



IN THE DISTRICT COURT OF TULSA COUNTY  
STATE OF OKLAHOMA

DISTRICT COURT  
**FILED**

FEB 29 2012

ORDER

SALLY HOWE SMITH, COURT CLERK  
STATE OF OKLAHOMA, TULSA COUNTY

On this 28<sup>th</sup> day of Feb., 2012, the following matters in the designated case came on for decision, pursuant to the rules of the District Court for Tulsa County. The Clerk of the Court is directed to notify counsel of record of the indicated decision by mailing a copy of this Order to them and to file a copy of this Order in this case.

CJ 2008 6173      Jim Sisney      vs.      Mary Anne Flippo, et al

Before the Court is the decision on the District's motion for summary judgment on the breach of contract claim brought by Plaintiff. The Court has requested an additional round of briefings on the issue of the impact of the possible waiver issues regarding the due process hearing. Interestingly, *both* supplemental briefs agree that there is a remedy regarding breach of contract, limited to the issue as announced in the Scherich case, 591 P.2d 1270 (Okla. Civ. App. 1979). Specifically Scherich held "to say Scherich has no right of appeal to the court is not to say he has no remedy for a breach of contract, e.g., arbitrary dismissal for willful neglect of duty by the board—ie., a dismissal founded on no evidence of such neglect."

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SALLY HOWE SMITH  
COURT CLERK

It should be noted the Court on its own initiative found a federal case indicating that there may be waiver issues involved in the breach of contract claim. In *Seabourn v Independent School District of Woodward County*, 775 F. Supp. 2d 1306 (W.D. Okla. 2010) the Court held that a breach of contract claim had been waived for failure to seek a de novo review procedure by a tenured teacher. Neither party cites this case in its supplemental brief, but the due process procedures for an administrator is distinguishable for a career teacher, although the legal principles of waiver seem similar. While this

