncertainty or any ambiguity of any language in this Contract, all of the provisions of this Contract shall be interpreted in accordance the dictates of Title 15, Section 170 of the Oklahoma Statutes as to a contract between a public body and a private party. The omission from this Contract of a term or provision contained in an earlier draft of this Contract shall have no evidentiary significance regarding the contractual intent of the parties. **The terms, conditions and provisions of this Contract may mutually be changed by the parties if such changes are reduced to writing and signed by both parties. No modifications or changes to this Contract will be binding upon the District**

unless the changes/modifications are approved by a majority vote of a quorum of District's Board of Education at a regular meeting as an agenda item for that meeting.

The language of this contract gives step by step instructions on how to modify, change, or renew the contract.

- 1. Changes reduced to writing.**
- 2. Added as an agenda item on a regular board meeting agenda.**
- 3. Vote of the board in open meeting.**
- 4. Majority vote of quorum to approve.**
- 5. Sign new/modified contract by both parties.**

Not only did the contracts themselves tell them the steps they need to take, but the Western Heights Board had executed these steps with the prior Superintendents Joe Kitchens. On September 10th, 2018, the board minutes reflect as follows: (See Exhibit J)

5. Vote to authorize or not authorize the amendment of contract terms for Superintendent Joe Kitchens for the term May 1, 2018 through June 30, 2019.

Motion to authorize the amendment of contract terms for Superintendent Joe Kitchens for the term May 1, 2018 through June 30, 2019 Passed with a motion by Mannix Barnes and a second by Robert Sharp.

As you look the screen capture above you see that the motioner, Mannix Barnes is the same as a signer of the 2019 and 2021 contracts that were not properly executed.

The facts are clear here:

- 1. Mannix Barnes knew or had the ability to know how to properly execute the 2021 contract through his experiences on the board and the continued learning course that board members must take. Furthermore Mr. Barnes has completed his education requirements to be superintendent of the school district which would have covered school law.**
- 2. Robert Everman has over 20+ years of school board experience and would have voted on multiple superintendent contracts in that 20+ years because a superintendent can only contract for 3 years per contract by law. He also has decades of business and political experience.**
- 3. Jerry Colclazier began representing Western Heights Board of Education in June of 1991. At the signing of the 2021 contract, Jerry Colclazier had been legally representing the Western Heights Board for 30 years. The screenshot taken from his website shows that he puts emphasis on his contractual negotiation abilities.**

SCHOOL AND MUNICIPAL LAW

Colclazier & Associates represents a number of school districts across the state, including Western Heights Public Schools in Oklahoma City. Advising schools and municipalities covers all aspects of the law from employment issues, to public bidding, to special education, to bargaining and contractual negotiations.

With 50+ combined years of experience in education, not only education, but with Western Heights School District management and advising, these three men want us to believe that with all that experience they do not have the knowledge to properly execute a contract.

The Events

As reflected by the signatures of the 2021 contract, On June the 22nd, 2021 Robert Everman and Jerry Colclazier entered into a contract with Mannix Barnes that indebted the School District of Western Heights for more than \$660,000.00.

The contract states that the contract was “caused” (giving rise to action) by the Western Heights School Board. **(See Screen Captures Below) (See Exhibit I)**

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 41
Of Oklahoma County, Oklahoma

1. **Term:**

The Board, by and on behalf of the District, hereby employs and Superintendent hereby accepts employment as Superintendent of Western Heights Public Schools for a maximum term commencing July 1, 2021 and ending June 30, 2024.

In order for the Western Heights Board of Education to cause an action, there must be a public vote. This is why the contract clearly states, **“No modifications or changes to this Contract will be binding upon the District unless the changes/modifications are approved by a majority vote of a quorum of District's Board of Education at a regular meeting as an agenda item for that meeting.”**

You don't want someone in authority to circumvent the proper process to achieve gaining the contract. But, if and when this occurs, there needs to be a clause like the one above to avoid having to pay unauthorized contract.

What is an unauthorized contract?

It is a contract that is entered into by a representative of an organization or public body without the authorization of the board for which the person represents. In this instead the Board President, Robert Everman, entering into the contract without vote being held at regular meeting and the contract being an agenda item at meeting would raise to the level of unauthorized contract.

