Report Comment | Ignore User
612, Broken Arrow (7/3/2009 3:28:07 PM)
Just saw this on the Ledger:

Dom E. wrote on Jul 3, 2009 2:04 PM:

" Just found out that 612 is the daughter of one of the board members.

Don't know which one, a close personal friend of theirs wouldn't let on as she felt she already told too much.

But considering their stance we know it has to be one of the 3 amigos. "

Some of these people really do live in fantasyland, don't they.

Kinda blows their credibility with me.

Jolie, maybe you are my long lost twin!

Report Comment | Ignore User
Jolie2, (7/3/2009 4:31:31 PM)
I'm sure we all would like to know who each poster is and are afraid of finding out at the same time. :)

For all I know, 612, you could be the daughter of one of the board members, but you still make a lot of sense to me! I would hope if you were that close to the situation, you'd be dropping more substantial clues as to what's been happening behind the scenes that the majority of three were unable to talk about in public.

Why does it always seem that those who make personal attacks and try to discredit posters online are the ones who are against the three-member majority? It really weakens their argument by being so petty.

Report Comment | Ignore User
612, Broken Arrow (7/3/2009 4:46:36 PM)
Yeah, do I really sound like I know anything?

I don't know which board members have daughters, or their ages. Of course, my posts are "infantile", so even babies are suspect.

Report Comment | Ignore User
612, Broken Arrow (7/5/2009 9:01:10 AM)
Posted on Ledger:

What bothers me about this is that Ms. Whelpley's daughters might be thought of as posting 612's comments. I don't think Dom E thought it through. He probably didn't realize there were so few possibilities, and that he was targeting two innocent people. Either way, it was irresponsible for him to post as fact either inaccurate gossip or an outright lie.

Dom E.

Your purpose in claiming I was a board member's daughter was probably to make me look biased so people would dismiss my point of view. But did it occur to you that you just dragged into this two people who have nothing to do with 612's posts?

I looked through newspaper articles and what I found agrees with Interested Citizen's conclusion: The only possibilities are Ms. Whelpley's daughters. Now, thanks to you, people in the community may be attributing my comments to them. Was that your intent?

Your attempt at discrediting me doesn't bother me – no matter what my identity, I'm right about considering all the possibilities and not attacking people and ruining reputations based on premature conclusions.

Did you gullibly listen to some gossip and post it as fact without verifying it? Or did you just make it up and post it as fact? Shameful. Your people should call for your resignation.

Report Comment | Ignore User

Jolie2, (7/5/2009 11:15:23 AM)

Trying to discredit the messenger in order to diffuse the message is one of the oldest, cheapest tricks in the book. We sure have seen too many of these attempts on the Ledger's comments. I'm glad you called "Dom" out on his irresponsible behavior.

Serving as a volunteer on the school board shouldn't include having your family potentially subjected to harrassment. For that matter, the board members shouldn't have to endure it, either.

Report Comment | Ignore User

612, Broken Arrow (7/5/2009 12:33:03 PM)

Only problem now is - someone might be inspired to say "doth protest too much", which is just too annoying. Especially if they include the dreaded "methinks". ** shudder **

Report Comment | Ignore User

thenight1, (7/6/2009 2:43:48 PM)

Trying to figure out who online posters are is just a distraction. Pay attention to what is said, that is far more informative. While my point of view has been different on many occasions, I have appreciated the input of everyone. I think opposing viewpoints can help keep us in reality and not too far on one side or another. After all, the truth is usually found somewhere in the middle.

I've been accused of being 2 different people so far and if this keeps dragging on, who knows how many more. I hate to see innocent people dragged into this but I wouldn't worry too much about it 612.

Report Comment | Ignore User

thenight1, (7/6/2009 2:57:23 PM)

Gerber seems to be doing a good job as far as I can tell, but why in the world would we want to extend his contract at this time? Wait until the investigations are over and in the meantime, keep looking for a long term replacement. I don't think we know if there is a better replacement yet because I don't even know if the BOE has seriously looked yet. If a replacement hasn't been found in time or the investigations are still ongoing, then extend Gerber's contract 1 year at a time.

The BOE has enough problems without breaking their word about Gerber being temporary. that just invites more distrust.

Report Comment | Ignore User

Jolie2, (7/6/2009 8:17:54 PM)

I wholeheartedly agree with your comments about Dr. Gerber, thenight1. The agreement that he would not seek the position beyond one year should be honored. It is important for the board to do everything it can to rebuild trust by honoring its agreements and keeping their word.

When the investigation is over and the results are released, I sincerely hope that Dr. Gerber and the original majority of 3 on the BOE are vindicated.

Report Comment | Ignore User

1adam12, (7/7/2009 4:27:12 PM)

Can anyone tell me why Chris Tharp wants to see the legal bills so bad. Why has he hired legal counsel and now costing the district more so they can defend his actions. Let's think about this. First an action by John Lare, Then when that was thrown out another action by John lare. That was a grand jury petition that out of all of the people in tulsa county a little over 800 valid signatures. 400 were not valid. Then lare turned in a phoney petition to force the board to do an investigation. 4 signatures were not valid or forged or withdrew. Then there is the sisney suit, two of them. Then sisneys police reports, two of them. Think this does not cost in attorneys fees? Who elected Chris Tharp to represent all of the taxpayers? When only 800 are interested enought to sign a petition. John lare also sued the city 3 or 4 times over the bass pro shop. Is anyone sorry for the bass pro being here? Why doesn't CT run for school board and do something positive for a change instead of always negative in the name of the taxpayer. Why is the only time we see CT is in a board meeting standing up for the taxpayer but seldom seen in the community doing something constructive for the community. I believe that if he would he would see some of the challenges that unpaid volunteers face. Walk a mile in their shoes. If the bills are released will that help in the lawsuit against the district or cost the district more. If you really knew these ladies and Dr. Gerber you would know that the integrity that they have and show is more than most people have in their finger. They have given their lives to this school and community only to be ridiculed and insulted by CT and his neighbors. Why does everyone think they have to hire an attorney to

get things settled anymore. Who really wins? The attorneys!! And while they win the bickering goes on, the ledger has something to print and people from outside look in and say what idiots we are. Come on Chris lets move on. Be patient Chris, let RFR do their job and soon you will see the truth. Please don't cost our district anymore money and blame it on these board members.

Report Comment | Ignore User

1adam12, (7/7/2009 4:32:56 PM)

One more thing. I know you will say that that is the law. Well that is your opinion and now we will get another opinion because obviously someone disagrees with you and your attorney. Don't you think these attorneys are loving this. I know that you would like to ride that FOI thing to death but then what about executive session? If you really want to know become a board member. Hopefully you will not then breach confidentiality like some have.

Report Comment | Ignore User

612, Broken Arrow (7/7/2009 6:36:45 PM)

1adam12, I agree that it should be pretty clear what the legal bills are for. Some say the board members racked up the charges because they hired counsel to illegally fire Sisney and try to hide their conspiracy. If that is the case, what is the question about the legal bills? What truth is Mr. Tharp trying to get at that we don't already know, or that he and others haven't already assumed (while calling anybody who questions their conclusions stupid)?

If they really want the truth about whether the board members were trying to cover up a conspiracy, what is releasing legal bills going to show that the OSBI investigation won't?

And if we're so interested in legal bills, why is there zero interest in whether the board had a good reason to hire their own counsel? Why do we want only part of the truth? Why are they not calling for Dr. Sisney to release his personnel records, so the board's scheme to illegally fire him will be exposed?

I thought at first that the board members didn't want to release the legal bills, but after thinking about it some more, I'm thinking they'd be delighted to release all the information there is involving this situation. They said in their meeting that they were concerned that releasing the legal bills would breach employment confidentiality. If there were incidents involving Dr. Sisney that truly put them in a position where they needed counsel, they would probably love for all of BA to know it. In fact, Maryanne Flippo said as much in her press conference.

I hope the board gets clearance to release the legal bills, along with all supporting information. If that happens, I believe we will get more than some people bargained for.

When Ms. Flippo's only comment was "personnel issue" after Sisney was suspended, I wonder if her demeanor, which looked to some like smug arrogance, was really extreme frustration at not being able to explain the actions the board was being skewered for?

Others can tell me how wrong I am (head in the sand, etc.) but after seeing how completely wrong they got my point of view from my comments - how they attributed things to me that I didn't say, made my motives out to be something they're not, and even went out on a limb so far as to assign me an incorrect identity (like I matter) - I can really see how they could get so carried away on the wrong track on this whole thing. It strengthens my belief that these posters either don't know anything really, or they do know, and they're trying to guide public opinion away from the truth. Why else would anyone care enough to argue with dumb, crazy ol' 612?

Report Comment | Ignore User

2112, (7/7/2009 10:33:54 PM)

Geez folks, it is just a foi request. You either comply or you don't. If you don't then it cost the taxpayer money. simple as that.

Report Comment | Ignore User

1adam12, (7/8/2009 9:00:23 AM)

Online policy of the ledger.
Online Comment Policy

We invite all to submit comments at our website. Please take the opportunity to contribute to these interactive forums and share your thoughts with our other loyal readers.

In order to keep these forums enjoyable and interesting for all, we ask that you follow the rules below.

By submitting content, you are consenting to these rules:

1. You agree not to submit inappropriate content. Inappropriate content includes any content that:

• infringes upon or violates the copyrights, trademarks or other intellectual property rights of any person

• is libelous or defamatory

• is obscene, pornographic, or sexually explicit

• violates a person's right to privacy

• violates any local, state, national, or international law

• contains or advocates illegal or violent acts

• degrades others on the basis of gender, race, class, ethnicity, national origin, religion, sexual preference, disability, or other classification

• is predatory, hateful, or intended to intimidate or harass

• contains advertising or solicitation of any kind

• misrepresents your identity or affiliation

• impersonates others

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612, Broken Arrow (7/8/2009 9:06:26 AM)

Even from the TW articles, the impression you get is that the school board is doing crazy things for no reason. You can see the comments from the standard TW readers who comment on everything, and they typically take the story at face value - what it seems like on the surface.

But how close to reality can the surface story be when the events that set this in motion can't be divulged by one side? The stories say the board did this, Dr. Sisney said that. In the absence of any kind of explanation from the board, it's very difficult to look behind what looks like inexplicable behavior. Then when Dr. Sisney explains it with his general accusations of corruption, it's easy to accept that story - as long as you don't start looking at details. Helping the misconceptions along is the fact that some people really like to think badly of others. Some are really excited about corruption on the school board.

But there is another possible explanation behind all this that, to me, makes a lot more sense. It's not the Tulsa World's job to point that out. It's not the Ledger's either, but from what I've seen, they sure seem to feel free to highlight Sisney's story, and discourage anyone from questioning it.

Report Comment | Ignore User

612, Broken Arrow (7/8/2009 9:10:52 AM)

"libelous or defamatory" - check.
"is predatory, hateful, or intended to intimidate or harass" - check.

"misrepresents your identity or affiliation" - the Ledger felt free to print the comment saying I was a board member's daughter. I'm sure they know I'm not, yet they were willing to let my comments be attributed to someone totally uninvolved with them. I thought that was pretty unprofessional.

Report Comment | Ignore User

612, Broken Arrow (7/8/2009 10:06:15 AM)

I'm sure there is a reason the board put this in the Code of Ethics:

16. Maintain a cordial and professional relationship with the Superintendent, but acknowledge that a Board Member will be unable to objectively and impartially evaluate the Superintendent, as required by law, if a Board Member forms a close personal friendship with the Superintendent.

Why they put it in remains to be seen. Is it because they are evil and are trying to set Ms. Updike up, as part of their conspiracy?

Or is it because they are aware that a friendship existed that was interfering with a board member being able to make decisions with the best interest of BA schools in mind, and they wanted to have the ability to call attention to it if the

need arose?
Report Comment | Ignore User
1adam12, (7/8/2009 2:55:58 PM)
This was a comment on the ledger by a blogger on the Tucker article.
Tiger Fan wrote on Jul 8, 2009 12:54 PM:

" There are two things that are incontrovertible. The first is that Dr. Gerber was the vice superintendent of operations when the Air Assurance controversy began. The second is that under the current BOE, class sizes are being increased due to a cut in teacher positions while at the same time a new special assistant is being hired for Dr. Gerber. It is hard for me not to hold Dr. Gerber and the BOE at least somewhat responsible for these things.

