IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

WESTERN HEIGHTS INDEPENDENT SCHOOL DISTRICT NO 1-41 OF OKLAHOMA COUNTY and MANNIX BARNES, Superintendent, Petitioners/Appellants, vs. THE STATE OF OKLAHOMA ex rel. OKLAHOMA STATE DEPARTMENT OF EDUCATION, OKLAHOMA STATE BOARD OF EDUCATION and JOY HOFMEISTER, State Superintendent of Public Instruction, Respondents/Appellees.	Case No. 120,034

On Appeal from the District Court of Oklahoma County
District Court Case No. CV-21-945
Honorable Aletia Haynes Timmons

APPELLEES' ANSWER BRIEF

RESPECTFULLY SUBMITTED THIS 28TH DAY OF FEBRUARY 2022

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APPELLEES' ANSWER BRIEF

Respondents/Appellees Oklahoma State Board of Education (the "State Board"), Oklahoma State Department of Education (the "State Department") and Joy Hofmeister (the "State Superintendent") (or collectively the "State"), by and through their attorneys of record, do hereby their Answer Brief and pray that this Court affirm the ruling of the district court. In support thereof, Appellees state as follows:

INTRODUCTION

This case comes to the Court not because of the alleged historical disdain[1] the State has for the Western Heights Public Schools (the "District"), nor because the District's superintendent elected to voice an opinion through press conferences and demands for live television interviews. Such conspiracies have no place in the questions of law presented. Neither do they rest within the evidence before the Court, nor in common sense. Truth be told, if the State really wanted to shutter the school district, Oklahoma law provides the State with the process and procedure to accomplish such an act. As the record clearly demonstrates, the State has attempted to do just the opposite: save the District from its unprecedented troubles.

At the onset of the COVID-19 global pandemic in 2020, the State learned that the District suspended food services to students. (Application for Emergency Order, Ex. "L," Pet. Exs. 26-27). Other Oklahoma school districts ensured meal service to their students during the pandemic, especially low-income students who rely on federal meal programs. Discovering this, after having been informed by the District just days prior that meal service would be offered, the State notified

[1] Appellants spend the opening of their Brief referring to an alleged "long and extensive history" of the State "retaliating against, and selectively prosecuting, them for publicly criticizing the actions of the State Superintendent and State Board." Aside from self-serving testimony of Appellant Barnes, there is no evidence to support such claims. Furthermore, none of the State's officials were in their current roles or had any involvement with Western Heights during the period of these alleged retaliations and prosecutions.

the District that there were potential accreditation and funding issues should the District not re-initiate meal service to students. *Id.*

In the Winter-to-Spring of 2021, the State received concerns from the District community (parents, staff, and more) about the operations and decisions of the District. These concerns included issues surrounding a lack of in-person instructional options for over 365 days, financial mismanagement, hostile work environment[2], District governance not being responsive to concerns, and a collapse of harmony in the District's culture. *Id.* The District was the only school district in the state to not offer in-person instructional services to students for the entire 2020-21 school year[3]; its academic opportunities and outcomes for students were near the bottom in the state[4]; audit findings included a violation of Oklahoma statute[5]; apparent loss of a third or more staff and more. *Id.* As a result, on March 25, 2021, the State Board expressed its utmost concern of the District's situation, voted to have the State Department conduct an additional review of the District, notify the District that it was to appear at the State Board's April 9 meeting and address the issues at that time.

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[2] The reports—many of them supplemented with direct documentation—included retaliation and threats, refusal to excuse staff with medical conditions and illnesses (including cancer) to report during the COVID-19 pandemic, failure to pay social security despite deducting amounts from employee paychecks, failure to pay premiums on employee health insurance and more.

[3] The District did not provided a full-time, in-person instructional delivery to students from March of 2020 through May of 2021.

[4] Five of the nine school sites in the District are federally designated as in need of comprehensive support (rank in the bottom 5% of all schools) and improvement and/or additional comprehensive support and improvement.

[5] The District's FY 2019 audit report reflecting violations of state law, including 62 O.S. §430.1, as a result of illegally using $8,810,000 in 2018 bond election proceeds. For its FY 20 audit, the District had more significant findings, including $614,408 error to the Internal Revenue Service, miscoding of payments, accounts not balanced with bank transactions, 42% of activity fund deposits not timely made and 15% of its purchase orders did not have adequate documentation, including for meals and travel. Most recently, the District has had its bank account garnished by the Internal Revenue Service for not properly paying its payroll taxes in prior years.

The State Department notified the District of these matters by letter of March 30, 2021. (Letter, Pet. Ex. 8). In the March 30 letter, the State Department advised the District that at the April 9, 2021, meeting, the State Board may take action to adjust the District's accreditation status to that with warning or probation; not, as asserted by Appellants, that the District would be closed. *Id.;* Letter, Pet. Ex. 12). From here, the District refused to engage with Appellees and comply with their actions. *Id.* State Department representatives sought to meet with District staff to discuss the matters that would lead to the recommendation for probation. Oklahoma Administrative Code 210:35-3-201. Also, the District denied the authority of the State Board to compel representatives of the District to appear at the April 9 meeting, and despite being provided with evidence of the authority (including 70 O.S. § 3-104(A)(13)) by letter dated April 8, the District refused to appear at the April 9 meeting of the State Board.[6] (Letter, Pet. Ex. 11; Letter, Pet. Ex. 12; Letter, Pet. Ex. 13; Minutes of April 9 State Board meeting, Pet. Ex. 16). With Appellants' refusals, on April 9, 2021, the State Board adjusted the District's accreditation status to "Accredited with Probation" and provided ninety (90) days for the District to take corrective action. (Minutes of April 9 State Board meeting, Pet. Ex. 16; Presentation of April 9, 2021, Pet. Ex. 17; Handouts for April 9, 2021, meeting, Pet. Ex. 18[7]). Official notice of the State Board's action and conditions of probation followed. (April 16, 2021, correspondence, Pet. Ex. 20). Pursuant to Oklahoma law at 70 O.S. § 3-104.4, Western Heights was provided with ninety (90) days (or, until July 8, 2021) to take action

[6] Prior to the April 9 meeting, the State Department respectfully requested that the District reconsider its refusal to meet with the Department to review the concerns identified and recommendation to the State Board at the April 9 meeting. These efforts include the eve of the April 9 State Board meeting where the State Department advised the District that it "remain[ed] hopeful that you and your client will avail themselves of the opportunity to appear [at the April 9 meeting]" and provided the information to access the State Board meeting on April 9. (Motion to Dismiss, Exhibit "C," 47-103).

