

**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 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 HVAC 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.

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 modern 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 CIV APP 1, 107 P.3d 609. The issue is whether, taking all of a plaintiff's 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 U.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.C.*, 493 F.3d 1210, 1215 (10th Cir. 2007); *Moffett v. Halliburton Energy Servs., Inc.*, 291 F.3d 1227, 1231 (10th Cir. 2002). Plaintiff's must allege facts sufficient to 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 (10th Cir. 1973).

The moving Parties frivolously argue herein that Plaintiff's 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.

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).

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.

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 Plaintiff's 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 N.A.*, 534 U.S. 506, 511, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002) (*emphasis added*).

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

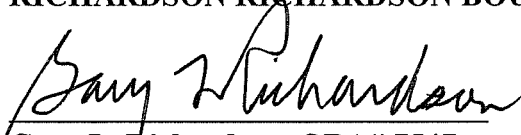
Finally, a person shall be entitled to trial by jury of any issue(s) of fact. 29 U.S.C.A. Section 626(c)(2). Plaintiff submits that any issue(s) as to the extent of or lack of bias on the part of the School Board are issues of fact, which are to be developed through discovery and decided by the trier-of-fact, 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.

**Respectfully submitted,
RICHARDSON RICHARDSON BOUDREAUX**

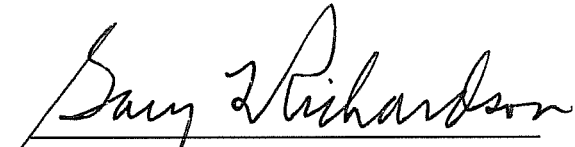
A handwritten signature in black ink that reads "Gary L. Richardson". The signature is written in a cursive style with a horizontal line underneath the name.

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of July, 2009, I electronically filed the foregoing Response to Defendant's Motion To Dismiss with the Clerk of the Court by using the CM/ECF system, which will send a Notice of Electronic Filing to the following:

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