

**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 Number: 09-CV-253-TCK-PJC

**PLAINTIFF’S RESPONSE TO DEFENDANT INDEPENDENT SCHOOL DISTRICT
#3’S MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT**

COMES NOW the above referenced Plaintiff, by and through his Attorneys of record, Gary L. Richardson, Charles L. Richardson and David R. Keesling of Richardson Richardson Boudreaux, to respond to Independent School District No. 3's (hereinafter “Defendant”) Motion for Summary Judgment. For his Response, Plaintiff offers the following:

STATEMENT OF THE CASE

Plaintiff Jim Sisney began serving as the Superintendent of Schools for 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 a district vendor and other related wrongdoing and sought to investigate the information.

On August 12, 2008, Attorney Douglas Mann of Rosenstein, Fist & Ringold, was hired to represent the interests of the School Board, as a whole, for Defendant Independent School District No. 3. Throughout attorney Mann’s “representation” he advised three specific Board Members of

Defendant School District, Maryanne Flippo, Shari Wilkins and Sharon Whelpley to the detriment of the entire Board, the Broken Arrow School District and the Plaintiff, Former Superintendent of Schools.

Plaintiff Jim Sisney filed a Petition in the Tulsa County District Court against Mike Rampey, Douglas J. Hudkins and school Board Members Maryanne Flippo, Shari Wilkins, Sharon Whelpley, 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. Following the filing of that lawsuit, 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.

The instant lawsuit was filed based upon the concerted pattern of behavior that surrounded Plaintiff's termination. Defendant has filed a Motion for Summary Judgment based upon its assertion that the Broken Arrow School District can not be held liable for Jim Sisney's termination, because Dr. Siney was afforded an opportunity to be heard by the School Board, including the three Board Members that orchestrated his termination. Under the facts set forth herein, neither Oklahoma, nor Federal law supports Defendant's assertions as to its lack of liability. Defendant is not entitled to summary adjudication and Plaintiff requests this Court deny Defendant's Motion.

PLAINTIFF'S RESPONSES TO DEFENDANT'S "UNDISPUTED FACTS"

1. *Undisputed.* Jim Sisney became the Superintendent of the Broken Arrow School District in 2003.

2. *Disputed.* At a meeting of the Board of Education of the Broken Arrow School District on October 6, 2008, the Board “voted” 3-2 to notify Sisney of his dismissal from employment and reasons were “created” prior to that meeting with School District attorney Doug Mann. *Deposition Jim Sisney*, pg.57, lns. 14-20; pgs. 101-105, 106, lns. 1-12; pg. 117, lns. 21-25; pg. 118, lns 1-2.; pg. 134, lns 11-13; pg. 211, lns 17-25; pg. 212, lns 1-4; Exhibit “A”; *See also Minutes of the Board of Education*, “Superintendent” Signature Block, Exhibit “B”; *See also* e-mail correspondence, Exhibit “C”; *See also* letter dated August 14, 2008, Exhibit “D”; *See also* letter dated October 1, 2008, Exhibit “E”; *See also* e-mail correspondence, Exhibit “F”.

3. *Undisputed.* Attorney Doug Mann sent a letter to Jim Sisney, dated October 7, 2008, which stated that “the Board of education has directed me to notify you, in writing, that the Board of Education has determined that it will consider and vote on your possible dismissal as a full-time certified administrator.”

4. *Undisputed.* The letter sent by Attorney Doug Mann included the five listed reasons for his “possible” termination.

5. *Disputed in part.* While the letter sent by Attorney Doug Mann included the language set forth in Defendant’s Motion regarding a due process hearing, the letter was orchestrated by Attorney Doug Mann, Shari Wilkins, Maryanne Flippo and Sharon Whelpley as a conclusion to their scheme to oust Jim Sisney as Superintendent, thereby serving as a notice he had no rights in-so-far-as they pertain to this specific School Board and Attorney Doug Mann. *Deposition Jim Sisney*, pg. 57, lns.14-20; pgs. 101-105, 106, lns. 1-12; Exhibit “A”; *See also Minutes of the Board of Education*, “Superintendent” Signature Block, Exhibit “B”; *See also* e-mail correspondence, Exhibit “C”; *See also* letter dated August 14, 2008, Exhibit “D”; *See also* letter

dated October 1, 2008, Exhibit “E”; *See also* e-mail correspondence, Exhibit “F”.