[7] In their Brief, Appellants continue to allege an unfounded claim that the handouts for the April 9, meeting were not published on the State Department's website until after the conclusion of the April 9 meeting. Brief, p. 9.

to correct and successfully implement the corrective actions determined by the State Board on April 9 and reflected in its official notice of April 16.

On April 22, 2021, the District appeared at the State Board meeting and announced that it had commenced litigation and advised that it had provided a response and report to the State Board the evening prior to this meeting. (Minutes, Pet. Ex. 16; Petition, 1-46). Aside from these announcements and general references to the minimal report provided, the District refused to engage in discussions with the State Board regarding the complaints received or the information presented by the State Department in relation to efforts to take corrective action in the District's school community. *Id.* On May 24, 2021, the State filed a Motion to Dismiss the Petition. (Motion to Dismiss, 47-103). While the legal proceedings were pending, the State learned of additional District noncompliance, including known disregard for the high school's non-functional fire prevention (sprinkler) system from February 23 to April 27, resulting in a citation from the Oklahoma City Fire Department.[8] (Application, Pet. Exs. 26-27 at pp. 10-13; Exhibits to Application, Pet. Ex. 27 at Ex. I and K). During an April 27 conversation between Fire Marshall Corporal Jesse Sunderman and Western Heights staff, the following exchanges occurred:

> **Fire Marshall:**
> . . . people in the building, without a working sprinkler system, period. I don't care about insurance, I don't care about anything else. I care about the safety of the kids and the people in this building and right now that's not happening
> . . .
>
> **Fire Marshall:**
> What date did those break?
>
> **Staff Member:**
> February the 21st
>
> **Fire Marshall:**
> February 21st, and you haven't been able to get anyone out here since February 21st.

[8] In the information provided to the State, the District was told that the high school could be closed and individuals could be put in jail for the seriousness of the violation.

Staff Member:
No sir, I haven't tried because we didn't have kids in the building and I'm trying to get insurance money and well I'm stuck, I understand what you're telling me

Fire Marshall:
Ok, well, no, you're not stuck. It is illegal to have a non-working sprinkler system. Period. At all. Even without people here
. . .

Fire Marshall:
So we need to move any students in the affected areas of the non-sprinkler system and they need to be in a sprinkled area or we just need to go ahead and close the school.
. . .

Fire Marshall:
. . . so who is making the decisions on when to fix these things and to not to?

Staff Member:
Admin over there, ****, the one you just talked to, and the Superintendent, Mannix
. . .

Fire Marshall:
So that's stuff that will get you put you in handcuffs, (yes) that will get you put in handcuffs, I will take you to county over that. There is no reason, what so ever, that this building was ever occupied with children especially. . .

Staff Member:
And the children did just start . . . we had them tutoring down in that area

Fire Marshall:
There shouldn't be kids in here . . .
(Application, Pet. Exs. 26-27; Emergency Petition for Writs of Mandamus, at Ex. G, ROA 372-624)

Based on the District's demonstrated disregard for (1) the health, safety and welfare of individuals entering the District's facilities; (2) academic outcomes; (3) harmony in the District's community; and (4) taxpayer funds, the State Board addressed these matters at its June 24 meeting. (June 24, 2021, Agenda, Pet. Ex. 29; Minutes, Pet. Ex. 31; Presentation, Pet. Ex. 35).[9] At the

[9] At 7:07 P.M. on June 23, the eve of the State Board's June 24 meeting, counsel for the District sent 126 pages of a purported update on the District's accreditation deficiencies to the State Board members

meeting, the State Department presented information concerning the District's worsening academic opportunities and outcomes for students, additional complaints received, historical information concerning the District's leadership (including claims of financial mismanagement and hostile work environments), and the District's knowing disregard for the high school's non-functional fire prevention (sprinkler) system from February 23 to April 27.

At this meeting, the State Board also took action to suspend the educator certificate (the "Certificate") of Appellant Barnes. (Application, Pet. Exs. 26-27; Minutes of June 24, 2021, meeting, Pet. Ex. 31; Emergency Order, Pet. Ex. 32). In that meeting, The State Board also notified the District that at the July 12 meeting, the State Board *may* amend the conditions of Accredited with Probation to include possible appointment of an interim superintendent and/or possible notice for non-accrediting the District.[10] Finally, the State Board took action at this meeting to request a special audit of the District, pursuant to 74 O.S. § 213, which is in addition to the citizens petition audit that was previously requested by the electors in the District.

Fourteen days later, the District filed an Application for Temporary Restraining Order and Injunction. (Petitioners' Motion for Temporary Restraining Order and For Preliminary Injunction, and Brief in Support, pp. 194-291). Petitioners alleged claims that were substantially similar to those in the Petition that was then subject to the Respondents' Motion to Dismiss. (*Id.*, compare with Petition, 1-46). In an emergency hearing within two hours of Petitioners filing the Motion for

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(excluding the State Board's counsel). In their Brief, Appellants make the baseless claim that the June 23 "response" had not been addressed. Brief, p. 12. At the 9:30 A.M. June 24, 2021, State Board meeting, an update was provided to the State Board, including but not limited to the topics addressed in the District's June 23 documentation. (Presentation, Pet. Ex. 35).

