

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

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

JOINT STATUS REPORT

JURY DEMANDED: X Yes No

I. Summary of Claims:

- 1. Claims to be dismissed: None at this time.
- 2. Plaintiff's claims: Termination in Violation of Due Process:
Property/Liberty Interests, Breach of Contract
- 3. Defendant's claims: None.

II. Summary of Defenses:

Defendant Independent School District No. 3 of Tulsa County, Oklahoma (the "Broken Arrow School District" or "School District" has not answered the plaintiff's complaint as currently at issue is the School District's motion to dismiss, which encompasses all of the plaintiff's claims against the School District. With respect to the defendant named as "Broken Arrow School District," it is not legal entity. The Board of Education of the Broken Arrow School District (the "School Board" or "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).

Plaintiff Jim Sisney ("Sisney") was the School District's Superintendent. By letter dated October 7, 2008 and in accordance with Oklahoma law, Sisney was notified in

writing that the Board of Education intended to consider his possible termination. In the letter, Sisney was advised of the reasons for which the Board was considering this action, of his entitlement to a due process hearing before the Board, and that his failure to timely notify the Clerk of the Board that he desired a hearing would result in its waiver. Sisney was also advised that the Board's decision on his employment would be final and nonappealable.

Sisney did not request a due process hearing before the Board, and on October 23, 2008, the Board voted to terminate Sisney's employment with the School District.

Sisney was provided the *opportunity* for a hearing before the Board before it voted whether or not to dismiss him from his employment. Sisney, however, failed to exercise his right to a due process hearing and thus waived his opportunity for due process 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.

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.

- 1. Defenses to be abandoned: None.

III. Motions Pending:

<u>Docket No.</u>	<u>Description</u>	<u>Date at Issue</u>
9.	School District's Motion to Dismiss all of Plaintiff's claims alleged in his Complaint	July 24, 2009

IV. Stipulations:

- 1. Jurisdiction Admitted: X Yes No
- 2. Venue Appropriate: X Yes No
- 3. Facts: X Yes No
 - a. The School District's 2008-2009 fiscal year began on July 1, 2008 and ended on June 30, 2009.
 - b. Sisney, was employed at the beginning of the 2008-2009 fiscal year pursuant to a written Superintendent Contract dated July

1, 2007 and executed between Sisney and the School District's Board of Education ("Board"). Sisney position was that of Superintendent – a fulltime certified administrator's position within the School District.

- c. On October 8, 2008, Sisney received a letter dated October 7, 2007 and signed by the Broken Arrow School District's attorney at the direction of the School District's Board, notifying Sisney that the Board would be considering and voting on his possible dismissal as an administrator with the School District (the "October 7, 2008 Letter").
- d. In the October 7, 2008 Letter, Sisney was notified of his right to request a due process hearing before the Board.
- e. Sisney did not notify the Clerk of the Board he was exercising his right to a due process hearing before the Board.
- f. Neither Sisney nor his attorney attended the Board meeting on October 23, 2008.

4. Law: Yes . No

- a. The procedure for the dismissal of a fulltime certified administrator from his administrative position within a school district is governed by Oklahoma law, particularly OKLA. STAT. tit. 70, 6-101.13 (2001).

V. Proposed Deadlines:

- 1. Parties to be added by: 09/01/09
- 2. Proposed discovery cutoff date: (4 months of discovery unless extended by the court for good cause)

The Parties jointly respectfully request that discovery, absent initial disclosures, be stayed pending a ruling on the School District's motion to dismiss. The Parties seek this stay due to the dispositive nature of the School District's motion and in an effort to minimize their respective litigation costs pending its resolution. See FED.R.CIV.P 1.

In the event that court declines the parties' request to stay discovery pending a decision on the School District's motion to dismiss, the parties believe four months of discovery will be appropriate.