6. *Disputed in part.* The letter sent by Attorney Doug Mann provided the address for the Board Clerk and stated that any requested hearing would be scheduled as soon as possible before the same School Board that orchestrated the letter and Jim Sisney’s termination. Likewise, the letter notified Jim Sisney that any requested hearing would be announced in writing to Jim Sisney and specify the date, time and place that Jim Sisney would go before the same School Board that orchestrated the letter and Jim Sisney’s termination. *Deposition Jim Sisney*, pg.57, lns. 14-20; pgs. 101-105, 106, lns. 1-12; pg. 117, lns. 21-25; pg. 118, lns 1-2.; pg. 134, lns 11-13; pg. 211, lns 17-25; pg. 212, lns 1-4; Exhibit “A”; *See also Minutes of the Board of Education*, “Superintendent” Signature Block, Exhibit “B”; *See also* e-mail correspondence, Exhibit “C”; *See also* letter dated August 14, 2008, Exhibit “D”; *See also* letter dated October 1, 2008, Exhibit “E”; *See also* e-mail correspondence, Exhibit “F”.

7. *Undisputed.* Jim Sisney received the letter sent by Attorney Doug Mann on October 8, 2008.

8. *Disputed in part.* Jim Sisney “understood” the letter sent by Attorney Doug Mann to be a letter orchestrated by Attorney Doug Mann, Shari Wilkins, Maryanne Flippo and Sharon Whelpley as a conclusion to their scheme to oust Jim Sisney as Superintendent, thereby serving as a notice he had no rights in-so-far-as they pertain to this specific School Board and Attorney Doug Mann. *Deposition Jim Sisney*, pg.57, lns. 14-20; pgs. 101-105, 106, lns. 1-12; pg. 117, lns. 21-25; pg. 118, lns 1-2.; pg. 134, lns 11-13; pg. 211, lns 17-25; pg. 212, lns 1-4; Exhibit “A”; *See also Minutes of the Board of Education*, “Superintendent” Signature Block, Exhibit “B”; *See also* e-mail correspondence, Exhibit “C”; *See also* letter dated August 14, 2008, Exhibit “D”; *See also*

letter dated October 1, 2008, Exhibit “E”; *See also* e-mail correspondence, Exhibit “F”.

9. *Undisputed.* Jim Sisney had an Attorney at the time he received the letter sent by Attorney Doug Mann and consulted with his Attorney regarding the letter sent by Attorney Doug Mann.

10. *Undisputed.* During his employment as Superintendent for the Broken Arrow School District, Jim Sisney recommended the dismissal of a full-time certified administrator and read the applicable rules in connection therewith.

11. *Disputed in part.* Jim Sisney “understood” a “right to hearing “to include a hearing before an unbiased tribunal. Any hearing discussed, suggested or expressed via letter to Jim Sisney through Attorney Doug Mann was orchestrated by Attorney Doug Mann, Shari Wilkins, Maryanne Flippo and Sharon Whelpley as a conclusion to their scheme to oust Jim Sisney as Superintendent, thereby serving as a notice he had no rights in-so-far-as they pertain to this specific School Board and Attorney Doug Mann. *Deposition Jim Sisney*, pg.57, lns. 14-20; pgs. 101-105, 106, lns. 1-12; pg. 117, lns. 21-25; pg. 118, lns 1-2.; pg. 134, lns 11-13; pg. 211, lns 17-25; pg. 212, lns 1-4; Exhibit “A”; *See also Minutes of the Board of Education*, “Superintendent” Signature Block, Exhibit “B”; *See also* e-mail correspondence, Exhibit “C”; *See also* letter dated August 14, 2008, Exhibit “D”; *See also* letter dated October 1, 2008, Exhibit “E”; *See also* e-mail correspondence, Exhibit “F”.