[10] Petitioners claim in the State Board threatened to "revoke the District's accreditation at the July 12th meeting, if the District did not immediately terminate the Superintendent." Brief, at p. 13, ¶21. This is not correct. The State Board advised the District that if it did not *suspend* Petitioner Barnes as is required by 70 O.S. § 6-101.29, the State Board would take this as further refusal to comply with the law and may provide additional reason for further action on the District. (Minutes of June 24 State Board meeting, Pet. Ex. 31; Presentation, slide 23, Pet. Ex. 35).

Temporary Restraining Order, the Court denied Appellants' requests for the Motion. (Journal Entry filed August 6, 2021, p. 719; Tr. 7/8/21, p. 1164).

Next, the State Board met on July 12 and took action in open meeting to amend the conditions of the District's continuing Accreditation with Probation. As a part of the amended conditions of probation, the State Board appointed an interim superintendent for the District and adopted a state intervention plan ("Intervention Plan")[11]. (Agenda, Pet. Ex. 36; Minutes, July 12, 2021, Pet. Ex. 38). The Intervention Plan included an on-site assessment of the District's needs leading into the 2021-22 school year, public meetings to receive community engagement and a community intervention team to develop the Intervention Plan.

Following the July 12 meeting, official notice of the State Board's action was provided to the District. (July 14, 2021, Letter, Pet. Ex. 44). In the official notice to the District, specific mention was made of the appointment of the State Board's interim superintendent, as well as that until the Intervention Plan is approved by the State, all actions of the District were subject to approval of the State Board. *Id.* As such, notice was provided to the District of the risk and potential liability to the District and its board members should they take action in violation thereof. *Id.* On July 14, the District's board of education held a meeting, at which it appointed its own interim superintendent, Ms. Kim Race.[12]

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[11] Specifically, the action required the District to update all necessary documentation and designations to indicate that only the interim superintendent designated by the State Department under the Intervention Plan approved by the State Board is authorized to act as the District's superintendent. (Letter of July 14, 2021, Pet. Ex. 44, p. 1).

[12] Days earlier, the District filed its Application for a Temporary Restraining Order and Injunction, and included a sworn affidavit from Ms. Race, stating that she was not experienced to serve as a superintendent. (Application for Temporary Restraining Order and Injunction, Exhibit "J," ROA pp. 194-291). In the sworn affidavit, Ms. Race states that she has never served in a superintendent's role in any school district, that she has limited experience in school finance and budgeting and no experience in closing out a district's year-end finances and wire transfers of money for the District, investments, making sound financial decisions, insurance claims and other related issues, facilities management, construction, and personnel. *Id.*

The District advised that it would continue to thwart the decisions of the State, going so far as to publicly state that until the District received a court order from a judge, it would not recognize the State's authority or actions. (Counterclaims – Emergency Petition for Writs of Mandamus, 372-624 at ¶7); *see also* https://nondoc.com/2021/07/15/western-heights-appoints-interim-superintendent-despite-state-orders/. On July 20, 2021, the District sent correspondence to the State Department and State Board, advising:

> The Western Heights School District does not recognize the authority of the State Superintendent or State Board to take over and operate the District, or conduct an "intervention", or to employ or appoint our Superintendent…please be advised that **our local Board of Education, our Interim Superintendent, and our staff will continue to control and operate the Western Heights School District.** (July 20, 2021, Letter, Pet. Ex. 45).

As a result, on July 22, 2021, Appellees requested a writ of mandamus to compel the District to recognize the State's actions and authority relative to the District and Barnes. (Counterclaims – Emergency Petition for Writs of Mandamus, ROA. pp. 372-624). Also on July 22, 2021, the Motion to Dismiss was sustained as to Petitioners' claims of Open Meeting Act violations and as to claims regarding individual proceeding requirements under the Oklahoma Administrative Procedures Act ("OAPA"), 75 O.S. § 250 *et seq.*, because Petitioner failed to exhaust administrative remedies.

On August 12, 2021, the District Court issued a writ of mandamus, granting the relief requested by Appellees. (Writ of Mandamus, ROA, p. 1017). Specifically, the Writ of Mandamus provided:

> The District is commanded to immediately (1) recognize, comply with and perform actions ordered by Respondents, including those in the Petition [for Writs of Mandamus] and the actions taken at the July 12, 2021, State Board meeting; and, (2) suspend Barnes pursuant to 70 O.S. § 6-101(L) and to return this Writ by the 12th day of August, 2021, with a certificate of having done as commanded.[13] *Id.*

[13] Petitioners never returned a certificate of compliance with the Writ, likely due to noncompliance with its requirements.

On August 13, 2021, Appellants filed a Supplemental Motion for Preliminary Injunction, essentially re-asserting the same claims and requests for relief as those set forth in the Petition, which had been dismissed on July 22, 2021, and those in the Motion for Temporary Restraining Order on July 8, 2021.[14] (Tr. of July 22, 2021, Supp. Index, 1).

On November 8-9, 2021, Appellants' Motion for Temporary Restraining Order and for Preliminary Injunction and Appellants' Supplemental Motion for Preliminary Injunction came on for hearing. After hearing testimony, examining evidence and reading the briefing submitted by the parties, the district court denied all thirteen (13) of Appellants' enumerated requests for relief.[15] (Tr., Vol. II at 343-358).