You also have to wonder how we have the money to create a new position if we don't have the money to keep the teachers we have now. What happened to common sense? "
So if someone creates a controversy that automatically discredits Dr. Gerber and AA. Even when not one thing has been proven and even most has been disproven. As far as we know now until someone disproves it Dr. Gerber was doing a great job over operations. Only Sisney said he was not and he is no longer employed there. Even surrounding superintendents showed their trust and confidence in him by making him president of their assosiation. I think some of these folks have fallen and got a knot on their heads with the reasoning they come up with. I think Sperry has some real nice homes for sell for immediate occuapancy. Didn't Dr. Sisney have a personal assistant? What happened to her? If she is gone would that not leave an opening for a new assistant?
Report Comment | Ignore User
612, Broken Arrow (7/8/2009 4:02:06 PM)
Right, "...when the Air Assurance controversy began..." is way different from "...when Air Assurance was in the process of cheating BA schools with the knowledge and assistance of BA staff and board members, as has since been proven..."

It's really amazing how people continue to look at the board members in light of Dr. Sisney's accusations, while at the same time denying Dr. Sisney has anything to do with it. Have they forgotten what made them mad at the board members in the first place?

For some people, I think it's just stubbornness. They latched onto Dr. Sisney's story, got righteously outraged at the board members, and called people who disagreed idiots. Now they want to stay outraged, just because they can't admit they were wrong.

That's why they have to read bad intentions into everything the board members do. Ms. Updike and Mr. Stover are free to vote against them to perpetuate the perception. When the 2 agree with the motion being voted on, they can still vote no to make the 3 look bad, with the knowledge that the 3 yes votes will carry it.
Report Comment | Ignore User
612, Broken Arrow (7/8/2009 4:05:31 PM)
So I guess it's "controvertible" after all :)
Report Comment | Ignore User
2112, (7/8/2009 11:04:12 PM)
Who can save us from Bob Lewis and Chris Tharp?

I don't know, how about "Help me Tom Cruise" If that doesn't work try Oprah.

Folks, Sisney has been gone for a long time, get over it. It is all about the board at this point.

and for it is worth about how much time 612 has spent denying how that is, it is pretty common knowledge I thought, that 612 is Ms. Flippo herself. What somewhat confirmed it for me is how fast 612 commented about the new ethics on the baps webpage and how much 612 wanted to compare what Updike did compared to Ms. Flippo.

As usual, this is all opinion, and not inteded to affect the unintended. Please, it is just a blog.
Report Comment | Ignore User
1adam12, (7/9/2009 7:56:49 AM)
You are wrong 2112 about sisney being gone. He has a lawsuit against the school district. Yes the same school district that he loves so much. Your continued quest to obtain the legal bills at this time are a distraction from the more important things and that is the children. If the district loses the lawsuit then how many more teaching positions will be lost? By providing the public confidential information about the legal bills it could jeopardize the bigger picture. Can you not wait till this lawsuit is over to then try to obtain those records and look at the bigger picture. Yes it is bigger than you and CT. Right now the district and its board members including updike and stover and citizens like CT, RN, MV,JL,BL,BT,SS,need to put down their pride and win the lawsuit. Even though you are a follower of sisney

if you want to do what is best for the district you will start working together. America has many different views but let another county attack us and we all pull together. It is time to pull together.

Report Comment | Ignore User

612, Broken Arrow (7/9/2009 8:16:25 AM)

It is all about Sisney. His claims of conspiracy (whether true or false) started this crusade against the board. All of the anti-board sentiment comes from their actions involving Sisney (whether those actions are justified or not).

All of the legal bills are directly attributable to the controversy around Sisney's accusations and termination. How can you say it's just about the board now, and act like they ran up legal bills for no reason? Even if the reason was bad, it's still Sisney.

I want to know whether the reason they ran up the bills was good or bad. Don't you? The OSBI investigation and the outcome of Sisney's lawsuits will tell us that.

I'm all for releasing the information on the legal bills, but only if it's ALL the information, so we can wee the true picture. I think the board wants that too. But they are concerned about whether that would open them up to legal action for breaching confidentiality. Their reasoning is obvious; yet you twist their intentions to make it sound like they're doing something wrong. If they've done something wrong we will find out. Continually trying to turn the public against them is hurting our whole community, and it's not fair to them.

The only reason people are mad at them is because they believe what Sisney said, and because certain individuals continue to try to smear them, with the help of the Ledger. I don't know what these individuals' stake is in protecting Sisney, but it's wrong to accuse with no proof, and continue to disparage volunteers who have long histories of serving with integrity.

Do you have it on good authority that I am Maryanne Flippo? How much does it take to "confirm" something for 2112, so much that he'll post online that it's "common knowledge"?

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BA Taxpayer, Parent, Alumni, Broken Arrow (7/9/2009 9:36:53 AM)

You all should listen to the latest video of the board meeting from 6-29-08 posted on the ba parents web site. It is almost a joke when the board wants to spend more money on just another attorney's opinion at $200 an hour and not spend any money on the Attorney General's Weighted opinion and it not const any money at all.

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612, Broken Arrow (7/9/2009 9:45:45 AM)

After having several legal actions brought against them, it is understandable if the board members are a little wary of being sued.

Releasing the legal bills would probably involve releasing information about Dr. Sisney's actions while he was an employee. As much as they probably want the public to have this information, they are probably being cautious not to put themselves in a position to allow him to bring a third lawsuit against them, which would cost BA even more.

This additional legal opinion is probably to take the liability off them, if they do release the records. I hope, and I believe they hope, the additional opinion will allow them to release the records, with complete disclosure of all supporting information.

Report Comment | Ignore User

612, Broken Arrow (7/9/2009 9:46:43 AM)

"…how much 612 wanted to compare what Updike did compared to Ms. Flippo…"

Huh?

2112, you continue to misrepresent what I say. If you go back and look at the conversation, you'll see that someone else called the board members "hypocritical" – a word that directly compares someone's actions with someone else's. What I said in response was in fact the opposite: that you can't compare their actions and determine whether they were hypocritical without knowing the circumstances of each.

I'm beginning to think the extent of your listening is only to pick out some point that you can mischaracterize in an attempt to refute what the person is saying. That's not constructive; in fact, it's divisive and downright deceitful.

All I have said all along is that we shouldn't base our conclusions on accusations that haven't been backed up or on gossip. What is it about that that you disagree with? Why do you find it so necessary to try to discredit me, when I'm only bringing up other possible explanations? I have never presented them as fact; only as possibilities. Why is that so damaging to you?

It’s going to take a lot longer for us to become good friends if you keep attacking my point of view by attributing things to me that I didn’t say and motives that I don’t have.

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BA Taxpayer, Parent, Alumni, Broken Arrow (7/9/2009 10:49:40 AM)

I understand about being lary of being sued but why spend more money to get an opinion. The AG opinion holds more weight not some big wig attorney.

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612, Broken Arrow (7/9/2009 10:57:56 AM)

I think it's totally to protect themselves. It's not a matter of whether they believe the AG opinion - I think it's just so they can say they did due diligence in making sure they weren't violating confidentiality laws by releasing.

The AG's opinion applies in general, but they need to make sure it applies to this specific situation. Until we get more information on what the "confidential" information includes, I think it's premature to condemn this action.

I don't think the board members take their decisions lightly, especially since they get raked over the coals for everything they do. It can't be fun for them. But so far, we don't know that their actions have been out of line. Hopefully the investigation results will be out soon. If they have really created this mess themselves, I'll be madder at them than anybody, because I tried to see things from their point of view, and gave them the benefit of the doubt.

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1adam12, (7/9/2009 11:07:38 AM)

To BA taxpayer. Go back and listen to the tape again that you suggested. The AG opinion takes a long time. They were hoping to get a quicker opinion since Chris Tharp seems to be setting himself up to sue them. Remember the AG opinion is still an educated opinion by an attorney, not law. Personnaly I like 612 hope the law firm comes back and says they have to disclose them. That will be interesting.

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BA Taxpayer, Parent, Alumni, Broken Arrow (7/9/2009 11:15:37 AM)

1adam12 you need to go back and listen to it Gerber suggested that we may need to hurry because of being afraid of getting sued. And know one had even called the AG to find out how long it would take. When tulsa city council asked for one and got it back within a month or two. And it cost $0.00.

I to agree with you all and hope the law firm comes back and says they have to disclose them.

Report Comment | Ignore User

BA Taxpayer, Parent, Alumni, Broken Arrow (7/9/2009 11:18:37 AM)

On top of that did anyone on the board or Gerber think to ask the Attorney of Chris Tharp if waiting for an opinion from the AG would be acceptable or did they just rush into this to spend more tax dollars to help support yet another law firm.

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612, Broken Arrow (7/9/2009 11:30:19 AM)

"rush into this to spend more tax dollars to help support yet another law firm"

This is the kind of jumping to conclusions and assuming bad motives that has fed this controversy. It doesn't make any sense to assume that the board's intention is to waste money. That's a completely ridiculous statement.

Why would we assume something bad that doesn't even make sense, when there is a perfectly sensible and likely explanation that shows prudence on the part of the board? Why the rush to accuse, in the absence of any realistic motive and any pertinent facts? It says a lot about the mindset of the person posting, but nothing about the mindset of the board.

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612, Broken Arrow (7/9/2009 11:33:45 AM)

"...hope the law firm comes back and says they have to disclose them..."

Another assumption that may not be accurate: that the board members don't want to disclose the information. We only know that they have stated that they are concerned that providing the information may violate confidentiality laws. That doesn't imply their wishes one way or the other.

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1adam12, (7/9/2009 12:34:40 PM)

to bataxpayer, better go back and watch the full original version not the shortened edited version. There is more discussion by the board about why. I guess this part was accidentily left off of the web site. Kind of sounds like the way the ledger does things or MV

Report Comment | Ignore User

Jolie2, (7/9/2009 1:28:00 PM)
612

Glad you're staying strong, calm, and reasonable in the face of opposition on the Ledger. Keep up the good work.
Report Comment | Ignore User
612, Broken Arrow (7/9/2009 2:35:13 PM)
Thanks for the encouragement, Jolie. :)

I wish I knew what Ms. Flippo knows.
Report Comment | Ignore User
2112, (7/9/2009 10:22:37 PM)
Wow, very sensitive folks out there. I have no idea where to start.

How about some reality: the encumbrances are posted, $125K to RFR and $5,0000 to Crowe to give an opinion. So for the upcoming school fiscal year we are accepting that $130K is going to lawyers.

Lets all face some more reality. the legal bill invoices are not confidential, and they will see the light of day for all to see. Nothing in the Open Records Act about waiting for this or that. Accept it, it is not privileged and it is only a matter of time.
Report Comment | Ignore User
612, Broken Arrow (7/11/2009 8:12:57 AM)
Well, you might be a little touchy too, if you had served the community for ten years only to have it end in bitter strife with your co-workers, lawsuits filed against you, and public accusations and name-calling from some members of the community.

Not to mention Dr. Sisney's behavior at the ESC - always crowding into your parking space and pretending it was by accident, using up all your staples, and eating your Raisinets when you weren't looking.

I'm just kidding of course. They were Lemonheads, not Raisinets.
Report Comment | Ignore User
Jolie2, (7/14/2009 6:53:41 PM)
This article is no longer showing up on the most commented list. I was worried they deleted it altogether or at least the comments were removed. I guess they thought it stayed at number one for far too long and wanted to give other stories a chance for top billing (or someone complained).

612, I hope you're still saving updates of the comments.

Let's pick another School board news story to meet up at, in the event something does happen to this story--kind of like an emergency meeting place. I would hate to lose uncensored communication on this issue.

How about the June 30, 2009, story entitled "BA school board censures fellow member for her comments" ?
Report Comment | Ignore User
Jolie2, (7/14/2009 6:55:51 PM)
I was just checking the court records for Sisney's defamation suit (CJ-2008-6173, Tulsa County). There are several new entries this month related to preparation of the hearing:

07-09-2009 WL - SISNEY, JIM 71372947 Jul 9 2009 4:14:47:090PM - $ 0.00
PLAINTIFF DR JIM SISNEY'S PRELIMINARY WITNESS AND EXHIBIT LIST // CERTIFICATE OF MAILING
Document Available at Court Clerk's Office

07-10-2009 WL - 71383625 Jul 10 2009 2:40:27:183PM - $ 0.00
THE DEFENDANTS' MARYANNE FLIPPO, SHARI WILKINS AND SHARON WHELPLEY'S PRELIMINARY WITNESS AND EXHIBIT LIST
Document Available at Court Clerk's Office

07-10-2009 CTFREE - 71383846 Jul 10 2009 2:50:55:490PM - $ 0.00
CANTRELL, DAMAN: UNOPPOSED APPLICATION FOR LEAVE TO FILE ANSWER OUT OF TIME IS GRANTED; ORDER ENTERED.