12. *Disputed in part.* Jim Sisney agrees that the statute delineates the procedure for a due process hearing. Jim Sisney “understood” a “right to hearing “to include a hearing before an unbiased tribunal. Any hearing discussed, suggested or expressed via letter or otherwise to Jim Sisney through Attorney Doug Mann was orchestrated by Attorney Doug Mann, Shari Wilkins,

Maryanne Flippo and Sharon Whelpley as a conclusion to their scheme to oust Jim Sisney as Superintendent, thereby serving as a notice he had no rights in-so-far-as they pertain to this specific School Board and Attorney Doug Mann. Jim Sisney “understood” that he was waiving a hearing before *this* biased School Board. *Deposition Jim Sisney*, pg.57, lns. 14-20; pgs. 101-105, 106, lns. 1-12; pg. 117, lns. 21-25; pg. 118, lns 1-2.; pg. 134, lns 11-13; pg. 211, lns 17-25; pg. 212, lns 1-4; Exhibit “A”; *See also Minutes of the Board of Education*, “Superintendent” Signature Block, Exhibit “B”; *See also* e-mail correspondence, Exhibit “C”; *See also* letter dated August 14, 2008, Exhibit “D”; *See also* letter dated October 1, 2008, Exhibit “E”; *See also* e-mail correspondence, Exhibit “F”.

13. *Undisputed.* Jim Sisney did not request a hearing before the School Board.

14. *Disputed in part.* The Board of Education scheduled a “special meeting” for October 23, 2008. Jim Sisney’s dismissal had already been orchestrated and decided by Attorney Doug Mann, Shari Wilkins, Maryanne Flippo and Sharon Whelpley. *Deposition Jim Sisney*, pg.57, lns. 14-20; pgs. 101-105, 106, lns. 1-12; pg. 117, lns. 21-25; pg. 118, lns 1-2.; pg. 134, lns 11-13; pg. 211, lns 17-25; pg. 212, lns 1-4; Exhibit “A”; *See also Minutes of the Board of Education*, “Superintendent” Signature Block, Exhibit “B”; *See also* e-mail correspondence, Exhibit “C”; *See also* letter dated August 14, 2008, Exhibit “D”; *See also* letter dated October 1, 2008, Exhibit “E”; *See also* e-mail correspondence, Exhibit “F”.

15. *Undisputed.* Neither Jim Sisney, nor his Attorneys, attended the special meeting of October 23, 2008 and inquired of the biased individuals whether or not they were, in fact biased, or whether they were willing to recuse *themselves* as biased members of the Board.

16. *Unable to dispute or affirm.* The facts presented as “undisputed” herein are unknowable

to Jim Sisney and Defendant offers no evidence in support thereof except the Affidavits of the three Board Members at issue. The fourth Affidavit of Terry Stover, includes facts that dispute the Defendant's contention. Specifically, Terry Stover affirms that based upon the "evidence" presented, or lack thereof, he voted not to terminate Jim Sisney. Further, evidence exists that Terry Stover was pressured into agreement. *See* Opening Brief in Support of Defendant's Motion for Summary Judgment, Exhibit 6; *See also* e-mail correspondence, Exhibit "G".

17. *Undisputed.* After returning to open session, On October 23, 2008, Shari Wilkins, Maryanne Flippo and Sharon Whelpley voted to terminate Jim Sisney, with Terry Stover and Stephanie Updike voting not to terminate Jim Sisney.