As nearly all, if not all, of the thirteen (13) requests for relief presented by Appellants are questions of law and pertain to matters of construing statutes, several matters of statutory interpretation are presented for consideration. It is a well-settled and fundamental rule of statutory construction to ascertain and give effect to legislative intent, which is first divined from the language of the statute. *YDF, Inc., v. Sclumar, Inc.*, 2006 OK 32, 136 P.3d 656, 658; *Am. Airlines, Inc. v. State, ex rel. Okla. Tax Comm'n*, 2014 OK 95, ¶33, 341 P.3d 56; *Ledbetter v. Howard*, 2012 OK 39, ¶12, 276 P.3d 1031; *Villines v. Szcepanski*, 2005 OK 63, ¶9, 122 P.3d 466. Where a statute is plain and unambiguous, it will not be subjected to judicial construction, but will receive the effect its language dictates. *State ex rel. Oklahoma Firefighters Pension and Retirement System v.*

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[14] That same day, Appellants also filed an Application to Assume Original Jurisdiction with this Court. *Western Heights Independent School District v. The Honorable Aletia Timmons,* Oklahoma Supreme Court, Case No. 119,799. In the Application to Assume Original Jurisdiction, Appellants asserted arguments and claims identical to those in Petition filed in District Court, the Motion for Temporary Restraining Order and Preliminary Injunction, the Supplemental Motion thereto. October 4, 2021, this Court denied Petitioners' Application to Assume Original Jurisdiction.

[15] A review of Appellants' Designation of Record reveals that the Order from which this appeal was filed was not included in the record. Counsel for Appellants was previously consulted regarding this matter and advised that Appellants do not object to inclusion of the Order should the Court request it.

City of Spencer, 2009 OK 73, 237 P.3d 125, 132. Further, statutes are interpreted to attain that purpose and end championing the broad public policy purposes underlying them. *Keating v. Edmondson*, 2001 OK 110, 37 P.3d 882, 886 (emphasis added). The legislative intent will be ascertained from the whole act in light of its general purpose and objective considering relevant provisions together to give full force and effect to each. *Am. Airlines, Inc.*, 2014 OK 95 at ¶33, 341 P.3d 56; *Keating v. Edmondson*, 2001 OK 110, ¶8 37 P.3d 882, 886. Additionally, statutes are to be interpreted in a manner which renders every word and sentence operative, not in a manner which renders a specific statutory provisions nugatory. *Odom v. Penske Truck Leasing*, 2018 OK 23, ¶35, 415 P.3d 521. As set forth below, Appellees submit the statutes are not ambiguous and the Legislature's intention is reflected in the plain language of the statutes.

ARGUMENT AND AUTHORITY

I. RESPONDENTS HAVE CONSTITUTIONAL, STATUTORY AND REGULATORY AUTHORITY OVER THE PUBLIC SCHOOLS, INCLUDING THE AUTHORITY TO PLACE THE DISTRICT ON PROBATION.

The State Board and Department are the agencies created and authorized by the Oklahoma Constitution and Legislature with the responsibility to govern, direct, administer, and supervise the public schools in the State. OKLA. CONST. Art. XIII, § 5; 70 O.S. § 1-105, 70 O.S. § 3-104.[16] Consistent with its duties to maintain a system of free public schools, the Legislature has plenary power with respect to how this is accomplished and may delegate the exercise of that authority. *See Hatfield v. Jimerson*, 1961 OK 250, 365 P.2d 980; *see also Indep. School Dist. No. 65 of Wagoner County v. State Board of Educ.*, 1955 OK 301, 289 P.2d 379. While the Legislature may

[16] The Oklahoma Constitution imposes a duty on the Legislature to establish and maintain a system of free public schools. OKLA. CONST. Art XIII, § 1. Further, the Oklahoma Constitution vests the supervision of instruction in the public school system with the State Board of Education, of which the State Superintendent is the chairperson. OKLA. CONST. Art. XIII, § 5.

not abdicate its responsibility to make laws and resolve fundamental policymaking, it may delegate the power to implement statutorily-mandated policies. *City of Oklahoma City v. State ex rel. Dep't of Labor,* 1995 OK 107, ¶ 12, 918 P.2d 26, 29; *Tulsa Cty Deputy Sheriff's Fraternal Order of Police, Lodge No. 188 v. Bd. Of Cty Comm'rs*, 2000 OK 2, ¶9, 995 P.2d 1124, 1128. It has done so with respect to Appellees. To prevent the Legislature's role from being usurped, its ability to delegate is subject to the condition that the statutes "must establish [the legislative] policies and set out definite standards for the exercise of any agency's rule making power." *Id.* The power to make rules to carry out legislatively determined policies and *apply those policies to varying factual conditions* is an administrative duty which may be delegated properly to an administrative body. *City of Sand Springs v. Dep't of Pub. Welfare,* 1980 OK 36, ¶7, 608 P.2d 1139, 1144. (Emphasis added).

At the opening of the Education Code (Title 70 of the Oklahoma Statute), the Legislature unequivocally established that Respondents, ***including positions established by their action***, are vested with the power and authority to supervise and direct the public schools, including their operations and actions. 70 O.S. § 1-105. Stated otherwise, these offices and state officers are vested with the power and authority to supervise and direct the public schools, including their operations and actions, by and through their governing board and employees thereof. The Legislature has also expressly provided that the State Board is the governing board of the public school system in the state. *Id.*, at subsection (B). To carry out their duties, the State Board is provided with (1) authority in matters pertaining to licensure, certification of persons for instructional, supervisory and administrative positions; (2) authority to require persons with administrative control to make regular and special reports to the State Board, including how such reports are made; (3) authority to adopt standards for accreditation of public schools, which include warnings, probation or

nonaccredited; (4) adopt policies and make rules for the operation of the public school system; (5) authority to provide for the health and safety of school children and school personnel while under the jurisdiction of school authorities; and (6) performing all duties necessary to the administration of the public school system in Oklahoma, including those duties not specifically mentioned herein if not delegated by law to any other agency or official. 70 O.S. § 3-104 (A)(1), (6), (7), (13), (17), (20.[17]

Furthermore, with its delegation to Appellees, the Legislature has established policies and set out standards for the exercise of Appellees' authority for oversight, supervision, direction and governance of the public schools. More specifically, by establishing a general framework, including accrediting tiers and requirements of State Board determined conditions for school districts, the Legislature expressed its recognition that the State Board have these duties and powers for the purpose of 1) ensuring the obligation to children in the public schools receive an excellent education and 2) ensuring the obligation to taxpayers that schooling is accomplished in an efficient manner. 70 O.S. § 3-104.3.