07-10-2009 APLI - RAMPEY, MIKE 71386555 Jul 10 2009 4:19:59:033PM - $ 0.00
UNOPPOSED APPLICATION FOR LEAVE TO FILE ANSWER OUT OF TIME
Document Available at Court Clerk's Office

07-10-2009 A - RAMPEY, MIKE 71386565 Jul 10 2009 4:21:01:663PM - $ 0.00
ANSWER OF DEFT MIKE RAMPSEY TO PLTF'S FIRST AMENDED PETITION
Document Available at Court Clerk's Office

07-10-2009 WL - HUDKINS, DOUGLAS J 71388490 Jul 13 2009 8:41:13:310AM - $ 0.00
DEFENDANT J DOUGLAS HUDKINS' PRELIMINARY LISTS OF WITNESSES AND EXHIBITS // CERTIFICATE OF MAILING
Document Available at Court Clerk's Office

Report Comment | Ignore User
Jolie2, (7/14/2009 6:57:08 PM)
Does anyone know the website to access court records related to Sisney's other lawsuit for wrongful termination against the district?

Report Comment | Ignore User
Jolie2, (7/15/2009 11:34:32 PM)
Here's the newest press release posted on the BAPS website (not dated, but I think it was just posted today because earlier I was looking at the same main page, getting ready for the start of the new school year, and I didn't see that title before)

QUOTE

Frequently Asked Questions regarding School Board Disavowal Resolution

The Broken Arrow Board of Education approved the action of issuing a disavowal resolution at its June 29 Regular Meeting regarding one of its member's statements made in a local newspaper.

Because "disavowal" resolutions are so rare, it is understandable when misconceptions and or mischaracterizations about them occur.

In an effort to provide more clarity and understanding to School District patrons about disavowal resolutions, BAPS is providing the answers to the following Frequently Asked Questions:

• What is the purpose of a "disavowal" resolution?

The nature of a "disavowal" resolution is to distance oneself from the opinions and conjectures of another. In the case of the BOE, a vote was taken to ensure that the public understood the statements made by one member were not to be taken as the official opinion of the Board. As with most organizations, a single member of that organization (in this case the Broken Arrow Board of Education), cannot speak for that organization without its permission.

• Does the "disavowal" resolution approved by the Board mean that Board members cannot express their individual opinions?

Absolutely not. When a representative member of a community entity speaks publicly, it is usually assumed that he or she speaks for that organization in a legal capacity. It is for this reason that it should be implied that the statements made are the opinions of that individual and not of the organization. Hence the statements are usually (and should be) preceded by the phrase, "in my opinion". This relieves the individual of implicating the organization's regards to the matter.

• Does this particular "disavowal" resolution infringe on a Board member's First Amendment rights?

No. An individual's right to express a personal opinion was never in question. As an elected official, one must remember to disassociate personal opinions from official positions of the organization represented. Once that is done, the individual can say almost anything without confusing the public as to the representation of the statements.

• This "disavowal" resolution has been called many other things in various media reports. Are those other characterizations correct?

No. There was no “proclamation” but a simple “disavowal”. There was no “censure” or “rap” involved in this process either. Perhaps the media did not have a clear understanding of the “disavowal” resolution and chose the aforementioned characterizations thinking they were synonyms when in fact they were not. The Board of Education simply maintained its distance from statements made by one member as not being a reflection of the board position on the matter commented on by the individual board member in the newspaper.

END QUOTE

Report Comment | Ignore User

612, Broken Arrow (7/21/2009 8:22:39 PM)

Hi Jolie, just got back from out of town. I'm glad to see communication from the school board on their disavowel resolution. I know some will scoff at anything they say or do, but hopefully most people will be willing to look past the media's "rap" and "censure" labels and consider the action for what it was.

Yes, if anything happens to this article we can meet on the "BA school board censures fellow member for her comments" article. I'm sure we'll be able to find each other. :)

Report Comment | Ignore User

Jolie2, (7/22/2009 7:19:15 AM)

Welcome back, 612. I thought that was why you hadn't posted.

Is there any way to track the official court records for Sisney's wrongful termination lawsuit?

Report Comment | Ignore User

612, Broken Arrow (7/22/2009 12:49:21 PM)

I don't know of a way to get to the federal lawsuit. Drat.

Report Comment | Ignore User

612, Broken Arrow (7/23/2009 11:03:10 AM)

Got it...I'll post the info from the federal court case when I get a chance. It's a website called Pacer. It's a pay-per-page thing.

The board has made a motion to dismiss. I'll post the text of the complaint and the motion to dismiss later...got to go...

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612, Broken Arrow (7/23/2009 3:00:08 PM)

Here is the motion to dismiss...more later...

DEFENDANT’S MOTION TO DISMISS

The Defendant, Independent School District No. 3 of Tulsa County (the “Broken Arrow School District”) and the Broken Arrow School Board,1 moves to dismiss the Plaintiff’s complaint pursuant to Rule 12(b)(6), FED. R. CIV. P., for failure to state a claim upon which relief can be granted. In support of its motion, the Broken Arrow School District states:

1. The Plaintiff, Jim Sisney, is the former superintendent of the Broken Arrow School District. Sisney was dismissed by the Board of Education of the Broken Arrow School District at a meeting held on October 23, 2008.

2. Sisney alleges that his dismissal deprived him of property and liberty without due process of law. Sisney also asserts a state law claim for breach of contract.

1 The Board of Education of the Broken Arrow School District (the “School Board”) is the governing body of the Broken Arrow School District. OKLA. STAT. tit. 70, § 5-106 (2008 Supp.). It has no independent legal existence apart from the Broken Arrow School District and is not an entity capable of being sued separately from the School District. OKLA. STAT. tit. 70, § 5-105 (2001).

2

3. The Broken Arrow School District requests that the Court take judicial notice pursuant to FRE 201 that Sisney was provided written notice that the Board intended to consider his dismissal, which notice also advised Sisney of the reasons for the possible action and his right to a due process hearing. The Broken Arrow School District requests that the Court take judicial notice pursuant to FRE 201 that Sisney publicly announced at a news conference that he was not going to request a due process hearing.

4. By waiving his opportunity for a due process hearing, Sisney also waived any claim that he was deprived of due process. Pitts v. Board of Education of U.S.D.

305, Salina, Kansas, 869 F.2d 555, 557 (10th Cir. 1989).
5. Sisney cannot claim that the Broken Arrow School District breached his contract when he declined to take advantage of his opportunity to contest whether his contract should be terminated.
THEREFORE, the Broken Arrow School District requests that Sisney's complaint be dismissed for failure to state a claim upon which relief can be granted.

612, Broken Arrow (7/23/2009 4:10:04 PM)
Here are the journal entries and misc. case info:
4:09-cv-00253-TCK-PJC Sisney v. Independent School District No. 3 of Tulsa County, et al
Terence Kern, presiding
Paul J Cleary, referral
Date filed: 04/30/2009
Date of last filing: 07/15/2009
Sisney v. Independent School District No. 3 of Tulsa County, et al
Assigned to: Judge Terence Kern
Referred to: Magistrate Judge Paul J Cleary
Cause: 42:1983 Civil Rights (Employment Discrimination)
Date Filed: 04/30/2009
Jury Demand: Plaintiff
Nature of Suit: 442 Civil Rights: Jobs
Jurisdiction: Diversity
04/30/2009 1
COMPLAINT with Jury Demand against all defendants (paid $350 filing fee; receipt number 10850000000000550856) by Jim Sisney (Richardson, Charles) (Entered: 04/30/2009)
05/01/2009 2 MINUTE ORDER by Court Clerk, directing Denise P. James to file a Motion for Admission Pro Hac Vice per Local Civil Rule 83.2. Additionally, if you intend to practice in this district in the future and want to become a member of this district, please submit an application for attorney admission. (lal, Dpty Clk) (Entered: 05/01/2009)
05/04/2009 3
SUMMONS Issued by Court Clerk as to Independent School District No. 3 of Tulsa County, Broken Arrow School Board (s-srb, Dpty Clk) (Entered: 05/04/2009)
05/29/2009 4
SUMMONS Returned Executed re: Broken Arrow School Board by certifid mail (Re: 1 Complaint) by Jim Sisney (Richardson, Gary) (Entered: 05/29/2009)

06/08/2009 5
ATTORNEY APPEARANCE by Kent Bolling Rainey on behalf of Independent School District No. 3 of Tulsa County, Broken Arrow School Board (Rainey, Kent) (Entered: 06/08/2009)
06/08/2009 6
Unopposed MOTION for Extension of Time to Answer or Respond to Complaint (Re: 1 Complaint) by Independent School District No. 3 of Tulsa County, Broken Arrow School Board (Rainey, Kent) (Entered: 06/08/2009)
06/09/2009 7 MINUTE ORDER by Judge Terence Kern Defendants have until June 26, 2009 to answer or otherwise respond to Complaint ; granting 6 Motion for Extension of Time to Answer (Re: 1 Complaint) (vah, Chambers) (Entered: 06/09/2009)

06/26/2009 8
MOTION to Dismiss by Independent School District No. 3 of Tulsa County, Broken Arrow School Board (Rainey, Kent) (Entered: 06/26/2009)
06/26/2009 9
BRIEF in Support of Motion (Re: 8 MOTION to Dismiss) by Independent School District No. 3 of Tulsa County, Broken Arrow School Board ; (With attachments) (Rainey, Kent) (Entered: 06/26/2009)
07/10/2009 10
RESPONSE in Opposition to Motion (Re: 8 MOTION to Dismiss) by Jim Sisney ; (Richardson, Gary) (Entered: 07/10/2009)

07/15/2009 11
ORDER by Judge Terence Kern, directing parties to file joint status report(Status Report due by 8/17/2009) (cds, Dpty Clk) (Entered: 07/15/2009)

612, Broken Arrow (7/23/2009 6:35:09 PM)
Dr. Sisney's complaint:
Part 1

COMES NOW the Plaintiff, Jim Sisney, individually, by and through his attorneys of record, Gary L. Richardson, Charles L. Richardson and Denise P. James of Richardson, Richardson 7 Boudreax, and for his causes of action against the Defendants, alleges and states as follows:

PARTIES, JURISDICTION, AND VENUE [skipping paragraphs 1-8 since they just address whether this court has jurisdiction.]

STATEMENT OF THE FACTS

8. Plaintiff incorporates paragraphs 1 through 7 herein as if set forth verbatim.
9. At all times mentioned herein, Plaintiff Jim Sisney was the Superintendent of Operations of the District. Dr. Sisney began serving as the Superintendent in the Spring of 2003.
10. In April, 2008, Dr. Sisney was made aware of information that led to the discovery of possible violations of Oklahoma's Competitive Bidding Laws by Air Assurance ("AA"). Dr. Sisney removed or transferred employees who were either knowing participants in the criminal enterprise with AA or consciously "winking" at the theft by deception.
11. AA is an HVAC company in Broken Arrow, Oklahoma. AA is owned and managed by Mike and Narissa Rampey. (collectively, "Air Assurance or AA".) AA has for several years engaged in a criminal scheme, in association with some employees of the Broken Arrow School district in violation of the Competitive Bidding Laws of Oklahoma. The scheme was used to avoid the Competitive Bidding laws of Oklahoma.
12. In furtherance of the criminal scheme, three members of the Board of Education commandeered the School Board in July and have worked feverishly and against all reason to keep the matter from seeing the light of day. As a part of the ongoing scheme, Superintendent Dr. Jim Sisney was fired in retaliation for threatening to investigate and expose the scheme that had gone on for several years. The ongoing criminal activity damaged other HVAC vendors in the area by eliminating competition.
13. Employees of the School District engaged in an ongoing enterprise with AA to keep AA's competition from competitively bidding work for the Broken Arrow School District. The enterprise's procedure was to wrongfully use a "Blanket Procurement Practice" for the District to avoid competitive bidding on HVAC services and parts. In addition to eliminating fair competition, facts will show that AA, over extended periods of time, padded their invoices to the District – by overcharging, by charging for services not performed, or by providing and charging for unnecessary repairs and parts.