18. *Disputed.* Attorney Doug Mann, Shari Wilkins, Maryanne Flippo and Sharon Whelpley orchestrated the "five reasons" for termination as a conclusion to their scheme to oust Jim Sisney as Superintendent. In fact, Attorney Doug Mann has previously addressed the issue of a Superintendent's termination and found none of the mentioned reasons sufficient for a vote of termination. Defendant offers no evidence in support thereof except the Affidavits of the three Board Members at issue. *Deposition Jim Sisney*, pg.57, lns. 14-20; pgs. 101-105, 106, lns. 1-12; pg. 117, lns. 21-25; pg. 118, lns 1-2.; pg. 134, lns 11-13; pg. 211, lns 17-25; pg. 212, lns 1-4; Exhibit "A"; *See also Minutes of the Board of Education*, "Superintendent" Signature Block, Exhibit "B"; *See also* e-mail correspondence, Exhibit "C"; *See also* letter dated August 14, 2008, Exhibit "D"; *See also* letter dated October 1, 2008, Exhibit "E"; *See also* e-mail correspondence, Exhibit "F"; *See also* correspondence by Doug Mann re: Superintendent, Exhibit "H".

19. *Undisputed.* None of the biased Board Members ever announced their bias to Jim Sisney.

20. *Disputed in part.* Jim Sisney has stated he has subjective belief that the Board Members were biased and that he is aware of evidence or testimony offered by persons listed as witnesses would substantiate that belief, although defense counsel did not ask him questions in regards to the substantiation. *Deposition Jim Sisney*, pg.57, lns. 14-20; pgs. 101-105, 106, lns. 1-12; pg. 117, lns. 21-25; pg. 118, lns 1-2.; pg. 134, lns 11-13; pg. 211, lns 17-25; pg. 212, lns 1-4; pg. 225, lns. 20-25; pgs. 226-227; pg. 228, lns. 1-4; Exhibit “A”; *See also Minutes of the Board of Education*, “Superintendent” Signature Block, Exhibit “B”; *See also* e-mail correspondence, Exhibit “C”; *See also* letter dated August 14, 2008, Exhibit “D”; *See also* letter dated October 1, 2008, Exhibit “E”; *See also* e-mail correspondence, Exhibit “F”.

21. *Undisputed.* Jim Sisney was paid the salary contracted for through June 30, 2009.

22. *Undisputed.* Jim Sisney was hired as Interim Superintendent for Sperry Public Schools in April, 2009, which position thereafter became permanent. Jim Sisney did not apply for a Superintendent position, except for the position which he currently holds.

PLAINTIFF’S STATEMENT OF OTHER FACTS PRECLUDING SUMMARY ADJUDICATION

1. Attached hereto as Exhibit “T” is the affidavit of Jim Sisney (“Plaintiff”).

2. The Affidavit of Plaintiff demonstrates, specifically, that Jim Sisney “understood” a “right to hearing” to include a hearing before an unbiased tribunal. Any hearing discussed, suggested or expressed via letter or otherwise to Jim Sisney through Attorney Doug Mann was orchestrated by Attorney Doug Mann, Shari Wilkins, Maryanne Flippo and Sharon Whelpley as a conclusion to their scheme to oust Jim Sisney as Superintendent, thereby serving as a notice he had no rights in-so-far-as they pertain to this specific School Board and Attorney Doug Mann. Jim Sisney understood that he was waiving a hearing before *this* biased School Board. *Deposition*

Jim Sisney, pg.57, lns. 14-20; pgs. 101-105, 106, lns. 1-12; pg. 117, lns. 21-25; pg. 118, lns 1-2.; pg. 134, lns 11-13; pg. 211, lns 17-25; pg. 212, lns 1-4; Exhibit “A”.

3. The evidence involving Mr. Stover demonstrates, specifically, that based upon the “evidence” presented, or lack thereof, in a closed session meeting with the School Board, he voted NOT to terminate Jim Sisney. Further, evidence indicates Terry Stover was pressured by Attorney Doug Mann, Shari Wilkins, Maryanne Flippo and Sharon Whelpley, which supports Plaintiff’s core contentions regarding orchestration by Attorney Doug Mann (member of the same law firm as Defense Counsel herein; Rosenstein, Fist & Ringold), Shari Wilkins, Maryanne Flippo and Sharon Whelpley as a conclusion to their scheme to oust Jim Sisney as Superintendent, in violation of his rights. *See* Opening Brief in Support of Defendant’s Motion for Summary Judgment, Exhibit 6; *See also* e-mail correspondence, Exhibit “G”.