To carry out this identified policy, the Legislature required the State Board to adopt requirements for compliance with standards for accreditation which the public schools must meet. 70 O.S. § 3-104.3; 70 O.S. § 3-104.4. Short of vesting the State Board with complete discretion over the accreditation system, the Legislature established minimum guardrails and processes by which accreditation reviews and determinations are to be made. *Id.* For one, the system of accreditation standards must provide for warnings, probation and loss of accreditation for schools to fail to comply. *Id.* Second, the accreditation system requires the State Department to review

[17] The Department has additional authority, powers and obligations under federal law, including with respect to students with disabilities and homeless children and youth. Within these requirements, the State has enforcement authority to ensure all educational programs for students are met. 20 U.S.C. § 1412; 42 U.S.C. § 11431 *et seq.*

complaints received and, within ninety (90) days of determining that a school district has failed to comply with the accreditation standards, to report the recommended warning, probation, or nonaccredited status to the State Board. 70 O.S. § 3-104.4(C).

With these in mind, the State Board adopted accreditation standards through administrative rulemaking so that it could apply the legislative policies and administrative rules to the various conditions that it was presented with in a given situation. In Oklahoma Administrative Code ("OAC"), Title 210, Chapter 35, the State Board has promulgated administrative rules governing school accreditation, totaling more than three hundred (300) pages. As a part of these rules, the State Board has established tiers of school district accreditation status including Accredited with Deficiencies, Accredited with Warning, Accredited with Probation, and Nonaccredited. OAC 210:35-3-201. These rules provide that before placing a district on warning or probation, representatives of the district will meet with the Department to review its accreditation status. *Id.* The State has adhered to the longstanding statutory and administrative rules governing school accreditation in every respect.

In Winter-to-Spring of 2021, the State Department received a significant volume of complaints regarding the District's operations, culture, finances and more. When asked about the District's declining academic performance, Barnes testified that it was due to the District's demographics (educating a high percentage of poor, Hispanic and Black kids) because that "presents a special challenge to have *those* types of students" and it is reflective in test scores. (Tr. Vol. 1 at 92, l.24 – 93, l. 16; 134). When asked about the board meeting during which a board member was seen consuming alcohol, Barnes seemingly defended the action by testifying that drinking within one's own home is not illegal. (Tr. Vol. I, at 132, ll.14-24). When asked about the findings of the 2019 audit of the District's finances, though he was a member of the District's

board of education) Barnes passed the blame for those instances of mishandling taxpayer funds. (Tr. Vol. I, at 130, l.25 – 131, l.4). However, when asked about similar findings being in the 2020 audit when Barnes was the superintendent, Barnes testified that he did nothing to try and correct the findings from the prior year of which he had knowledge. (Tr. Vol. I at 282, l.11 – 283, l.2). Predictably, the situation worsened.

On March 25, 2021, the State Department presented its initial review of these findings to the State Board and did so in executive session as authorized by 25 O.S. § 307 (B)(4) and (7).[18] At its March 25 meeting, the State Board voted to have the State Department notify the District that it was to appear at an April 9, 2021 and address the concerns.[19] (Minutes, Pet. Ex. 7; Letter of March 30, 2021, Pet. Ex. 8). In addition, the State Board voted to have the State Department conduct a performance review of the District. *Id.* All of this occurred. First, by way of letter dated March 30, 2021, the State Department notified the District of the State Board's concerns and that it was to appear at the April 9, 2021, State Board meeting. (Pet. Ex. 8). Further, the State Department advised that at the April 9 meeting, the State Board could consider adjusting the District's accreditation status to that with warning or probation. *Id.* In their Brief, Appellants continue to make claim (without evidentiary support) that the State Board made an adjudication of the District at the March 25, 2021, meeting. *See* Brief, pp. 4 and 7. As evidenced by the minutes

[18] In their Brief, the District continues to perpetuate a conspiracy that the State Department convened in the "secret meeting" for more than three hours to discuss the District. This is false. As is plainly evidenced by the March 25, 2021, agenda for the State Board's meeting, there were five lawful executive sessions that were discussed that day, consuming the entirety of the time in executive session (reported by the Appellants to be more than three hours). (Agenda, Pet. Ex. 5).

[19] Contrary to the District's claim (again without any support) that the March 25, 2021, meeting resulted in a "motion [was made], seconded, and passed unanimously, that the District has failed to comply with Oklahoma laws and regulations," no such adjudication occurred. *See* Brief, p. 4, ¶6. Rather, at this meeting, the State Board publicly stated it was highly concerned and took action to notify the District that it was to appear at the State Board's April 9 meeting and address the issues. (Minutes, Pet. Ex. 7). Further, the State Board took action to require the State Department to conduct a performance review of the District and present the findings of such review at a special meeting of the State Board on April 9, 2021. *Id.*

of the March 25 meeting and State Department's April 6, 2021, correspondence, there was no adjudication by the State Board regarding the District being placed on probation on March 25, 2021. (Tr. Vol. I, p. 245, l. 14 – p. 256, l. 25).