612, Broken Arrow (7/23/2009 6:35:35 PM)
Dr. Sisney's complaint, part 2

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14. Mike Rampey demanded a meeting in May, 2008, and an apology, from Dr. Sisney; he immediately notified the School District he would not longer be providing them services. He soon changed his mind and his tactics, choosing to engage the School Board members and to get Sisney fired.
15. A pattern of retaliatory behavior and pressure from Dr. Sisney's board ensued against him. He was put under pressure to apologize to the "Rampeys" and to make things right with them. Dr. Sisney refused and the pressure intensified with the Board. His refusal infuriated three(3) members of the School Board and they began a concerted pattern of retaliation against Sisney, ultimately leading to his dismissal.
16. On May 27, 2008, Dr. Sisney e-mailed Mike Rampey (AA) that their billing history would be investigated. Within a short time, Mike Rampey arranged meetings and met with every Board member. By June 19, he had told the Board President, Terry Stover, he wanted Sisney gone/fired. (Dr. Sisney was suspended on October 6, 2008, and fired 10 days later.) The three members of the Board and Mike Rampey wanted Dr. Sisney gone as part of a continuation of the criminal scheme.
17. In addition, Dr. Sisney has reason to believe that his life and possibly the lives of his family members are in danger as he has heard talks of threats of harm asserted against him. The above-mentioned tribulations have caused an enormous strain upon Dr. Sisney and his family emotionally, physically, and financially.
18. The actions discussed herein are violative of the rights of Dr. Sisney, as well as contrary to the laws of the State of Oklahoma and the rules governing the Broken Arrow School Board and School District.
19. As a result of the aforementioned conduct, Jim Sisney has suffered and continues to suffer injuries in an amount greater than $75,000.

612, Broken Arrow (7/23/2009 6:35:55 PM)
Dr. Sisney's complaint, part 3

TERMINATION IN VIOLATION OF DUE PROCESS PERSUANTE TO 42 U.S.C. Sec.1983: PROPERTY INTEREST

20. Plaintiff incorporates paragraphs 1 through 19 herein as if set forth verbatim.

21. Defendants, at all times pertinent hereto, were persons “acting under the color of state law” as defined in 42 U.S.C. Sec.1983
22. Under the terms of the employment Agreement, Dr. Sisney possessed a viable property interest in his continued employment.
23. Defendants knowingly and maliciously deprived Dr. Sisney of his federally protected property right, upon his termination.
24. The activities and actions of Defendants toward Dr. Sisney infringed upon and affected the terms, conditions, or privileges of his employment in violation of 42 U.S.C Sec 1983.

TERMINATION IN VIOLATION OF DUE PROCESS PURSUANT TO 42 U.S.C.Sec1983: LIBERTY INTEREST

25. Plaintiff incorporates paragraphs 1 through 24 herein as if set forth verbatim.
26. Defendants, at all times pertinent hereto, were persons “acting under the color of state law” as defined in 42 U.S.C. Sec.1983
27. Defendants termination of Dr. Sisney under the auspices of mismanagement and Defendant’s characterizations of Dr. Sisney as a Superintendent who, if in fact, mishandles and mismanages money creates a significant stigma that forecloses his freedom to take advantage of other similar employment opportunities.
28. Dr. Sisney was not afforded the opportunity, upon termination, to receive a “meaningful” hearing to clear his name, which is compelled by Federal Constitutional Law.
29. The activities and actions of Defendants, toward Dr. Sisney infringed upon his constitutional rights and his employment in violation of 42 U.S.C Sec1983.

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612, Broken Arrow (7/23/2009 6:37:04 PM)
Dr. Sisney's complaint, part 4

BREACH OF CONTRACT

30. Plaintiff incorporates paragraphs 1 through 30 herein as if set forth verbatim.
31. The conduct of the Defendants as described herein constitutes a breach of the employment Agreement for which Defendants are liable.
32. As a direct and proximate result of the Defendants’ breach of contract, Jim Sisney has suffered damages in an amount greater than $75,000.

PUNITIVE AND EXEMPLARY DAMAGES

33. Plaintiff incorporates paragraphs 1 through 32 herein as if set forth verbatim.
34. Defendants’ individual acts and omissions, as set forth in the preceding paragraphs, were oppressive and in wanton and/or reckless disregard of Jim Sisney’s rights.
35. As a direct result of Defendants’ oppression and wanton and/or reckless disregard, Dr. Sisney is entitled to exemplary and punitive damages in an amount to determined by a jury commensurate with the financial resources available to Defendants and sufficient to deter others similarly situated from like behavior.
WHEREFORE, Plaintiff Jim Sisney prays that this Court grant judgment against Defendants IN EXCESS of Seventy Five Thousand Dollars and no/100 dollars ($75,000.00), as well as attorney fees, costs, accruing interest and any other such relief this Court deems just and proper.

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Jolie2, (7/23/2009 9:24:16 PM)
I love you, 612. :)

I'll make time tomorrow to read what you've posted, but wanted to tell you thank you. I was very happily surprised you found a source of information on the second lawsuit. Too bad you have to pay for it.

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612, Broken Arrow (7/23/2009 10:30:22 PM)
:) I thought you'd be pleased to see the info...I'm just glad you asked about it. It had not occurred to me to search for a website for federal cases.

I just got another document converted to text, so I'll post it next. It's Dr. Sisney's response to the motion to dismiss.

The charge isn't much...it's worth it to have access to the documents.

I don't have a website handy where I can post the pdfs, but I would be happy to send them to someone who does. Email me at reader612 at yahoo dot com.

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612, Broken Arrow (7/23/2009 10:37:22 PM)
Dr. Sisney's response to motion to dismiss, part 1

PLAINTIFF'S RESPONSE TO OPENING BRIEF IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS
COMES NOW the Plaintiff, Jim Sisney, individually, by and through his Attorneys of record, Gary L. Richardson and Charles L. Richardson of Richardson, Richardson & Boudreaux, and for his Response to the Opening Brief In Support Of Defendants' Motion To Dismiss, alleges and states as follows:
FACTS RELEVANT TO ALL CLAIMS
Plaintiff Jim Sisney began serving as the Superintendent of Operations of the Broken Arrow School District in the Spring of 2003. After many successful years of service to the District, in April, 2008, Dr. Sisney was made aware of information that led to the discovery of possible violations of Oklahoma law by Air Assurance ("AA") and other related wrongdoing. AA is an HV AC company in Broken Arrow, Oklahoma. AA is owned and managed by Mike and Narissa Rampey (collectively,"Air Assurance or AA"). Dr. Sisney removed or transferred employees who were either knowing participants in the wrongdoing with AA or consciously participating in the wrongdoing by deception or omission.
On September 3, 2008, Plaintiff Jim Sisney filed a Petition in the Tulsa County District Court against Mike Rampey, Narissa Rampey, Douglas J. Hudkins and Three (3) Unnamed Co-Conspirators, alleging defamation, injurious falsehood, invasion of privacy- false light, tortious interference with a business contract and intentional infliction of emotional distress, based upon assertions of individual and collective actions and/or involvement of those Defendants in unlawful and or wrongful conduct, involving the Broken Arrow School System, its employees and vendors, and said conduct occurring to the detriment of the Plaintiff. On October 1,2008, Plaintiff Jim Sisney filed an Amended Petition in that court adding school Board Members Maryanne Flippo, Shari Wilkins, Sharon Whelpley and Douglas Mann as Defendants.

612, Broken Arrow (7/23/2009 10:38:27 PM)
Dr. Sisney's response to motion to dismiss, part 2

The School Board voted 3-2 to terminate Dr. Sisney's employment with the Broken Arrow School District on October 23,2008. The Board Members voting in favor of Dr. Sisney's termination were Maryanne Flippo, Shari Wilkins and Sharon Whelpley.
ARGUMENTS AND AUTHORITIES
I. STANDARD OF REVIEW
"The general philosophy of modem pleading rules is that they should give fair notice of the claim and be subject to liberal amendment, be liberally construed so as to do substantial justice, and decisions should be made on the merits rather than on technical niceties," quoting 5 Wright & Miller, Federal Practice and Procedure: Civil 3d §§ 1202, 1215-1226." Pan v. Bane, 2006 OK 57, 141 P.3d 555. The Oklahoma Pleading Code is to be liberally construed, and motions to dismiss are not favored. Indiana Nat. Bank v. State Dept. of Human Services, 1994 OK 98, 880 P.2d 371. A motion to dismiss for failure to state a claim tests the law of the claims, not the facts supporting them. Bankers Trust Co. v. Brown, 2005 OK ~IV APP 1, 107 P.3d 609.
The issue is whether, taking all of a plaintiffs allegations as true, he or she is precluded as a matter of law from recovery. See id. The factual allegations within the claim "must be enough to raise a right to relief above the speculative level." Bell Atlantic Corp. v. Twombly, 550 ~.S. 544, 127 S.Ct. 1955, 1965, 167 L.Ed. 929 (2007). The trial court should not ask whether the petition points to an appropriate statute or legal theory, but whether relief is possible under any set of facts that could be established consistent with the allegations. Alvaredo v. KOB-TV, L.L.e., 493 F.3d 1210, 1215 (10th Cir. 2007); Moffett v. Halliburton Energy Servs., Inc., 291 F.3d 1227, 1231 (l O" Cir. 2002). Plaintiffs must allege facts sufficientto state a claim to relief that is plausible on its face. Bell Atlantic Corp. v. Twombly, 550 U.S. 544. Once a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint. See id. Thus, the burden of demonstrating a petition's insufficiency is not a light one, and is on the party moving for dismissal. See id. The law is clear that a complaint, or a single claim part of many in a complaint, should not be dismissed unless it appears to a certainty that plaintiff is entitled to no relief under any facts which could be proved in support of the claim. Gas-A-Car, Inc. v. American Petrofina, 484 F.2d 1102, 1107 (lOth Cir. 1973). The moving Parties frivolously argue herein that Plaintiffs claims for violation of due process and breach of contract are flawed to the extent that no claim is stated that will afford relief under the law. However, all of these claims are recognized by Oklahoma and federal

law, and the Plaintiff has alleged sufficient facts under each to withstand a motion to dismiss. The facts, when viewed in the light most favorable to the Plaintiff, Jim Sisney, preclude the entry of judgment in favor of Defendants.

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612, Broken Arrow (7/23/2009 10:39:29 PM)

Dr. Sisney's response to motion to dismiss, part 3

II. PLAINTIFF DID NOT WAIVE HIS OPPORTUNITY To BE HEARD BEFORE AN UNBIASED TRmUNAL

Procedural due process imposes constraints upon governmental decisions which deprive individuals of interests encompassed by the Fourteenth Amendment's protection of liberty and property." Board of Regents v. Roth, 408 U.S. 564, 569 (1972). The essence of due process is the requirement that a person in jeopardy of serious loss be given notice of the case against him and an opportunity to meet it. Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893,47 L.Ed.2d 18. The fundamental requirement of due process is an opportunity to be heard at a meaningful time and in a meaningful manner. Armstrong v. Manzo, 380 U.S. 545,552,85 S.Ct. 1187, 1191, 14 L.Ed.2d 62 (1965). The degree of the potential deprivation that may be created by a particular decision is a factor to be considered in assessing the validity of a decision-making process from a due process standpoint. Mathews v. Eldridge, 424 U.S. 319. As established by the United States Supreme Court, public employment is a property right which requires due process, specifically notice and an opportunity to respond, prior to adverse employment action being taken against the employee. Cleveland v. Loudermill, 470 U.S. 532 (1985).

Administrators are entitled to specific due process procedures that must be adhered to by a Board of education prior to dismissal or non-reemployment. Hoerman v. Western Heights Board of Education, 913 P .2d 684 (Okla.App. 1995). Oklahoma law provides as follows:

Whenever the local board of education or the administration of a school district shall determine that the dismissal or non-re-employment of a full-time certified administrator from his administrative position within the school district should be effected, the administrator shall be entitled to the following due process procedures:

1. A statement shall be submitted to the administrator in writing prior to the dismissal or non-re-employment which states the proposed action, lists the reasons for effecting the action, and notifies the administrator of his right to a hearing before the local board of education prior to the action; and

2. A hearing before the local board of education shall be granted upon the request of such administrator prior to the dismissal or non-re-employment. A request for a hearing shall be submitted to the board of education not later than ten (10) days after the administrator has been notified of the proposed action.

Failure of the administrator to request a hearing before the local board of education within ten (10) days after receiving the written statement shall constitute a waiver of the right to a hearing. No decision of the local board of education concerning the dismissal or non-re-employment of a full-time certified administrator shall be effective until the administrator has been afforded due process as specified in this section. The decision of the local board of education concerning the dismissal or non-re-employment, following the hearing, shall be final.