The Agendas

We have looked over the agendas and minutes going back to the hiring of Mannix Barnes. In the minutes and agendas, they are only two instances when the employment of Mannix Barnes listed as agendas items. In both instances they are listed as executive session items.

First, is May the 11th, 2020 (See Screen Capture Below). (See Exhibit J)

6. Vote to authorize or not to authorize the continued employment of Mannix Barnes as Superintendent of Western Heights Schools.

Motion to continue employment of Mannix Barnes as Superintendent of Western Heights Schools Passed with a motion by Rosalind Cravens and a second by Ms. Linda Farley.

Second, is June the 14th, 2021 (See Screen Capture Below). (See Exhibit K)

6. Vote to authorize or not to authorize the continued employment of Mannix Barnes as Superintendent of Western Heights Schools.

Motion to authorize the continued employment of Mannix Barnes as Superintendent of Western Heights Schools. Passed with a motion by Robert Sharp and a second by Ms. Linda Farley.

State Statute Title 70-5-117 gives the board the power to contract with a superintendent. The 2019 contract also gives the board the power to extend the contract at any point. But, it has to be done in a proper manner. While a discussion about this or any contract can take place in the executive session, it must be clearly listed on the agenda as an executive session item. For contracts to be listed as an executive sessions item there would need to be clear wording that lets the public know that a contract modification is taking place. In both of these instances, the board is conducting annual evaluations. The annual evaluation was required in both the contract and by state statute. (See Screen Captures Below). (See Exhibit H & I)

Superintendent Evaluation and Annual Performance Incentive Stipend:

The Board shall evaluate and assess the performance of Superintendent in writing at the times required under the Board-approved Superintendent evaluation instrument and at such other times as deemed necessary and appropriate by the Board. The meetings at which the Board evaluates and assesses the performance of Superintendent will be held in closed or executive session unless the Board and Superintendent mutually agree, in writing, that they should be held in open session. The evaluation shall be in instrument as determined by the Board. The evaluation process shall conclude in June of each fiscal year with a final summative score (that is, the composite numerical average) for all Board members submitting an evaluation. For purposes of calculating the final summative score each

In order to show that the board and legal counsel Jerry Colclazier knew how to properly execute the 2021 contract, we again turn to the board minutes.

First on September 10th, 2018, the Western Heights Board of Education voted to approve an amendment to Joe Kitchens contract. The item is listed on the agenda under Instruction/General Areas/Special

Superintendent Items. Everything you have to do to properly execute a contract modification, change, or renew the superintendent contract is listed in the 2019 contract. Put the contract change on a regular meeting agenda. Let it be voted on in open meeting and you have met all the requirements and all the amendments and terms are legal. Joe Kitchens contract amendment, done less than a year before Mannix Barnes become superintendent and motioned by Mannix Barnes is correct. Yet, when he became superintendent, he and the other board members forgot how to do it. (See Screen Captures Below). (See Exhibit L)

5. Vote to authorize or not authorize the amendment of contract terms for Superintendent Joe Kitchens for the term May 1, 2018 through June 30, 2019.

Motion to authorize the amendment of contract terms for Superintendent Joe Kitchens for the term May 1, 2018 through June 30, 2019 Passed with a motion by Mannix Barnes and a second by Robert Sharp.

Second on June the 10th, 2019, the Western Heights Board of Education voted to approve another modification to the contract of Joe Kitchens. (See Exhibit M)

1. Vote to receive the resignation of Joe Kitchens as Superintendent of Schools effective 31 July 2019; and approve or not approve the terms of employment for Joe Kitchens as Superintendent for the term May 1, 2019 thru July 2019.

Motion to receive the resignation of Joe Kitchens as Superintendent of Schools effective 31 July 2019; and approve or not approve the terms of employment for Joe Kitchens as Superintendent for the term May 1, 2019 thru July 2019 Passed with a motion by Ms. Linda Farley and a second by Robert Sharp.

These modifications, changes, and/or extensions to both Joe Kitchens and Mannix Barnes occurred in less than a 3-year period. While Mr. Kitchens contract were executed properly, Mr. Barnes contracts were not.

