

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

JIM SISNEY, an individual,)
)
 Plaintiff,)
)
 vs.)
)
 INDEPENDENT SCHOOL DISTRICT)
 NO. 3 OF TULSA COUNTY, a Political)
 Subdivision; and the BROKEN ARROW)
 SCHOOL BOARD,)
)
 Defendants.)

Case No. 09-CV-253-TCK-PJC

**DEFENDANT’S UNOPPOSED MOTION TO
COMPEL PLAINTIFF’S ATTENDANCE AT DEPOSITION
AND BRIEF IN SUPPORT**

The Defendant, Independent School District No. 3 of Tulsa County, Oklahoma a/k/a Broken Arrow Public Schools (the “District”), without objection from plaintiff’s counsel, respectfully moves the court, pursuant to Rule 37(d), Federal Rules of Civil Procedure, for the entry of an order requiring plaintiff Jim Sisney to appear for deposition on Tuesday, December 22, 2009 at 9:00 a.m. at the offices of the District’s counsel. In support of this motion, the District would show the court as follows:

1. Sisney is the former Superintendent of the District. He brought this action after the District’s Board of Education voted to dismiss him from that position.
2. Sisney has asserted federal law claims against the District under 42 U.S.C. § 1983 for deprivation of property and liberty without due process of law and a state law claim for breach of contract.

3. The court entered a Scheduling Order in this matter on August 26, 2009 [Dkt. No. 14]. The Scheduling Order requires that discovery be completed by December 31, 2009. (See Scheduling Order, Exhibit 1).

4. On November 13, 2009, the District's counsel wrote plaintiff's counsel requesting deposition dates for Sisney during the weeks of December 7-11 or December 14-18, 2009. The District's counsel also informed Sisney's counsel that if he did not hear from them by November 24, 2009, he would notice Sisney for deposition at the date of his choice and at his office. (See November 13, 2009 Letter to David Keesling, Exhibit 2).

5. Plaintiff's counsel did not respond to District counsel's letter. Accordingly, on November 30, 2009, a notice to take Sisney's deposition on Thursday, December 17, 2009, at 9:00 a.m. at the offices of Rosenstein, Fist & Ringold, was mailed to plaintiff's counsel. Sisney's counsel received this letter and the deposition notice on December 1, 2009. (See November 30, 2009 Letter to David Keesling and Notice to Take Deposition, Exhibit 3).

6. Prior to December 17, 2009 - the date of Sisney's noticed deposition - plaintiff's counsel did not contact District's counsel or file any type objection or request for a protective order regarding Sisney's noticed deposition.

7. The District's counsel was prepared to take the Sisney's deposition on December 17, 2009, including having both a court reporter and representative of the District present. However, neither Sisney nor his counsel appeared at 9:00 a.m. or thereafter for Sisney's deposition.

8. Not having heard anything from plaintiff's counsel, at approximately 9:36 a.m. on December 17, 2009 counsel for the District telephoned plaintiff's counsel to inquire as to whether Sisney would be appearing for his deposition. After being informed that attorneys David Keesling, Denise James and Charles Richardson were unavailable and after waiting approximately 20 minutes on hold, the District's counsel was able to speak with plaintiff's counsel Gary Richardson. Mr. Richardson stated that Sisney's deposition had "fallen through the cracks" due to staffing problems at Mr. Richardson's office. He further stated that it was not Sisney's fault for failing to appear for his noticed deposition and agreed to produce Sisney for deposition at the offices of the District's counsel on Tuesday, December 22, 2009 beginning at 9:00 a.m.

9. During his telephone conference with the District's counsel on December 17, 2009, Mr. Richardson stated that he had no objection to a motion to compel filed by District's counsel requesting an order of the court compelling Sisney attendance for his deposition on Tuesday, December 22, 2009 beginning at 9:00 a.m. at the offices of the District's counsel.

10. Rule 37(d)(1)(A)(i) of the Federal Rules of Civil Procedure permits the court to enter sanctions based upon a party's failure to appear for a properly noticed deposition. As the appropriate sanction for plaintiff's nonattendance at his noticed deposition, the District at this time is only requesting an order commanding the plaintiff to appear for his deposition at the date time and place agreed to by plaintiff's counsel.

WHEREFORE, the Broken Arrow School District requests the court to enter an order compelling plaintiff Jim Sisney to appear at the offices of the District's counsel,

Rosenstein, Fist & Ringold, 525 South Main, Suite 700, Tulsa, Oklahoma 74103, for his deposition on Tuesday, December 22, 2009 beginning at 9:00 a.m., together with such other relief as the court deems just and appropriate.

Respectfully submitted,

s/ Kent B. Rainey

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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of December, 2009, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Gary L. Richardson
Charles L. Richardson
Denise P. Jones
6450 S. Lewis, Suite 300
Tulsa, OK 74136

Attorneys for the Plaintiff

s/ Kent B. Rainey

Kent B. Rainey