4. It is undisputed that Jim Sisney had a protected property interest in his continued employment as Superintendent of Broken Arrow Public Schools by virtue of his employment contract. The evidence shows a clear and concerted pattern of behavior on the part of School District Attorney Doug Mann, Shari Wilkins, Maryanne Flippo and Sharon Whelpley wrongfully terminate Jim Sisney from his position as Superintendent of Broken Arrow Public Schools in violation of that interest. *See* Opening Brief in Support of Defendant’s Motion for Summary Judgment, p.2; *See also* *Deposition Jim Sisney*, Exhibit “A”.

5. The testimony clearly shows that questions of material fact exist on the issue of whether the Defendant violated the rights of the Plaintiff. Clearly, the question of the Defendant’s liability and whether Defendant violated any procedural or substantive rights of the Plaintiff should be decided in a jury trial. *See* Opening Brief in Support of Defendant’s Motion for

Summary Judgment, p.2; *See also* Exhibits A-I.

ARGUMENTS & AUTHORITIES

I. THE STANDARD OF REVIEW FOR MOTIONS FOR SUMMARY ADJUDICATION REQUIRES DEFENDANT'S MOTION BE DENIED.

The purpose of the summary judgment remedy is not to serve as a substitute for a trial by jury. *Barber v. General Electric Co.*, 648 F.2d 1272 (10th Cir.(Okla.)1981). A motion for summary judgment is appropriate only when there is no genuine issue remaining for a trial by jury. *Brooks v. Utah Power & Light Co.*, 151 F.2d 514 (10th Cir.1945). Summary judgment is not proper when genuine questions or issues of fact exist. *Franks v. Nimmo*, 796 F.2d 1230 (10th Cir. 1986).

In determining if there is an issue of material fact the Court must view the evidence in the light most favorable to the parties opposing the motion. *Id.* When the facts are viewed in the light most favorable to the opposing party or parties and could lead a reasonable jury to rule in favor of the non-moving parties, summary judgment is improper and the issues shall be determined by the trier of fact. *Id.*; *see also Anderson v. Liberty Lobby, Inc.*, 477 US 242 (1986). The trier of fact is to weigh the credibility of witnesses, evidence presented, and the reasonableness of the actions and circumstances. *Anderson*, 477 US at 247-48. The burden is the moving party to illustrate such facts, not on the non-moving party to retort allegations. A person shall be entitled to trial by jury of any issue(s) of fact. 29 U.S.C.A. Section 626(c)(2).

A review of the materials submitted by the parties, when viewed in the light most favorable to Plaintiff, requires denial of Defendant's motion. The materials submitted by Plaintiff create issues of fact as to whether Defendant is liable for the termination of Dr. Sisney. Upon submission of this Response, more specifically the affidavits, deposition and other evidentiary materials cited herein, and all inferences to be drawn there from, it is clear that there remain genuine issues as to

material facts, and therefore, Defendant's Motion for Summary Judgment should be denied.

II. PLAINTIFF DID NOT WAIVE HIS OPPORTUNITY TO BE HEARD BEFORE AN UNBIASED TRIBUNAL

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).

A. BIASED TRIBUNAL

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 (specific) *due process*

procedures.....

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 for Summary Judgment, Defendant does not dispute that Plaintiff had a protected property interest in his employment, as was clearly delineated within Plaintiff's Complaint. Therefore, it is the appropriate level of due process afforded and the procedural technicalities effected thereon that are at issue herein. Defendant claims that no genuine issues of material fact exist to support the assertion that a denial of due process upon termination was effected by Defendant, thereby violating Plaintiff's rights.

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 course 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 id*.

