

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

JIM SISNEY, an individual,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 09-CV-253-TCK-PJC
)	
INDEPENDENT SCHOOL DISTRICT)	
NO. 3 OF TULSA COUNTY, a Political)	
Subdivision; and the BROKEN ARROW)	
SCHOOL BOARD,)	
)	
Defendants.)	

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).

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.

s/ Kent B. Rainey
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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of June, 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
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Attorneys for the Plaintiff

s/ Kent B. Rainey
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