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612, Broken Arrow (7/23/2009 10:40:50 PM)

Dr. Sisney's response to motion to dismiss, part 4

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70 O.S. Section 6-101.13 (emphasis added).

A fair trial in a fair tribunal is a basic requirement of due process. Fairness, of course, requires an absence of actual bias in the trial of cases. In re Murchison, 349 U.S. 133 (1955); See also U.S.C.A. Const. Amend. 14. As such, any member of the board who participates in the hearing process must be able to refrain from making a decision as to non-renewal or termination until the conclusion of the due process hearing. See id.

In their Motion to Dismiss, Defendants do not dispute that Plaintiff had a protected property interest in his employment, as was clearly delineated within Plaintiffs Complaint. Therefore, it is the appropriate level of due process that is at issue herein. Defendants claim that Plaintiff s Complaint fails to allege facts that give rise to a violation of a denial of due process upon termination. It should first be noted, "all that is required under notice pleading is that a

petition give fair notice of the plaintiff s claim and the grounds upon which it rests." Gens v. Casady School, 177 P.3d 565, 229 Ed. Law Rep. 891,2008 OK 5, ~9. Further, the court accepts as true all well-pleaded facts, as distinguished from conclusory allegations, and all reasonable inferences from those facts are viewed in favor of the plaintiff Swierkiewicz v. Sorema NA., 534 U.S. 506, 511, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002) (emphasis added).
5
In Staton v. Mayes, 552 F.2d 908 (C.A.Okl. 1977), Plaintiff, a former school superintendent was discharged on charges of willful neglect of duty and incompetence, upon which he brought a civil rights suit challenging dismissal as denial of due process. See id. Public comment and statements were made prior to the hearing and throughout the coarse of the termination process by the public and school board members, regarding the process and removal of the superintendent. See id. The Court held that discussions by school board members revealed a tribunal that was not meeting the demands of due process for a hearing with fairness and the appearance of fairness, notwithstanding the testimony of the school board members that • they required proof at hearing and decided on the basis of the proof, where disqualification or an alternate tribunal were not provided for at time of hearing. See id; See also U.S.C.A.Const. Amend. 14. The Court further held that the constitutional guarantee of an impartial and fair hearing is invoked at the hearing stage, therefore due process considerations must prevail. See ide
Applying the holding in Staton to the case at bar, Plaintiff, Jim Sisney, the Broken Arrow Schools Superintendent, was terminated from his position, upon which he brought the instant civil rights suit challenging his dismissal as a denial of due process. The media coverage, as well as public statements before hearing and discussions by school Board Members both prior to and during the termination process, reveal a tribunal incapable of meeting the demands of due process for a hearing with fairness and the appearance of fairness, notwithstanding any testimony of school Board Members that they required proof at hearing and decided on the basis of the proof. Core to the issues involved herein, there exists evidentiary material and allegations to support that the Board Members were

predetermined to dismiss Dr. Sisney. See id; See also Sisney v. Rampey, et.al., Tulsa County District Court No. CJ- 2008- 6173.

612, Broken Arrow (7/23/2009 10:41:48 PM)
Dr. Sisney's response to motion to dismiss, part 5

In fact, a lawsuit was filed by Dr. Sisney prior to the "hearing" in which the Board was to decide Dr. Sisney's continued employment that implicated the Board Members in serious allegations of wrongdoing. See Sisney v. Rampey, et.al: Absolutely no disqualification or alternate tribunals were provided for at time of hearing, despite the contentious nature of the factual scenario and the pending allegations of wrongdoing that were unfolding at the time, and upon which Dr. Sisney's claims are based. See id; See also U.S.C.A.Const. Amend. 14. Here, the constitutional guarantee of an impartial and fair hearing was invoked at the hearing stage of Dr. Sisney's termination, therefore due process considerations must prevail. See id.
Finally, a person shall be entitled to trial by jury of any issue(s) of fact. 29 U.S.C.A. Section 626(c)(2). Plaintiff submits that any issue(s) as to the extent of or lack of bias on the part of the School Board are issues of fact, which are to be developed through discovery and decided by the trier-of-fact, not by this Court on the pleadings.
CONCLUSION
WHEREFORE, when viewed in the light most favorable to Plaintiff, Jim Sisney, the facts alleged in Plaintiff's Complaint clearly show that Defendants' conduct in connection with Plaintiff's termination violated clearly established law. The Defendants' Motion to Dismiss, should therefore be DENIED.
In the event the Court determines that Plaintiff should plead his claims against Defendants with more particularity, Plaintiff requests leave to amend his causes of action.

612, Broken Arrow (7/24/2009 12:31:27 AM)
Whoa, I had been having trouble with Internet Explorer on my Vista computer. It would hang whenever I opened this article - maybe because of all the comments. I had to remote to an XP machine to read or post comments.

I downloaded Google's Chrome browser. Not only does it not have any problem with this article, but it's FAST! Web

pages take MUCH less time to load. I don't know what it can't do compared to IE, but so far, I like it!
Report Comment | Ignore User
612, Broken Arrow (7/24/2009 8:23:19 AM)
It seems that the gist of Dr. Sisney's claim is that his hearing would not have been fair and impartial, and he provides the extensive background on the alleged HVAC conspiracy to show the reasons and extent to which the board was against him. He uses the fact that he had filed a lawsuit against them before he was terminated as evidence that they were against him. Interesting.

Common sense might say that there is no point in requesting a hearing that won't do you any good. But the flip side of that is that it wouldn't have done any harm either. Allowing him to continue with his wrongful termination suit depends only on whether he requested the hearing, not on a favorable outcome. So the court has to decide whether the requirement that he exhaust his remedies applies under these circumstances.

The board's brief cites another case that provides some insight into the federal court's purpose:

QUOTE
Pitts misunderstands the nature of his federal claim, which is an assertion
that he was denied due process. Federal courts do not sit to second guess
state decisions on the merits of a discharge decision, but only to ensure that
employees are provided due process when the decision is made.

UNQUOTE

The way I understand it, if the federal court rejects his case because he didn't exhaust his remedies, he still has time to request the hearing. I believe the deadline is a year from the termination date.

Coming next: the boards' brief (anything but) that was submitted with the motion to dismiss.
Report Comment | Ignore User
612, Broken Arrow (7/24/2009 8:25:09 AM)
OPENING BRIEF IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS
The Defendant, Independent School District No. 3 of Tulsa County (the "Broken Arrow School District") and the Broken Arrow School Board, respectfully submits this brief in support of its motion to dismiss this action.1
The Plaintiff, Jim Sisney, is the former Superintendent of the Broken Arrow School District. The Board of Education voted to dismiss Sisney from his employment with the Broken Arrow School District on October 23, 2008. Sisney then brought this action alleging that he was terminated without due process. He asserts claims under 42 U.S.C. § 1983 for deprivation of property and liberty without due process of law. Sisney also asserts a state law claim for breach of contract resulting from his termination.
The Broken Arrow School District now moves to dismiss Sisney's complaint for failure to state a claim upon which relief can be granted.
The Tenth Circuit has explained that "[p]rocedural due process ensures that a state will not deprive a person of life, liberty or property unless fair procedures are used in making that decision." Kirkland v. St. Vrain Valley School District No. RE-1J, 464 F.3d 1182, 1189 (10th Cir. 2006). The court explained that to determine whether a plaintiff was denied procedural due process, a two-step inquiry is necessary: "(1) Did the individual possess a protected interest to which due process protection was applicable? (2) Was the individual afforded an appropriate level of process?" Id.
In this case, the Broken Arrow School District acknowledges that Sisney had a protected property interest in continued employment by virtue of his contract as superintendent of schools. This case therefore turns on the second inquiry set forth above – was Sisney "afforded an appropriate level of process?"
Oklahoma law specifies the procedure to be followed in terminating the employment of a full-time certified administrator. OKLA. STAT. tit. 70, § 6-101.13 (2001). This statute provides that the administrator must be notified, in writing, of the proposed action and provided a list of the reasons for such action. The administrator then has ten (10) days after his receipt of the written notice to request a due process hearing before the local board of education. If the administrator timely requests a hearing, the board is required to conduct a due process hearing before voting on the possible termination. If the administrator does not timely request a hearing, Section 6-101.13 specifically provides that he has waived his right to a hearing.

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612, Broken Arrow (7/24/2009 8:25:40 AM)

The Supreme Court has observed that due process is a flexible concept that calls for such procedural protections as the particular situation demands. Morrissey v. Brewer, 408 U.S. 471, 478 (1972). The Tenth Circuit has emphasized that the essential elements of procedural due process are notice and an opportunity for a hearing. Darr v. Town of Telluride, 495 F.3d 1243, 1251 (10th Cir. 2007), and Jones v. Nuclear Pharmacy, Inc., 741 F.2d 322, 325 (10th Cir. 1984). Because Section 6-101.13 provides for notice and the opportunity for a hearing prior to any termination action, it satisfies the requirements of the Due Process Clause of the Fourteenth Amendment.

In his complaint, Sisney does not state whether he was offered an opportunity for a due process hearing. He merely alleges that he was deprived of a property interest by being terminated (Complaint, ¶ 23) and, upon being terminated, was not offered a "meaningful" opportunity to clear his name (Complaint, ¶ 28).

Sisney's termination was covered extensively by the Tulsa World and other local news media. The news stories reported that Sisney was notified of the reasons for his possible termination and offered the opportunity for a due process hearing. Pursuant to FRE 201, this Court may take judicial notice of these facts. Zimomra v. Alamo Rent-ACar, Inc., 111 F.3d 1495, 1503-04 (10th Cir. 1997) (affirming district court's authority to take judicial notice of adjudicative facts on motion to dismiss). Moreover, a court may take judicial notice of adjudicatory facts without converting a motion to dismiss under Rule 12(b)(6) into a motion for summary judgment under Rule 56. Pace v. Swerdlow, 519 F.3d 1067, 1072 (10th Cir. 2008); Buck v. Hampton Tp. School Dist., 452 F.3d 256, 260 (3rd Cir. 2006); U.S. v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003).

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612, Broken Arrow (7/24/2009 8:26:28 AM)

OPENING BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS, part 3

Based on the foregoing authorities, this Court may – and should – take judicial notice that Sisney was notified in writing that the Board of Education intended to consider his possible termination, that he was advised of the reasons for which the Board of Education was considering this action, that he was offered the opportunity for a due process hearing, and that he did not request a due process hearing.

By declining to exercise his right to a due process hearing, Sisney waived his right to claim that he was denied due process. Pitts v. Board of Education of U.S.D. 305, Salina, Kansas, 869 F.2d 555, 557 (10th Cir. 1989) (holding that teacher who "was fully informed of his considerable procedural rights" and failed to take advantage of those procedures "waived his right to challenge them in federal court"); Cliff v. Board of School Comm'rs of City of Indianapolis, 42 F.3d 403, 413-14 (7th Cir. 1995) (stating that the right to a due process hearing is waived "when the employer offers a pre-termination hearing and the employee fails to accept"); Correa v. Nampa School Dist. No. 131, 645 F.2d 814, 817 (9th Cir. 1981) (noting that "where adequate administrative procedures exist, a person cannot state a claim for denial of procedural rights when he has elected to forego a complete hearing").

Because Sisney waived his right to a due process hearing, his claims that he was deprived of property and liberty without due process of law fail to state a claim upon which relief can be granted. Likewise, Sisney cannot claim that the Broken Arrow School District improperly terminated his contract when he declined to take advantage of his opportunity to contest whether his contract should be terminated.

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612, Broken Arrow (7/24/2009 8:27:24 AM)

OPENING BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS, part 4

Sisney's complaint should therefore be dismissed pursuant to Rule 12(b)(6).

Argument and Authority

Introduction

Motions to dismiss were formerly analyzed under a stringent standard that authorized dismissal only if "it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The Supreme Court expressly rejected that standard in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), noting that "this familiar observation

has earned its retirement." Id. at 563. Instead, the Court in Twombly held that to survive a motion to dismiss, a complaint must contain "enough facts to state a claim that is plausible on its face." Id. at 570. The Court explained that plaintiffs must nudge their claims "across the line from conceivable to plausible." Id.
The Tenth Circuit has expressly recognized and applied this new standard. Ton Services, Inc. v. Qwest Corporation, 493 F.3d 1225, 1236 (10th Cir. 2007); Ridge at Red Hawk, LLC v. Schneider, 493 F.3d 1174, 1177 (10th Cir. 2007). Courts applying the Twombly standard continue to assume the truth of all well-pleaded factual allegations in a complaint and view such allegations in the light most favorable to the plaintiff. Id.
In this case, Sisney's complaint does not state a claim that is plausible on its face. Although Sisney advances claims for denial of property and liberty without due process of law, the facts before this Court establish that Sisney was advised of his due process rights and expressly waived his right to a due process hearing. Sisney's due process claims are therefore not facially plausible.