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 and further, that despite the appearance of procedural technicality, the events surrounding Jim Sisney's termination were carefully orchestrated by Attorney Doug Mann, Shari Wilkins, Maryanne Flippo and Sharon Whelpley as a conclusion to their scheme to oust Jim Sisney as Superintendent, thereby serving as a notice he had **no** rights in-so-far-as they pertain to this specific School Board and Attorney Doug Mann. *See id*; *See also Sisney v. Rampey, et.al.*, Tulsa County District Court No. CJ- 2008- 6173; *See also Deposition Jim Sisney*, Exhibit "A"; *See also Minutes of the Board of Education*, "Superintendent" Signature Block, Exhibit "B"; *See also* e-mail correspondence, Exhibit "C"; *See also* letter dated August 14, 2008, Exhibit "D"; *See also* letter dated October 1, 2008, Exhibit "E"; *See also* e-mail correspondence, Exhibit "F"; *See also* e-mail correspondence, Exhibit "G"; *See also* correspondence by Doug Mann re: Superintendent, Exhibit "H". 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.*

B. RULE OF NECESSITY

Defendant argues that pursuant to the Rule of Necessity, Sisney could not have prevented the “only body authorized to consider Oklahoma law to consider Sisney’s possible dismissal from acting, because there are *no mechanisms in place for disqualifying a majority of a board of education or seating an alternative tribunal*”. *See* Opening Brief in Support of Defendant’s Motion for Summary Judgment, p.24 (*emphasis added*). At the same time, Defendant argues that Plaintiff should have challenged the bias of the three School Board Members and the fairness of the “hearing” prior to, or at such time as his termination. In support, Defendant states that “while due process requires an unbiased tribunal, an exception is afforded when there is only one tribunal with the legal power to act”. *See id* at 22. Essentially, Defendant is arguing that Plaintiff may have encountered a biased tribunal but there is nothing he, or anyone else can do about it. *See id* at p.21-24. Plaintiff agrees to the extent that nothing could be done at the time the events unfolded, but seeks to rectify the wrong that was done by proper way of this lawsuit.

III. DEFENDANT IS NOT ENTITLED TO JUDGMENT AS A MATTER OF LAW ON PLAINTIFF'S BREACH OF CONTRACT CLAIM

Defendant correctly asserts that the Oklahoma Court of Civil Appeals has held that a school employee who alleges that a termination decision breached his employment contract must show either that the school district violated the employee's procedural due process rights or that it acted arbitrarily and capriciously in terminating him. *Childers v. Independent School District No. 1 of Lincoln County*, 1992 OK CIV APP 50, 842 P.2d 355. 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. A decision is arbitrary and capricious "if there is no support for it in the record and it is therefore a willful and unreasoning action, in disregard of facts and circumstances." *Patrick v. State ex. rel. Board of Education*, 1992 OK CIV APP 153, 842 P.2d 767.

Jim Sisney's termination decision breached his employment contract because the school district, by way of Attorney Doug Mann and School Board Members Shari Wilkins, Maryanne Flippo and Shari Wilkins, both violated Jim Sisney's procedural due process rights and acted arbitrarily and capriciously in terminating him. *Childers*, 1992 OK CIV AP 50. In fact, Plaintiff asserts that the instant situation, is, in fact, the very definition of "arbitrary and capricious". See Plaintiff's Complaint; *See also Deposition Jim Sisney*, Exhibit "A"; *See also Minutes of the Board of Education*, "Superintendent" Signature Block, Exhibit "B"; *See also e-mail correspondence*, Exhibit "C"; *See also letter dated August 14, 2008*, Exhibit "D"; *See also letter dated October 1, 2008*, Exhibit "E"; *See also e-mail correspondence*, Exhibit "F"; *See also e-mail correspondence*, Exhibit "G"; *See also correspondence by Doug Mann re: Superintendent*, Exhibit "H". Attorney Doug Mann, Shari Wilkins, Maryanne Flippo and Sharon Whelpley orchestrated the "five reasons" for termination