Below is a screen capture that also shows that the agenda used the similar wording for Joe Kitchens annual evaluation as they did with Mr. Barnes annual evaluation. (See Screen Captures Below) (See Exhibit N)

6. Discuss and take possible action regarding the continued employment of Joe Kitchens

Motion to approve the continued employment of Joe Kitchens. Passed with a motion by Rosalind Cravens and a second by Mannix Barnes.

When wording that is similar in nature and/or does not distinguish between two acts, then the use of the term is interpreted by historical precedent. As we see with Joe Kitchens evaluation on the agenda, the wording is similar as the wording for the 2020 & 2021 Mannix Barnes evaluations listed on agenda. Historical precedent therefore dictates that the meaning is the same.

Demands

The electors listed in this Letter of Demand, request that all payments, included but not limited to salary, bonuses, benefits, and attorney fees immediately cease, and the board diligently seek the return of any and all monies paid by Western Heights School District on this unauthorized, unlawful, or fraudulent contract with Mannix Barnes.

We have clearly shown why this contract is not legal and lawful. There was no reasonable assumption that could be made by any member of the public, based on the wording of any agenda items on regular

school board meeting agendas of Western Heights Public Schools, that Mr. Barnes would be receiving a new, modified, changed, or amended contract. There was still a full year left on the original contract.

If the board make the conscious decision not to pursue the recovery of the Western Heights School District funds erroneously used to pay Mannix Barnes through this contract, the electors will be left with no other recourse than to pursue legal actions against the board members that put the contract in place.

I want to stress that this behavior will not be tolerated and if the extreme action of civil suit must be pursued by the electors, it will be extremely detrimental to the members of Western Heights School Board.

We will seek the maximum civil penalty which shall be liable to the school district affected for double the amount of all sums of money so paid, and double the value of property so transferred, as a penalty to be recovered by civil suit brought by the board of education of such school district, or by any school district elector thereof.... Currently, the amount is around \$300,000.00. Double this amount is \$600,000.00 and is rising each month that payments are being made to Mannix Barnes.

Jerry Colclazier will most likely advise you that the contract was executed properly. But I would advise the board and individuals to seek their own legal advice and/or counsel due to conflict of interest as he was the author of the contract and a signer of said contracts, and in legal actions, will need to be called as a witness to the contract.

We look forward to a response from the board and their assists in the pursuit for recovery of Western Heights School District's misappropriated funds.

Respectfully,

- 1. Amy Boone** _____
- 2. Penny Bradley** _____
- 3. David Dunn** _____
- 4. Magaly Rivas** _____
- 5. Joe Cooper** _____
- 6. Dawrenda Cooper** _____
- 7. Jendra Cooper** _____
- 8. Lacosta Herron** _____
- 9. Carol Wood** _____
- 10. Eddie Wood** _____

APPENDIX

Exhibit A.....	Title 70-5-126 Refusal, Failure or Neglect of Board - Elector May Institute Action
Exhibit B.....	Title 70-5-125 Claims - False - Voting For – Liability
Exhibit C.....	Title 70-5-117 Powers and Duties - Rules and Regulations
Exhibit D.....	Title 5-118 - Meetings of Boards of Education of School Districts
Exhibit E.....	Title 70-5-110 - Instruction for New and Incumbent Board Members – Expenses
Exhibit F.....	Title 25-8-311 Open Meeting Act Public Bodies Notice
Exhibit G.....	Title 25-8-313 Actions Taken in Willful Violation of Act
Exhibit H.....	Mannix Barnes 2019 Superintendent Contract
Exhibit I.....	Mannix Barnes 2021 Superintendent Contract
Exhibit J.....	Western Heights Board of Education Minutes 5-11-2020 Annual Evaluation of Mannix Barnes
Exhibit K.....	Western Heights Board of Education Minutes 6-14-2021 Annual Evaluation of Mannix Barnes
Exhibit L.....	Western Heights Board of Education Minutes 9-10-2018 Mod to Joe Kitchens Contract
Exhibit M.....	Western Heights Board of Education Minutes 6-10-2019 Mod to Joe Kitchens Contract
Exhibit N.....	Western Heights Board of Education Minutes 3-11-2019 Joe Kitchens Annual Evaluation