Likewise, Sisney's state law breach of contract claim does not state a plausible claim, because Oklahoma law specifically authorizes school districts to terminate the contracts of full-time certified administrators. OKLA. STAT. tit. 70, § 6-101.13 (2001). Sisney's claim that his contract was not properly terminated is not plausible in light of his decision not to contest the termination of his contract.

612, Broken Arrow (7/24/2009 8:28:31 AM)
OPENING BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS, part 5

Proposition I
The Court Should Take Judicial Notice That
Sisney Was Notified of His Due Process Rights and
Waived His Right to a Due Process Hearing
FRE 201 allows a court to take judicial notice of adjudicative facts. As the advisory committee notes to FRE 201(a) explain, "Adjudicative facts are simply the facts of the particular case." FRE 201(b) specifies that a judicially noticed fact must be a fact "not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court, or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."
Federal courts have upheld the propriety of taking judicial notice of facts reported by the local news media. Ritter v. Hughes Aircraft Co., 58 F.3d 454, 458-59 (9th Cir. 1995) (upholding trial court's decision to take judicial notice of fact reported in newspaper article because such fact was generally known in the area and was capable of accurate and ready determination). See, also, Associated General Contractors of America v. City of Columbus, 936 F.Supp. 1363, 1424-25 (S.D. Ohio 1996), vacated on other grounds, 172 F.3d 411 (6th Cir. 1999) (collecting cases discussing judicial notice of facts reported in newspaper articles).

The relevant facts of Sisney's dismissal are both generally known within the Northern District of Oklahoma (because of the coverage provided by the local news media) and capable of accurate and ready determination by resort to the official records of the Broken Arrow School District.
In a story published on October 8, 2008, the Tulsa World reported that the Board of Education of the Broken Arrow School District voted "to send a letter to Superintendent Jim Sisney outlining the reasons for his possible dismissal." See story entitled "All Sides Silent on BA Suspension" attached as exhibit 1.

612, Broken Arrow (7/24/2009 8:29:21 AM)
OPENING BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS, part 6

On October 17, 2008, the Tulsa World made available on its web site a copy of the letter the Broken Arrow School District sent to Sisney notifying him that the Board would consider his termination, listing the reasons for his possible termination, and advising him of his due process rights. See letter dated October 7, 2008, attached as exhibit 2.
The letter, which is signed by the Broken Arrow School District's attorney, recites that the Board has directed the attorney to notify Sisney, in writing, that the Board will

consider and vote on Sisney's possible dismissal. The letter lists the following five reasons for the proposed action:
1. Significant evidence from several witnesses shows that you frequently treat staff, patrons and others in a demeaning and humiliating manner which imperils working relationships.
2. Witnesses have indicated that during duty time and while acting as superintendent of schools, you have made unprofessional, demeaning and derogatory statements to a District employee about other District employees, current and former board members and superintendents of other Tulsa area school districts.
3. Witnesses and a document show that you entered into an agreement, on behalf of the District, with an administrator in which the administrator is requires to be paid for sick leave when he is not sick, requires the administrator to keep the agreement confidential when all such agreements are public records and which agreement you did not disclose to the school board.
4. Witnesses have indicated that you have made false public allegations against a District vendor as to that vendor's billing practices to the District.
5. Significant evidence from several witnesses shows that you are not a good leader nor do you work in a collaborative or collegial manner with staff or the community.

612, Broken Arrow (7/24/2009 8:31:52 AM)
OPENING BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS, part 7

The letter then notifies Sisney of his right to request a due process hearing:
This is to notify you that you have the right to a hearing before the Board of Education prior to the Board taking any action with regard to your possible dismissal. If you wish to exercise your right to this hearing, you must, WITHIN TEN (10) CALENDAR DAYS OF YOUR RECEIPT OF THIS NOTICE, NOTIFY THE CLERK OF THE BOARD OF EDUCATION IN WRITING. If you fail to notify the Board Clerk in writing within the ten (10) calendar day period of your desire to have a hearing on your possible dismissal, you will be deemed to have waived your right to a hearing and the Board can proceed to make a decision concerning your possible dismissal without affording you any further notice or any further opportunities to present your side of the matter to the Board. The decision of the Board of Education concerning your possible dismissal is final and nonappealable.
(Emphasis original). The letter stated that if Sisney requests a hearing, the hearing will be scheduled as soon as possible and Sisney will be notified in writing of the date, time and place of the hearing.
On the same day, October 17, 2008, the Tulsa World published a story stating that Sisney had announced at a news conference "that he would not request a due process hearing" before the Board of Education. See story entitled "Suspended BA Superintendent Says He Won't Request Hearing," attached as exhibit 3.

612, Broken Arrow (7/24/2009 8:32:37 AM)
OPENING BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS, part 8

On October 23, 2008, six days after Sisney's public announcement that he would not request a due process hearing, the Board of Education of the Broken Arrow School District held a meeting at which the Board voted to dismiss Sisney. The Tulsa World reported the Board's action in a news story published the same day. See story entitled "BA School Board Ousts Embattled Superintendent in 3-2 Vote," attached as exhibit 4.2
The story also recited that Sisney's contract provides that if the School District terminates Sisney's employment for any lawful reason, Sisney must be paid the full amount of his annual salary for the remainder of the current fiscal year, which ends on June 30, 2009.
The Broken Arrow School District requests that this Court take judicial notice of the foregoing facts pursuant to FRE 201(b). FRE 201(d) provides that a court "shall take judicial notice if requested by a party and supplied with the necessary information"

(emphasis added). To confirm the accuracy of the facts reported in the Tulsa World articles, the Broken Arrow School District has attached to this brief a true and correct copy of the notice letter given to Sisney that the Board of Education will consider his termination. See Exhibit 5. It is identical to the copy published by the Tulsa World. In addition, the Broken Arrow School District has also attached to this brief a copy of the minutes of the meeting of the Board of Education at which Sisney was terminated. See Exhibit 6. These documents from the files of the Broken Arrow School District establish that the facts reported by the Tulsa World are "not subject to reasonable dispute" because
they are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."

612, Broken Arrow (7/24/2009 8:33:28 AM)
OPENING BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS, part 9

The Court should take judicial notice of these facts.
Proposition II
Sisney May Not Claim That He Was
Denied Due Process After Waiving His Right to a Hearing
Sisney was notified of his right to a due process hearing and expressly waived such a hearing. For that reason, he cannot now claim that he was denied due process. The Tenth Circuit addressed this specific issue in Pitts v. Board of Education of U.S.D. 305, Salina, Kansas, 869 F.2d 555 (10th Cir. 1989). There, the local board of education notified a tenured teacher that it did not intend to renew his contract for the following school year. The court explained that this action was "the first step in the lengthy process required by Kansas law for the dismissal of a tenured public school teacher." Id. at 556. Upon receiving notice of the board's decision and an outline of his due process rights, the teacher indicated that he wanted to exercise his right to a due process hearing before a committee selected for such purpose. Before the committee's first meeting, the teacher filed a lawsuit in federal court, and neither the teacher nor his attorney attended the committee's prehearing conference. The teacher then submitted a letter stating that he was waiving his right to a pretermination hearing. The district court subsequently entered summary judgment for the school district, and the teacher appealed. The Tenth Circuit concluded that the teacher had waived his right to challenge the due process procedures available to him:

> Pitts was fully informed of his considerable procedural rights. Indeed, he initially asserted them. The procedures mandated by Kansas law clearly meet the requirements of the due process clause. By knowingly failing to take advantage of those procedures, Pitts has waived his right to challenge them in federal court.

Id. at 557 (emphasis added; footnote omitted).
The teacher contended that the grounds relied on by the board were unsupportable and stigmatizing. He also argued that the court was improperly imposing the requirement that he exhaust his administrative remedies before bringing suit. The Tenth Circuit explained that the former argument was irrelevant while the latter was incorrect:

> Pitts misunderstands the nature of his federal claim, which is an assertion that he was denied due process. Federal courts do not sit to second guess state decisions on the merits of a discharge decision, but only to ensure that employees are provided due process when the decision is made. Thus, our holding here is not that Pitts must exhaust his claim before he has a federal cause of action; rather, unless state law fails to afford Pitts adequate process, he has no federal constitutional claim to begin with. By waiving his hearing, Pitts deprived the school board of the opportunity to provide him with due process, and he gave up his right to test the correctness of the board's decision.

612, Broken Arrow (7/24/2009 8:34:32 AM)
OPENING BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS, part 10

Sisney's situation is identical. Sisney was provided written notice of the reasons the Board of Education of the Broken Arrow School District was going to consider his possible dismissal and provided an opportunity for a due process hearing. By waiving his right to a due process hearing, Sisney deprived the Board of the opportunity to provide him with due process. When

he made the choice to waive a hearing, Sisney also waived
his right to dispute “the correctness of the board’s decision.”
The Tenth Circuit reached the same result in Kirkland v. St. Vrain Valley School
District No. RE-1J, 464 F.3d 1182 (10th Cir. 2006). In that case, an assistant
superintendent told the superintendent he would resign after serious financial
irregularities were discovered. In return, the superintendent agreed that the school district
would continue to pay the assistant superintendent’s salary for the remainder of the
school year. The board of education rejected the agreement and placed the assistant
superintendent on unpaid administrative leave. One board member was quoted in a local
newspaper as stating that the assistant superintendent had lied to the board and falsified
documents. The assistant superintendent requested a pretermination due process hearing
before the board. Thereafter, the board and the assistant superintendent entered into a
written termination agreement. The agreement contemplated that litigation would ensue
and provided that the assistant superintendent would not request a due process hearing
before the board, in return for which the board would terminate his employment without
public comment.
After the board terminated him, the assistant superintendent brought suit, alleging
that he had been deprived of property and liberty without due process of law. The district
court denied the motion for summary judgment based on qualified immunity filed by the
superintendent and board members, and they appealed. The Tenth Circuit concluded that
the defendants did not deprive the assistant superintendent of property or liberty by
rejecting the initial resignation agreement, suspending him without pay, or dismissing him pursuant to the termination
agreement. With regard to the dismissal action, the
Tenth Circuit held that by entering into the termination agreement, the assistant
superintendent had “waived any right to a pre-termination hearing.” Id. at 1195. The
court explained that because the assistant superintendent, by signing the termination
agreement, “waived any right to a pre-termination hearing, he has failed to allege a claim
for the deprivation of due process.” Id. at 1196.

612, Broken Arrow (7/24/2009 8:35:21 AM)
OPENING BRIEF IN SUPPORT OF DEFENDANT’S MOTION TO DISMISS, part 11

The court ruled that his waiver also waived his right to a name-clearing hearing:
Kirkland alleges that Defendants deprived him of this liberty interest
without due process when he asked for, but never received, a “nameclearing”
hearing. But again, Kirkland waived his right to any hearing
through his termination agreement with the District. Further, Kirkland
acknowledges that he never requested a hearing to clear his name separate
from his request for a pre-termination hearing. In light of that, Kirkland’s
decision to waive the hearing before the Board, in the April termination
agreement, was sufficient to waive any right Kirkland may have had to a
name-clearing hearing separate from a pre-termination hearing.
Id. The Tenth Circuit reversed the lower court’s ruling, holding that the assistant
superintendent’s due process claims failed to allege a constitutional violation. Id.
Other circuits have reached the same result. In Cliff v. Board of School Comm’rs
of City of Indianapolis, 42 F.3d 403 (7th Cir. 1995), the Seventh Circuit held that a
teacher waived her right to a due process hearing by submitting a letter to the board
withdrawing her request for a hearing and asking the board to defer any decision on her
nonrenewal until an arbitrator ruled on her latest grievance. The board responded by
acknowledging the teacher’s withdrawal of her request for a hearing but declining to
defer its decision until the pending grievance had been resolved. The teacher made no
attempt to reinstate her request for a hearing, and the board ultimately voted not to renew her contract. The Seventh
Circuit held that the teacher had waived her right to a due
process hearing. “[T]he right to such a hearing is generally waived when an employer
offers a pre-termination hearing and the employee fails to accept.” Id. at 414. The court
observed that an employee “‘cannot sue in federal court to secure a right which he
declined when it was voluntarily offered to him.’” Id., quoting Suckle v. Madison Gen.
Hosp., 499 F.2d 1364, 1367 (7th Cir. 1974).