Pursuant to administrative rules providing that the State Department will meet with a school district prior to it being placed on accreditation with warning or probation, the State Department provided opportunities to meet with the District. OAC 210:35-3-201; (Letter of April 6, 2021, Pet. Ex. 12). The District refused these offers to meet and, upon advice of counsel, refused to meet at the April 9 meeting of the State Board. (Tr. Vol. I at 141, ll.13-19). As such, following a presentation of the matters and the performance review at the State Board's April 9 meeting, the District's accreditation status was adjusted to that with probation. (Minutes of April 9, 2021, meeting, Pet. Ex. 16; Handouts for April 9, 2021, meeting, Pet. Ex. 18; Presentation of April 9, 2021, meeting, Pet. Ex. 17; Letter of April 16, 2021, Pet. Ex. 20).

Official notice of the State Board's action and conditions of probation followed. (April 16, 2021, correspondence, Pet. Ex. 20). Pursuant to Oklahoma law at 70 O.S. § 3-104.4, Western Heights was provided with ninety (90) days (or, until July 8, 2021) to take action to correct and successfully implement the corrective actions determined by the State Board on April 9 and reflected in its official notice of April 16. On April 22, 2021, the District appeared at the State Board meeting and announced that it had commenced litigation and to advise that it had provided a response and report to the State Board the evening prior to this meeting. (Minutes, Pet. Ex. 16).

In support of their position, Appellants rely only on 70 O.S. § 1-115 and 70 O.S. § 5-117. Section 1-115 is titled "School System – Administered by State Department of Education, etc." and does nothing to support Appellants. With respect to Section 5-117, it is prohibited fora local school board to making rules that are inconsistent with the law or rules of the State Board. 70 O.S.

§ 5-117(2). In 2012, the Oklahoma Attorney General interpreted Section 5-117 to prohibit school boards from taking any action in violation of state laws or the rules of the State Board of Education. *See* 2012 OK AG 14. In their claims, Appellants assert that there is no hierarchy as between the State and local school districts and that local school boards are free to operate according to their own rules and desires, without conditions imposed elsewhere. In making this assertion, Appellants ignore the provisions of the Oklahoma Constitution and state statute and seem to discard the State's authority, powers and duties to oversee, supervise, direct and govern the public schools. Moreover, Appellants' position seemingly renders superfluous the system of accreditation, established by the Legislature and vested to the State Board, so that it could respond to the factual conditions that present themselves.

Finally, Appellants advise the Court that statutory language formerly authorizing the State to intervene in a school district has since been repealed. *See* Appellants' Brief, p. 26. Notwithstanding that 70 O.S. § 1210.541 applies to federal law accountability determinations (state testing and state accountability systems, like those at issue in the Court of Civil Appeals cases relied on by Appellants) and not the State's accreditation system (addressed herein), subsection (D) plainly provides that the State Board can establish interventions in school districts. 70 O.S. § 1210.541.[20]

II. THE DISTRICT IS NOT ENTITLED TO AN INDIVIDUAL PROCEEDING PURSUANT TO THE OAPA WHEN THE STATE BOARD ADJUSTS THE ACCREDITATION STATUS OF A SCHOOL DISTRICT.

[20] Notably, subsection (D) also recognizes a hierarchy of systems and entities where it provided for the State Board to make interventions into school districts and for school districts (local education agency) to make interventions in school sites within the district.

A. Oklahoma statutes do not provide for an individual proceeding under the OAPA when the State Board places a school district in 'Accredited with Probation' status.

The OAPA does not mandate that the individual proceeding mechanisms outlined therein be followed with regard to *all* agency actions. Rather, the OAPA is a recognition that the established processes are required *if, and only if,* another source of law required action in regard to a license be preceded by notice and an opportunity for an individual proceeding. *Stewart v. Rood*, 1990 OK 69, 796 P.2d 321 (overruled on other grounds, in part, by *DuLaney v. Oklahoma State Dept. of Health*, 1993 OK 113, 868 P.2d 676). Stated otherwise, the OAPA does not require an individual proceeding until some independent authority requires such a hearing. *Boyer v. State Bd. Of Examiners of Psychologists*, 1992 OK CIV APP 80; 834 P.2d 450; *see also Double LL Contractors, Inc. v. State ex rel. Oklahoma Dept. of Transp.*, 1996 OK 30, 918 P.2d 34. This position is supported by the plain language of the OAPA, providing that "[e]xcept as otherwise specifically provided by law, the issuance or denial of a new license[21] shall not require an individual proceeding." 75 O.S. § 314.

Appellants do not point to any independent statutory basis for an individual proceeding. They do not do so because there is none with regard to the facts in the instant case, where the State Board has acted to adjust a school district's accreditation status short of withdrawing accreditation (i.e., closing the school). The Legislature has come close to requiring an individual proceeding in the context of school closure, though it has stopped short of using the phrase "individual proceeding." Prior to the mandatory annexation of a school district (district closure, loss of accreditation), the Legislature has established that the State Department shall notify the school

[21] A "license" is defined by the OAPA as any "permit, certificate, approval, registration, charter or similar form of permission required by law." 75 O.S. § 250(3).

district in writing of the recommended school district closure and said school district has fifteen (15) days to request an opportunity to appear before the State Board. 70 O.S. § 7-101.1.[22] With respect to operational decisions concerning anything short of a mandatory closure of a school district (deficiency, deficiencies, warning or probation), the Legislature has not provided for such prior notice and an opportunity to be heard. It has not done this with respect to a school district being placed on probation with conditions. Further, the Legislature did not do so when the State Board recoups funds pursuant to 70 O.S. § 18-118 when an audit discloses that funds were illegally received by a school district (certainly adverse to a school district). Had the Legislature intended to provide an individual proceeding under the OAPA, with regard to anything short the State Board voting to non-accredit (i.e., close) a school district, it certainly has the knowledge of how to do so and the authority to so act. However, it did not do so. As such, Appellants' claim of entitlement to an individual proceeding under the OAPA for *any and all* actions of the State must be denied.