3. Fact witness lists to be exchanged by: 09/17/09
4. Proposed Date for Expert Reports by Plaintiff: 09/30/09
5. Proposed Date for Expert Reports by Defendant: 10/26/09

VI. Fed. R. Civ. P. 26(f) Discovery Plan:

1. Should any changes be made to the timing, form or requirements for disclosures under Rule 26(a)? No.
2. When were or will disclosures under Rule 26(a)(1) be made?

On August 17, 2009, Plaintiff submitted to Defendant Plaintiff's Initial Disclosures pursuant to Rule 26(a)(1).

By August 17, 2009, Defendant School District will make its initial disclosures pursuant to Rule 26(a)(1).

Pursuant to Rule 26(a)(1), initial disclosures must be made within 14 days after you confer for the purpose of preparing this discovery plan. All parties are under an affirmative duty to (i) comply with the mandatory disclosure requirements, and (ii) notify the Court of any nondisclosure so that the issue can be promptly referred to a Magistrate Judge for resolution. Failure of any party to disclose information, or failure of any party to bring disclosure issues to the Courts attention in a timely manner, may result in sanctions, including prohibiting the use of that information at trial, pursuant to Rule 37(c)(1).

3. Should discovery be conducted in phases and/or should discovery be limited at this time to particular subject matters or issues?

Yes. The Parties jointly respectfully request that discovery, absent initial disclosures, be stayed pending a ruling on the School District's motion to dismiss. The Parties seek this stay due to the dispositive nature of the School District's motion and in an effort to minimize their respective litigation costs pending its resolution. See FED.R.CIV.P 1.

4. Should any changes be made in the limitations on discovery imposed by the Federal Rules of Civil Procedure or the Courts local rules? None, other than set forth in 3, above.

- 5. Proposed Number of fact and expert depositions:
 - A. To be allowed for Plaintiff? 15 fact witnesses/ 2 experts.
 - B. To be allowed for Defendant? 15 fact witnesses/ 2 experts
(not to include custodian of records depositions)
- 6. Is there any need for any other special discovery management orders by the Court? None, other than set forth in 3, above.

VII. Are Dispositive Motions Anticipated? If so, describe them.

The School District anticipates filing a motion for summary judgment in the event its motion to dismiss is denied.

VIII. Do All Parties Consent to Trial before the Assigned Magistrate Judge?

 Yes

 X No

If yes, please attach completed Trial Consent form and indicate the month and year in which trial by the Magistrate Judge is Requested. _____

IX. Is there any matter that should be referred to the assigned Magistrate Judge for final disposition upon partial consent of all the parties pursuant to Local Rule 73.1?

 Yes

 X No

(If yes, please attach a completed Partial Consent Form)

X. Settlement Plan (check one):

1. X Settlement Conference Requested after completion of discovery.
Describe settlement judge expertise required, if any: Employment Law/Education.

2. Private Mediation Scheduled in (date) _____.

3. Other ADR (Explain)

4. ADR is not appropriate in this case (Explain):

Has a copy of the Courts ADR Booklet been provided to clients as required?

Defendants: X Yes No
Plaintiff X Yes No

XI. Does this case warrant special case management? No. (If Yes, explain why.)

XII. Do the parties request that the Court hold a scheduling conference? No.

If a conference is not requested, or ordered by the Court, the Court will, after receiving this report, issue a scheduling order based on the information contained in this report.

XIII. Estimated Trial time: 4-5 days.

Read and Approved by:

Richardson Richardson Boudreaux

S/ Charles L. Richardson
Gary L. Richardson, OBA#7547
Charles L. Richardson, OBA#13388
6450 S. Lewis, Suite 300
Tulsa, OK 74136
(918) 492-7674
(918) 493-1925
Attorneys for Plaintiff

s/ Kent B. Rainey
Kent B. Rainey, OBA #14619
Rosenstein, Fist & Ringold
525 South Main, Suite 700
Tulsa, Oklahoma 74103
Telephone: (918) 585-9211
Facsimile (918) 583-5617
Attorneys for Defendants