as a conclusion to their scheme to oust Jim Sisney as Superintendent. *Deposition Jim Sisney*, pg.57, lns. 14-20; pgs. 101-105, 106, lns. 1-12; pg. 117, lns. 21-25; pg. 118, lns 1-2.; pg. 134, lns 11-13; pg. 211, lns 17-25; pg. 212, lns 1-4; Exhibit “A”; *See also Minutes of the Board of Education*, “Superintendent” Signature Block, Exhibit “B”; *See also* e-mail correspondence, Exhibit “C”; *See also* letter dated August 14, 2008, Exhibit “D”; *See also* letter dated October 1, 2008, Exhibit “E”; *See also* e-mail correspondence, Exhibit “F”; *See also* e-mail correspondence, Exhibit “G”; *See also* correspondence by Doug Mann re: Superintendent, Exhibit “H”. In fact, Attorney Doug Mann has previously addressed the issue of a Superintendent’s termination and found none of the mentioned reasons sufficient for a vote of termination. *See* Letter by Doug Mann to Superintendent, Exhibit “H”. Defendant offers no evidence in support thereof, except the Affidavits of the three Board Members at issue. *See* Opening Brief in Support of Defendant’s Motion for Summary Judgment, Exhibits 7-9. The Affidavit of Mr. Stover attached hereto demonstrates, specifically, that based upon the “evidence” presented, or lack thereof, in a closed session meeting with the School Board, he voted not to terminate Jim Sisney. *See* Opening Brief in Support of Defendant’s Motion for Summary Judgment, Exhibit 6. Further, evidence exists that demonstrates Terry Stover was pressured by Attorney Doug Mann, Shari Wilkins, Maryanne Flippo and Sharon Whelpley, which supports Plaintiff’s core contentions regarding orchestration by Attorney Doug Mann (member of the same law firm as Defense Counsel herein; Rosenstein, Fist & Ringold), Shari Wilkins, Maryanne Flippo and Sharon Whelpley as a conclusion to their scheme to oust Jim Sisney as Superintendent, in violation of his rights and in an arbitrary and capricious manner. *Deposition Jim Sisney*, pg.57, lns. 14-20; pgs. 101-105, 106, lns. 1-12; pg. 117, lns. 21-25; pg. 118, lns 1-2.; pg. 134, lns 11-13; pg. 211, lns 17-25; pg. 212, lns 1-4; Exhibit “A”; *See also Minutes of the Board of Education*, “Superintendent”

Signature Block, Exhibit “B”; *See also* e-mail correspondence, Exhibit “C”; *See also* letter dated August 14, 2008, Exhibit “D”; *See also* letter dated October 1, 2008, Exhibit “E”; *See also* e-mail correspondence, Exhibit “F”; *See also* e-mail correspondence, Exhibit “G”; *See also* correspondence by Doug Mann re: Superintendent, Exhibit “H”; *See also* Opening Brief in Support of Defendant’s Motion for Summary Judgment, Exhibit 6.

CONCLUSION

The evidence and allegations herein, when viewed in the light most favorable to Plaintiff, call for Defendant’s Motion for Summary Judgment to be denied. There are certainly issues of fact for jury determination as to whether Defendant violated Plaintiff’s rights by way of his termination. Defendant, by prescription of law and contract, must afford Plaintiff certain procedures and protections upon termination from employment as a full-time certified administrator. Here, there is evidence that Defendant acted in violation of those procedures and protections prior to effecting, throughout delineating and ultimately resulting in the Plaintiff’s termination. Defendant’s arguments herein fail as a matter of law and the Motion for Summary Judgment in this regard should be denied. As shown above, Defendant can be held accountable for the violations of Plaintiff’s rights that resulted from Plaintiff’s improper termination.

WHEREFORE, Plaintiff respectfully requests this Court deny Defendant Independent School District No. 3’s Motion for Summary Judgment and all other relief the Court deems just and equitable.

Respectfully submitted,

/s/ David R. Keesling

Gary L. Richardson, OBA# 7547

Charles L. Richardson, OBA# 13388

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 1st day of February, 2010, a true and correct copy of the foregoing instrument was properly transmitted to:

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/s/ David R. Keesling

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