612, Broken Arrow (7/24/2009 8:36:11 AM)
OPENING BRIEF IN SUPPORT OF DEFENDANT’S MOTION TO DISMISS, part 12

In Correa v. Nampa School Dist. No. 131, 645 F.2d 814 (9th Cir. 1981), a school employee sued the school district after her contract was not renewed. The district court held that the plaintiff "had waived her right to claim a due process violation because she knowingly and voluntarily chose to forego the District's administrative procedures and instead pursued a claim through the Office of Civil Rights." Id. at 816-17. The Ninth Circuit affirmed, noting that "where adequate administrative procedures exist, a person cannot state a claim for denial of procedural rights when he has elected to forego a complete hearing." Id. at 817.

In Birdwell v. Hazelwood School District, 491 F.2d 490 (8th Cir. 1974), the Eighth Circuit held that a teacher could not pursue a due process claim after waiving his right to a due process hearing. The teacher was recommended for dismissal after he made disruptive comments about military recruiters visiting campus. The teacher chose not to attend the board meeting where his dismissal was considered, and the board then voted to dismiss him. In rejecting the teacher's claim that he was denied due process, the court noted that the teacher had no right to complain of the alleged deficiencies in the due process procedure he was offered:

He was aware of the time and place of the Board meeting, that his continued employment was at stake, and that his dismissal was being recommended because of his statements in class and his actions toward the servicemen in the building. Nevertheless, with this knowledge, and after conferring with legal counsel, it was his decision not to attend the meeting.

Id. at 494-95. Based on the foregoing facts, the court found the teacher had waived his right to challenge his due process hearing:

The opportunity thus demanded was here afforded but appellant deliberately chose not to avail himself of it and not to present to the Board the arguments made to us. He cannot now scour the record of the hearing he thus ignored for flaws in its conduct. We find a voluntary and knowing waiver.

Id. at 495.

The foregoing authorities establish that Sisney may not claim that he was denied due process after he knowingly waived his opportunity for a pretermination due process hearing. Sisney's due process claims therefore fail to state a claim upon which relief can be granted.

Likewise, Sisney cannot claim that the Broken Arrow School District's termination of his employment was a breach of his contract when he declined to take advantage of his opportunity to challenge such termination. The Broken Arrow School District terminated Sisney's employment pursuant to the provisions of OKLA. STAT. tit. 70, § 6-101.13 (2001). Sisney has no breach of contract claim.

Conclusion

For the reasons set forth in this brief, the Broken Arrow School District requests that Sisney's complaint be dismissed for failure to state a claim upon which relief can be granted.

612, Broken Arrow (7/24/2009 8:43:10 AM)

It's a lot easier to read in the pdfs. Maybe the BAParentsForTruth people will post them on their website. I would be happy to provide them.

The board provided several exhibits, all of which we have seen before:

Exh 1 - the brief copied above

Exh 2 - Tulsa World article 10/8/2008 - All Sides Silent on BA Suspension

Exh 3 - Tulsa World article 10/7/2008 - Letter to Dr. Sisney from the article

Exh 4 - Tulsa World article 10/17/2008 - Suspended BA Superintendent Says He Won't Request Hearing

Exh 5 - Notice Letter to Dr. Sisney 10/7/2008

Exh 6 - Approved minutes of BA School Board meeting 10/23/2008

612, Broken Arrow (7/24/2009 10:04:12 AM)

I'm not sure how the top-commented story list is determined, but the note on the tab says, "These are the top stories that have been commented on in the past 7 days." I don't know if it's always been this way, or if this is a change.

Since (normally) stories get most of their comments in the first few hours, and our weekly volume doesn't usually approach the number of comments on the most popular new stories, that may explain why this story isn't in the list any more.

Oh well. It made it easy to find, but I guess BA can do without more attention being drawn to this controversy.

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612, Broken Arrow (7/24/2009 12:18:06 PM)

Dr. Sisney's argument cites a seemingly similar Oklahoma case: Staton v. Mayes, 552 F.2d 908

You can find it easily in a Google search.

There were two arguments that the plaintiff (terminated Superintendent) made: that there was a defective notice which amounted to a denial of due process, and that the board was biased, so that his hearing could not possibly be fair.
The court rejected the defective notice argument but in this case agreed with the argument that the board's bias prevented the hearing from being fair.

A major difference in this case, which Dr. Sisney's argument does not point out, is that a hearing was scheduled by the school board and held, the superintendent was present, and evidence was presented by both sides. All of this occurred before the vote to terminate.

In the Staton case, the superintendent was being terminated for incompetency and willful neglect of duty. The reason the court considered the board "biased" was that two of the board members had previously made public comments about the superintendent, to the effect that " no progress could be made with school problems until there was a new superintendent" and, "from discussions with parents, teachers and citizens it had become apparent to him that the trouble lay with the superintendent, and that he would vote to make the necessary change".

The court recognized that there was an inherent problem with having the board conduct the hearing; if they knew in advance of the reasons for termination (the only reason they would be considering termination in the first place), of course they wouldn't be entering the hearing unbiased. In this case, the public comments made them APPEAR biased before the hearing, which made all the difference.

The court's ruling amounted to a "do-over". The difference would be new (at the time) laws that allowed appeal remedies after a board decision, with a full hearing and review on the facts by the Professional Practices Commission and further appeal to the State Board of Education. This provides the means for an equitable solution protecting the right to a fair hearing.
So - the board could go through the process to terminate again, and if the superintendent wants to dispute their findings, then after any State appeal or review proceedings, the trial court could then consider whether further compensatory relief may be proper.

Dr. Sisney is not eligible for these State appeal/review proceedings because he waived his due process hearing.

The two arguments are very different: Staton argued that his hearing was unfair; Sisney is arguing that his hearing WOULD HAVE BEEN unfair.

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612, Broken Arrow (7/24/2009 8:23:15 PM)

The Staton case really illustrates the point that the due process hearing is an absolutely essential step before moving on to further appeals. The court's ruling in fact sent the matter back to the school board, which the court had already pronounced biased! What ruling is Richardson hoping to get by citing this case?

The court did not find that Staton's termination was wrongful, pronounce him innocent of the claims against him, and award him compensation. It didn't look at the grounds for termination at all. It only looked at whether or not Staton had had access to a fair hearing. Finding that he did not, and that at the time he had no state-level recourse, the court sent him back to the school board to start the termination process again, this time with the new Oklahoma laws in place to allow appeals to state-level officials. Dr. Sisney of course already had the ability to take advantage of these state laws at the time of his termination.

Given the unwillingness of federal courts to become involved in cases when state-level remedies have not been exhausted, it seems likely that giving Sisney a fresh start at the state level is the best outcome he can hope for. This

is probably a stretch, given that Sisney has already declined this opportunity. The court would have to agree that Sisney had good reason to decline his hearing (beyond being terminated anyway - maybe the fear for his life he mentions? some other serious potential harm to him?), and allow him to appeal to the state agencies in spite of waiving his due process hearing. Is this what Richardson is going for? If so, it seems like he took a pretty big (and expensive) gamble when he advised Sisney to waive his due process hearing.

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612, Broken Arrow (7/25/2009 9:53:14 AM)

The district filed a response yesterday to Sisney's response to their motion to dismiss. I just saw it this morning. This case is moving right along!

In it, Rainey (the district's attorney, with RFR) points out some key differences between the Staton case and Sisney's case. In addition, he says that the new (at the time of the Staton case) Oklahoma laws allowing appeals to state authorities are no longer in effect, which makes the school board "the only tribunal authorized at law that could provide" a due process hearing.

Major points:

- Staton had a hearing; Sisney waived his right to one

- Staton's counsel objected to the board's bias at the beginning of his hearing; Sisney never presented his "bias" claim to the board. "a litigant cannot transform a tactical decision to withhold the information from the court's attention into a trump card to be played only if it becomes expedient. The duty is to disclose."

- School boards are no longer limited to certain enumerated grounds for terminating superindents like for tenured teachers; they can terminate for any just cause.

- A school board is "the sole body granted authority by the Oklahoma Legislature to consider the nonreemployment or dismissal of an administrator". Under current Oklahoma law, no
statutory or administrative procedure exists for addressing board bias claims or for the seating of an alternative tribunal in lieu of a board of education.

- While "due process" requires an unbiased tribunal, a limitation or an exception applies when there is only one tribunal with the legal power to act.

- Sisney's use of his defamation lawsuit against the 3 board members as proof of their bias is not going to hold up under Oklahoma law.

Rainey includes two pointed remarks about Sisney's tactics:

1) Sisney did not, at any time, request a hearing before the Board. Maybe Sisney did not want to public and press to learn, at a public hearing,
all of the evidence warranting his immediate dismissal.

2) There can be no doubt that Sisney's "bias" claim is asserted for no other reason than "to destroy the only tribunal with power" to consider his dismissal. Sisney should not be allowed, through this action, to accomplish that goal.

Posting the text of the response next...

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612, Broken Arrow (7/25/2009 9:54:48 AM)

DEFNDANT'S REPLY BRIEF IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS part 1

This reply brief is submitted in support of the motion to dismiss submitted by Independent School District No. 3 of Tulsa County, Oklahoma (the "Broken Arrow School District" or "School District") [Docket No. 8].

As preliminary matters, the plaintiff, Jim Sisney ("Sisney"), has not contested that the Broken Arrow School Board has no independent legal existence and is not capable of being sued separately from the School District. Furthermore, Sisney has not contested any of the facts which the School District asserts are subject to judicial notice, nor has he cited any authority challenging the propriety of the court taking judicial notice of these facts. Thus, the following facts have been conceded for the purposes of the School District's motion to dismiss: (1) Sisney was notified in writing that the Board of Education intended to consider his possible termination, (2) Sisney was advised in that

notification of the reasons for which the Board of Education was considering this action, (3) Sisney was offered the opportunity for a due process hearing, and (4) Sisney did not
at any time request a due process hearing.

612, Broken Arrow (7/25/2009 9:55:42 AM)
DEFNDANT'S REPLY BRIEF IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS part 2

I.
SISNEY HAS WAIVED ANY "BIAS" CLAIM BY WAIVING HIS RIGHT
TO A DUE PROCESS HEARING
Sisney's proffered excuse for not requesting a due process hearing is that the Broken Arrow Board of Education ("Board") was a "tribunal incapable of meeting the demands of due process for a hearing and with the fairness and appearance of fairness[.]" Response, at p. 6. In support of his "bias" claim, Sisney cites to Staton v. Mayes, 552 F.2d 908 (10th Cir. 1997). However, Staton is factually and legally distinguishable from the facts at issue. Furthermore, Staton is silent as to the issue of an employee, such as Sisney, who voluntarily waives his right to a due process hearing – a waiver that is fatal to any "bias" claim.
A. Staton is factually and legally distinguishable.
In Staton, the plaintiff, a school superintendent, was given notice of his possible dismissal and the date on which a hearing had been scheduled before the local board of education. Id. at 910. This notice complied with Oklahoma law then in effect, which (1) defined a school superintendent as a "teacher" for the purposes of termination proceedings, (2) limited termination to certain enumerated grounds of cause, and (3) required a board of education to set a hearing date in the notice letter. Id. at 913 n. 10; see OKLA. STAT. tit. 70, § 6-103 (1971) (repealed 1990). Staton attended his due process hearing with counsel, and prior to introduction of any testimony, Staton's counsel objected to the lack of impartiality of the board of education. Id. at 910, 913.
The facts and law applicable to the case at bar, however, are materially different from those found in Staton. While Sisney, like Staton, received notice of the grounds for his possible termination, the Board was not required by Oklahoma law set a due process hearing date. Rather, the Board was only required to offer a due process hearing to Sisney, and it was Sisney's legal obligation - if he sought due process - to request such a hearing in writing. OKLA. STAT. tit. 70, § 6-101.13 (2001). Staton is further distinguishable because the reasons an administrator (such as a superintendent) may be dismissed are no longer limited to certain enumerated causes. Rather, a board of education can terminate an administrator for any just cause. Id. Additionally, the statutory procedure for an administrator's dismissal is different from that for a teacher. Compare OKLA. STAT. tit. 70, § 6-101.13 (2001) (setting forth administrator dismissal proceedings) with OKLA. STAT. tit. 70, §§ 6-101.20 – 6.101.29 (setting forth teacher dismissal proceedings); Hoerman v. Western Heights Bd. of Educ., 913 P.2d 684, 690-91 (Okla. Ct. App. 1995) (recognizing that administrators are not teachers, "the Legislature has not preemptively specified the grounds for dismissal of an administrator as it has with tenured teachers[,]" and "the Legislature intended that cause for dismissal of an administrator be determined upon the facts of each case." (emphasis original)).

