



JOY HOFMEISTER
STATE SUPERINTENDENT *of* PUBLIC INSTRUCTION
OKLAHOMA STATE DEPARTMENT *of* EDUCATION

April 6, 2021

VIA E-MAIL ONLY

Mannix Barnes
c/o Jerry Colclazier
Jerry@colclazier.com

Re: Western Heights Public Schools
(the "District") - Notice to Appear

Dear Mr. Colclazier,

I am in receipt of your April 5, 2021, correspondence on behalf of Western Heights Public Schools (the "District."), sent in response to the State Board of Education's action to require the District's administration and a board member to appear on April 9, 2021.

As you know, the State Board of Education ("State Board") has been entrusted with the supervision of the public school system of Oklahoma, through the Constitution and laws of this state (*see, e.g.*, Okla. Const. Art. 13, Section 5; 70 O.S. § 3-101 *et seq.*). Specific to your questions about legal authority to compel representatives of a school district's administration to report to the State Board of Education, the Oklahoma Legislature has provided in law that the State Board shall:

Have authority to require persons having administrative control of all school districts in Oklahoma to make such regular and special reports regarding the activities of the schools in said districts as the Board may deem needful for the proper exercise of its duties and functions. Such authority shall include the right of the State Board of Education to withhold all state funds under its control, to withhold official recognition, including accrediting, until such required reports have been filed and accepted in the office of said Board and to revoke the certificates of persons failing or refusing to make such reports (70 O.S. § 3-104(13)).

Further, you have requested not only the content of communications received by the State Department of Education (OSDE) alleging complaints about the District, but have *specifically requested the identities of the complainants*. Pursuant to 51 O.S. § 24A.14, the OSDE does not release the identities of complainants who allege violations of law by school districts or their employees, to protect against the danger of retaliation.

While the scope of the complaints was identified in the State Board's motion and vote on March 25, and in subsequent correspondence to the District on March 30, they will again be addressed at the Special Meeting of the State Board scheduled for April 9. Moreover, the District's attempt to claim ignorance of the complaints and issues is misplaced. A cursory review of the matters identified reveals that these issues were actions taken by District actors (ex., 2019 audit on illegal use of bond proceeds, discontinuance of child nutrition services in April 2020), have been brought to the attention of the District and its superintendent through communications from OSDE program offices at the time the concerns were received, and/or reflect information any functioning school district should be aware of (ex: significant loss of personnel and student enrollment).

Next, you question the authority of the State Board to hold an executive session "regarding the business of the District." The content of the Board's executive session agenda item regarding Western Heights Public Schools falls squarely under the statutory authorization you cite, 25 O.S. § 307(B)(4) and (7), which provides:

Confidential communications between a public body and its attorney concerning a pending investigation, claim, or action if the public body, with the advice of its attorney, determines that disclosure will seriously impair the ability of the public body to process the claim or conduct a pending investigation, litigation, or proceeding in the public interest; And,

Discussing any matter where disclosure of information would violate confidentiality requirements of state or federal law;

On March 25, the State Board was discussing a pending investigation, claim or action related to the District, and based on the advice of legal counsel, disclosure of such matters would have impaired the ability of the processing of the investigation, claim or action. Further, despite your request for identification of what individuals made complaints about the District, the individual complainants and their complaints contain confidential information that could not be discussed in open session of a public meeting. Executive session was designed to discuss matters like the ones cited in our March 30, 2021, Notice to Appear, and the purposes identified on the State Board's March 25 agenda are expressly authorized by law.

Finally, despite your erroneous belief, the State Board is not seeking to "revoke the accreditation of the district." Rather, as clearly set forth in the March 30 correspondence, the April 9 meeting may or may not result in action on the District's accreditation status, including warning or probation. Oklahoma law requires the OSDE to investigate a complaint of failure to provide educational services or failure to comply with accreditation standards within thirty (30) days of receiving the complaint. 70 O.S. § 3-104.4. Contrary to your assertion, OSDE has engaged in that process, discussed the matters confidentially with the State Board as authorized on March 25, and followed up with the District as reflected in the March 30 correspondence. With that and the State Board's action for the OSDE to conduct a performance review of the District, these matters will be presented to the State Board on April 9 with a recommendation that the District be lowered to probation. This action is consistent with the plain language of applicable law and administrative rules.

As a part of recommending the District be placed on probation, OSDE has attempted to meet with District representatives, including the Superintendent. However, from your letter and the District's own statements, it is my understanding that the District is advised to not meet with OSDE. While OSDE respectfully requests that the District reconsider and meet on either Wednesday, April 7, or Thursday, April 8, this matter is scheduled to proceed on Friday, April 9, regardless of whether the District avails itself of an opportunity to engage prior to the Special Meeting.¹ Should the District elect to meet with OSDE, please advise of a time that you are available and we will work to accommodate your schedules.

Please let me know if you have further questions prior to the District's appearance at the Special Meeting on April 9.

Sincerely,



Brad Clark,
General Counsel

Cc: The Honorable Members of the State Board of Education

¹ To the extent this correspondence does not respond to allegations in your April 5 letter, the OSDE and State Board respectfully deny them for lack of merit.