Rather than requiring an individual proceeding, the Legislature vested the State Board with authority in matters occurring outside of a school district closure. And, in the instance of a recommendation to place a school district on warning or probation, the State Board has followed the OAPA's rulemaking process to provide school districts with prior notice and a meeting with the State Department. OAC 210:35-3-201. The State Department provided the District with an opportunity to meet and review the matters at hand prior to the District being placed on probation at the April 9, 2021, meeting. Moreover, the State Board provided more than the opportunity to meet with the State Department prior to April 9. That is, the State Board took action at its March 25, 2021, meeting to provide the District (and its representatives) with an opportunity to be heard

[22] Consistent with this statutory provision, the State Board has also promulgated administrative rules providing for prior notice and an opportunity to be heard when a school district is presented for loss of accreditation (i.e., school closure). OAC 210:1-5-5.

and present information to the State Board before it would take action at its April 9, 2021, meeting. As previously established, the District refused its opportunity to meet and be heard, and this decision was based on the advice of its counsel.

Without Oklahoma statutory support for their claim, Appellants rely on two cases concerning a federal law that has since been repealed. *See* Brief, pp. 19-22. These cases are most distinguishable from the present for reasons including the federal law at issue in those cases specifically provided for an opportunity to be heard, presentation of evidence and a final determination made (i.e., a final order). In the cases relied on, the issue related to a federal law, the No Child Left Behind ("NCLB") Act, which was repealed in 2015. Prior to its repeal, the NCLB Act provided, in part, that a school district was able to review information, be heard and afforded an opportunity to provide evidence prior to a final determination being made. *See Western Heights v. Dept. of Education* , 2007 OK CIV APP 21, 169 P.3d 417, ¶4; *see also* 20 U.S.C. § 6316 (2015).[23] As such, Appellants reliance on them is misplaced.[24] In contrast to those (now repealed) federal statutes and regulations, in the instant, the Legislature has expressed its policymaking decision that in the context of Oklahoma state school accreditation the possible sanction requiring prior notice and an opportunity to heard must occur *only* when a school district is recommended for closure. 70 O.S. § 7-101.1; *see also* OAC 210:1–5-5. Without question, that has not occurred in this case. As a result, the State respectfully urges denial of the Appellants' claims.

[23] Similarly, its corresponding regulations that provided for reviews and an opportunity to be heard prior to a school closure or loss of funding have also been repealed. *See* 34 C.F.R. § 200.31, 34 C.F.R. §§ 200.30-200.53.

[24] Appellants are also misplaced in the claim regarding Appellees not having amend the accountability determinations rules consistent with the Court's 2007 ruling. *See* Appellants' Brief, p. 21; A review of the Administrative Code evidences the school accountability rules at OAC 210:10-13-18 relating to the federal law in place at the time were amended in 2007 and 2008 to reflect these changes.

B. There is no constitutional mandate for an individual proceeding in determinations of a school district's accreditation status.

In their Brief, Appellants make no claim to a constitutional entitlement to an individual proceeding for the District. This is illuminating because there is no constitutionally mandated liberty or property interest belonging to a school district. Individuals, such as Barnes, certainly have a property interest in their personal educator certificates and as set forth below, Barnes has an individual proceeding regarding same; however, this does not exist with respect to a school district. As such, the District's claim to an individual proceeding should be denied.

III. THE STATE HAS AUTHORITY TO ISSUE EMERGENCY ORDERS TO SUSPEND AN EDUCATOR CERTIFICATE AND PROPERLY UTILIZED ITS AUTHORITY IN SUSPENDING BARNES' CERTIFICATE.

Barnes asserts that 1) the State does not have the authority to suspend an educator certificate, including that of a school superintendent; 2) the State Board does not have the authority to issue an emergency order to summarily suspend an educator certificate; and, 3) the State did not follow its own procedures for action to suspend an educator's certificate. Barnes's assertions are misplaced and in error.

A. The State has the authority to suspend an educator certificate, including that belonging to a school district superintendent.

The State Board is vested with the general authority to provide for the health and safety of schoolchildren while under the jurisdiction of school authorities. *See* 70 O.S. § 3-104 (A)(6). To that end, the State Board has the full and exclusive authority in matters pertaining to the licensure and certification of persons for instructional, supervisory, and *administrative positions* (i.e., a school district superintendent) with the public schools of the state. *Id.* Further, this law (and others) specifically requires the State Board to promulgate rules relating to teacher standards of professional conduct and relating to the suspension and revocation of teaching certificates. *Id.;*

see also 70 O.S. § 6-101.21. Plainly, the State Board has authority over certificates, including that of a school district superintendent. In addition, the State Board has authority to act on an emergency basis to suspend an educator certificate.

Appellees have promulgated administrative rule on "suspension and/or revocation of certificates" at OAC 210:1-5-6.[25] These rules explicitly apply to *superintendents*, principals, classroom teachers and others in administrative and supervisory services in public schools. *Id.*

B. The State Board has authority to issue an emergency order summarily suspending an educator certificate.

Oklahoma law and State Board rule authorize the summary suspension of a certificate on an emergency basis. Oklahoma law provides:

> As authorized by or pursuant to law, if an agency finds that the public health, safety, or welfare imperatively requires emergency action, has promulgated administrative rules which provide for such action and incorporates a finding regarding the emergency in its order, emergency actions may be ordered pending the final outcome of proceedings instituted. 75 O.S. § 314.1; *see also* 75 O.S. § 314(C)(2).