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DEFNDANT'S REPLY BRIEF IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS part 3

B. Sisney waived any claim of Board bias by failing to request a due process hearing and by failing to present his "bias" claim to the Board.
The Broken Arrow Board of Education enjoys a presumption of impartiality. See Hoerman, 913 P.2d at 688 (recognizing that a presumption of impartiality exists in favor of those serving in quasi-judicial capacities and that the burden of establishing a disqualifying interest rests on the party making the assertion); Mangels v. Pena, 789 F.2d 836, 838 (10th Cir. 1986) (citing Withrop v. Larkin, 421 U.S. 35, 47 (1975) for the proposition that honesty and integrity are presumed on part of a tribunal).
Despite having received written notice that the Board would be considering his possible dismissal as superintendent, Sisney did not, at any time, request a hearing before

the Board. Maybe Sisney did not want to public and press to learn, at a public hearing, all of the evidence warranting his immediate dismissal. Maybe it was for another reason. Whatever the reasons, they are immaterial and irrelevant because by not requesting a hearing, Sisney voluntarily - and by operation of law - waived his right to a due process hearing.1 OKLA. STAT. tit. 70, § 6-101.13 (2001). ("Failure of the administrator to request a hearing before the local board of education within ten (10) days after receiving the written statement shall constitute a waiver of the right to a hearing."); see also Faulkenberry v. Kansas City Southern Ry. Co., 602 P.2d 203, 206-207 (Okla. 1979) ("A waiver is defined as the voluntary or intentional relinquishment of a known right.").

The essential elements of procedural due process are notice and an opportunity for a hearing. Darr v. Town of Telluride, 495 F.3d 1243, 1251 (10th Cir. 2007). Sisney was provided the opportunity for a hearing. However, he voluntarily waived his right. Having done so, Sisney cannot now be heard to complain that the Board was "biased." Cf. Koch v. Koch Industries, Inc., 203 F.3d 1202, 1238-1239 (10th Cir. 2000) (holding that plaintiffs waived their argument that the trial court was biased "because they failed to timely move for disqualification"); United States v. Diaz-Albertini, 772 F.2d 654, 657 (10th Cir. 1985) (recognizing that "[w]hen the basis for a challenge to a particular juror can be timely shown, the failure to object at the trial's inception constitutes a waiver of the right to attack the composition of the jury" and noting that a "litigant cannot transform a tactical decision to withhold the information from the court's attention into a trump card to be played only if it becomes expedient. The duty is to disclose."); Tigrett v. The Rector and Visitors of the Univ. of Virginia, 97 F.Supp.2d 752, 762 (W.D. Va. 2000) (rejecting student's claim that it was not his duty to allege bias in a hearing proceeding and finding that student could not, as a matter of law, "show how he was denied due process when he was given an opportunity to question members of the panel concerning their alleged bias but declined to challenge their impartiality." (emphasis original)).

---- footnote ------

1 It is undisputed that the legal consequence associated with not timely requesting a due process hearing was contained in the Notice letter received by Sisney. That is, the Board could act on his employment without further notice or an opportunity to be heard – which is what occurred.

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DEFNDANT'S REPLY BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS part 4

II.

SISNEY'S "BIAS" CLAIM FURTHER FAILS AS A MATTER OF LAW BECAUSE THE RULE OF NECESSITY PREVENTS THE DISQUALIFICATION OF THE THREE BOARD MEMBERS SISNEY CLAIMS WERE BIASED.

A school district's board of education is an elective body under Oklahoma law. OKLA. STAT. tit. 70, § 5-107A (2001). It is charged under Oklahoma law with, among other things, (i) maintaining and operating a complete public school system of such character as it deems best suited to the needs of the school district, and (ii) contracting and fixing the duties and compensation of superintendents, teachers, and other employees. OKLA. STAT. tit. 70, § 5-117(A)(3) & (14) (2008 Supp.), amended on other grounds by 2009 Okla. Sess. Laws Ch. 250, § 1 (H.B. 1592 effective May 14, 2009).

Further, it is the sole body granted authority by the Oklahoma Legislature to consider the nonreemployment or dismissal of an administrator. OKLA. STAT. tit. 70, § 6-101.13 (2001).

There are five members of the School District's board of education. It is to three of these board members, coincidently the three board members who voted to terminate Sisney's employment, against whom Sisney now asserts a claim of "bias."2 Complaint, ¶¶ 12, 15, 17.

In his Response, Sisney asserts that this court is the proper forum for considering his bias claim because no disqualification or alternative tribunals were available at the time of his hearing. Response, at p.7. It is true that under current Oklahoma law, no statutory or administrative procedure exists for addressing board bias claims or for the seating of an alternative tribunal in lieu of a board of education.3 Sisney is incorrect, however, assuming that this somehow transforms this court into the appropriate forum for addressing his "bias" claim.

----------footnotes----------
2 At the time Sisney's termination was considered and voted upon by the Board, three of its members were named defendants in an action filed by Sisney - CJ-2008-6173, District Court of Tulsa County. In his Response, Sisney alludes to the fact that these three board members' status as defendants implicates per se bias on their parts. Response, at p.7. This is not the case under Oklahoma law. The fact that these three board members were defendants in a lawsuit brought by Sisney is simply "a factor which might reflect on the appearance of bias by the [tribunal]." Johnson v. Board of Governors of Registered Dentists of the State of Okla., 913 P.2d 1339, 1348 (Okla. 1996).
3 In Staton, the court of appeals references Oklahoma statutory provisions that had been enacted to give a superintendent an appeal remedy after an adverse board decision. Staton, 552 F.2d at 915. These provisions, however, are no longer in effect. See Hoerman, 913 P.2d at 689-90.

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DEFENDANT'S MOTION TO DISMISS part 5

Courts, including the Oklahoma Supreme Court, have consistently noted that regardless of the potential for bias, a board and its elected members may have a statutory duty and obligation to hear a case and render a decision. This doctrine, referred to as the "rule of necessity," has been recognized by the United States Supreme Court in United States v. Will, 449 U.S. 200, 217 (1980); the Oklahoma Supreme Court in Southwestern Bell v. Oklahoma Corporation Commission, 873 P.2d 1001, 1009 (Okla. 1994); and the Tenth Circuit Court of Appeals in Brinkley v. Hassig, 83 F.2d 351, 357 (10th Cir. 1936). Generally speaking, while "due process" requires an unbiased tribunal, a limitation or an exception applies when there is only one tribunal with the legal power to act. In those circumstances what process is due requires a consideration of the individual's interest in the outcome and the state's interest in providing the procedure. Hortonville Joint School District, 426 U.S. 482, 494-96 (1976).

In the Southwestern Bell case, the Oklahoma Supreme Court ruled Corporation Commissioner Robert Anthony was required to consider an administrative rate increase request presented by Southwestern Bell even though he acted as an informant for the FBI while it was investigating the phone company's activities with Corporation Commissioners. Because the Oklahoma Corporation Commission was the only body legally entitled to make the decision and there was no statutory mechanism in place to replace Commissioner Anthony, the three board members were required to sit and consider the case. In so holding, the Oklahoma Supreme Court wrote:

In an attempt to conserve judicial resources, as well as the resources of the rate payers, we observe in passing that while an attempt to disqualify Anthony in a proceeding involving a judicial function might arguably be cognizable, it would likely lead to the same result reached in this legislative function decision today: Commissioner Anthony would not be disqualified but would be allowed to continue to hear the matter despite assertions of bias and prejudice. This is so because the "rule of necessity", which would undoubtedly be held applicable, would require that Anthony not be disqualified because the concurrence of a majority of the Commissioners is necessary for a decision, and there is no mechanism in the law for appointment of a replacement commissioner. The rule of necessity is a common law rule recognizing that a judge should not be disqualified where his jurisdiction is exclusive or there is no provision for appointing a replacement so that his disqualification would deny the constitutional right to a forum. United States v. Will, 449 U.S. 200, 101 S.Ct. 471, 66 L.Ed.2d 392 (1980). The rule has been held applicable to state administrative proceedings where the administrative body was acting in an adjudicatory capacity. Barker v. Secretary of State's Office of Missouri, 752 S.W.2d 437 (Mo. App. 1988); First American Bank & Trust Co. v. Ellwein, 221 N.W.2d 509 (N.D. 1974), cert. denied, 419 U.S. 1026, 95 S.Ct. 505, 42 L.Ed.2d 301 (1974). It operates on the principle that "a biased judge is better than no judge at all" and the disqualification of a judge cannot be allowed to "bar the doors to justice or to destroy the only tribunal vested with the power" to hear the matter. Barker, supra,

at 440 (emphasis added).

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DEFNDANT'S REPLY BRIEF IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS part 6

Under Sisney's argument, three of the District's board members were required to disqualify themselves from considering his possible dismissal because of their alleged bias. This logic, however, is fatally flawed and absurd. First, it would prevent a quorum of the Board (at least three members), as required by Oklahoma's Open Meetings Act, from ever being able to meet to consider Sisney's dismissal – thereby effectively preventing its lawful consideration. See OKLA. STAT. tit. 25, § 304(2) (2008 Supp.) (requiring a majority of members of a public body to be present for a meeting); OKLA. STAT. tit. 25, § 305 (2001) (mandating that "[I]n all meetings of public bodies, the vote of each member must be publicly cast and recorded"); OKLA. STAT. tit. 25, § 306 (2001) (stating that no informal gatherings among a majority of the members of a public body shall be used to decide any action or to take any vote on any matter). Second, it would prevent the only body authorized by Oklahoma law to consider Sisney's possible dismissal from acting because there are no mechanisms in place for disqualification of a majority of a board of education or the seating of an alternative tribunal. Accordingly the Board, even assuming "bias," was the only legal and proper forum to hear and consider Sisney's dismissal.

From the very necessity of the case has grown the rule that disqualification will not be permitted to destroy the only tribunal with power in the premises. If the law provides for a substitution of personnel on a board or court, or if another tribunal exists to which resort may be had, a disqualified member may not act. But where no such provision is made, the law cannot be nullified or the doors to justice barred because of prejudice or disqualification of a member of a court or an administrative tribunal.

Brinkley, 83 F.2d at 357 (emphasis added).

There can be no doubt that Sisney's "bias" claim is asserted for no other reason than "to destroy the only tribunal with power" to consider his dismissal. Sisney should not be allowed, through this action, to accomplish that goal.

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DEFENDANT'S REPLY BRIEF IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS part 7

III.

SISNEY SHOULD NOT BE GRANTED LEAVE TO AMEND

For the reasons previously set forth, Sisney's complaint fails to state a claim upon which relief can be granted. Furthermore, the undisputed facts conclusively establish that Sisney waived his opportunity for a due process hearing by failing to request a hearing, and this waiver is fatal to his "bias" claim. Accordingly, leave should not be granted for

Sisney to amend his Complaint as any such amendment would be futile. See Duncan v. Manager, Dep't of Safety, City & County of Denver, 397 F.3d 1300, 1315 (10th Cir. 2005) (recognizing that a court may refuse leave to amend due to futility of amendment); Watson ex rel. Watson v. Beckel, 242 F.3d 1237, 1239-40 (10th Cir. 2001) (explaining that a "proposed amendment is futile if the complaint, as amended, would be subject to dismissal.").

Conclusion

As the court of appeals noted in Staton, federal courts "must be mindful of the commitment in our Nation of public education to the control of state and local authorities." Staton, 552 F.2d at 912 (citing Goss v. Lopez, 419 U.S. 565, 578 (1975)). Sisney was provided the opportunity for a hearing before the Broken Arrow Board of Education before it voted whether or not to dismiss him from his employment. However, he voluntarily waived his opportunity for a due process hearing before the

Board - the only tribunal authorized at law that could provide it. As such, Sisney was afforded all of the due process required by law. Accordingly, Sisney's due process claims against the School District fail to state a claim upon which relief can be granted, and leave to amend should be denied.