The State Board rule relating to the suspension of a teaching certificate parallel the authority and requirements of Section 314.1. More specifically, State Board rules, at OAC 210:1-5-6, provide:

> Pursuant to 75 O.S. § 314.1, in the event the State Board of Education finds that public health, safety, or welfare imperatively requires emergency action, the State Board of Education may issue an emergency order summarily suspending a certificate pending an individual proceeding for revocation or other action. Such proceedings shall be promptly instituted and determined. Such an order shall include specific findings of fact specifying the grounds for the emergency action. Within three (3) business days of the issuance of the order by the Board, a copy of the order shall be sent to the holder of the certificate via certified or registered mail, delivery restricted to the certificate holder, with return receipt requested.

Clearly, the State Board has the authority to suspend a certificate and do so on an emergency basis.

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[25] The State Board is vested with the general authority to provide for the health and safety of students while under the jurisdiction of school authorities. 70 O.S. § 3-104. To that end, the State Board has the full and exclusive authority in matters pertaining to the licensure and certification of persons for instructional, supervisory, and administrative positions with the public schools of the state. *Id.*

Additionally, Oklahoma law and prior caselaw do not require pre-suspension notice. More specifically, 75 O.S. §§ 314-314 provides in part:

C. 1. ***Unless otherwise provided by law***, an existing license shall not be revoked, ***suspended***, annulled, withdrawn or nonrenewed ***unless, prior to the institution of such final agency order, the agency gave notice*** by mail to the licensee of facts or conduct which warrant the intended action, ***and the licensee was given an opportunity to show compliance with all lawful requirements for the retention or renewal of the license.***

2. **If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action**. These proceedings shall be promptly instituted and determined. (Emphasis added).

By its plain language, subsection (C)(2) creates an exception to the requirement for prior notice required in (C)(1) if the agency finds that the public health, safety, or welfare requires emergency action. Moreover, the language of 75 O.S. § 314.1 provides additional authorization for emergency action without prior notice. Established case law is consistent with this interpretation and application. *Dablemont v. State, Dept. of Public Safety,* 1975 OK 162, 543 P.2d 563 (holding held that **except in emergency situations**, due process requires notice and an opportunity for hearing when a state seeks to terminate a property interest); *see also Barry v. Bianchi*, 443 U.S. 55, 99 S.Ct. 2642 (1979). The legality of the State issuing emergency orders to suspend educator certificates has been litigated before. *See Miller v. State of Oklahoma, CV-2017-568, Oklahoma County District Court (affirmed by the Oklahoma Court of Civil Appeals (Unpublished Opinion), Case No. 116,159) and Boshers v. State of Oklahoma, CV-2016-2273, Oklahoma County District Court.*

C. The State Board complied with the administrative requirements when taking action to suspend Barnes' educator certificate.

Petitioners incorrectly claim that the State did not comply with the administrative rule and/or statute when effectuating the emergency suspension of Barnes. First, Appellants claim that

the Application for an Emergency Order and the subsequent Emergency Order were devoid of specific facts and findings. However, the Application and the Emergency Order set out allegations and findings across thirty-three (33) pages and exhibits totaling more than two hundred (200) pages. (Application, Pet. Exs. 26-27; Emergency Order, Pet. Ex. 32). Appellants further claim that the State Board rule was violated because prior notice was not provided to Barnes within three (3) business days of the emergency order and because they claim the application for an emergency order must be provided by certified mail. *See* Brief, pp. 35-36. Giving Appellants the benefit of the doubt, this appears to be a simple conflation of requirements relating to emergency suspension applications, emergency orders to suspend and revocations. First, the rule referenced by Appellants pertains to revocations and not emergency suspensions. OAC 210:1-5-6(d)(3 (providing "within three business days of the date the application to revoke a certificate is filed…). The rule regarding an emergency suspension (captioned "Emergency Action") provides that within three business days of the issuance of an emergency order (occurred on June 24, 2021), a copy of the order shall be sent to the holder or the certificate via certified or registered mail. These provisions were complied with. The Emergency Order was sent (via e-mail and certified mail) to Barnes' legal counsel (Respondent's Response and Objection to Supplemental Motion at Exs. B-C, 1101-1150).

D. There was an emergency basis to suspend Barnes' educator certificate, and the judgment of the State Board in determining such an emergency should not be disturbed.

The State Board's interpretation of Oklahoma teacher licensure statutes and Section 314 as it relates to the emergency suspension of teaching certificates is to be accorded due consideration by courts in construing their provisions. *McCain v. State Election Bd.*, 1930 OK 323, 289 P.759. Further, the State Board's determination of an emergency is afforded great weight and is not to be

substituted. *Tulsa Area Hospital Council, Inc. v. Oral Roberts University*, 1981 OK 29, 626 P.2d 316.

As a reminder, in the Winter-to-Spring of 2021, the State Department received complaints regarding the entirety of the District's operations. Academic opportunities for students were among the lowest in the State, in-person instruction was not provided for more than a full year, financial mismanagement had occurred, employees (including one with cancer) had reported her insurance was not paid for as required such that her treatments were not covered. And there was more. In the Spring of 2021, the District's 2020 financial audit was released. It was worse than the year before. However, when asked about similar findings being in the 2020 audit when Barnes was the superintendent, Barnes testified that he did nothing to try and correct the findings from the prior year and of which he had knowledge. (Tr. Vol. I at 282, l.11 – 283, l.2). Then, when asked about his representation to the State to get the Certificate that he had skills and competencies in accounting and financial management, Barnes admitted that each of the 2020 findings occurred under his watch. (Tr. Vol. I at 286, l.19 – 289, l. 18; 2020 Audit Report at Ex. V to Application, Pet. Exs. 26-27). While Appellants willfully ignored the emergent nature of the failures, they were worsening and culminated with the knowledge that persons inside the school facilities were without protection should a fire occur.

To summarize, with Barnes at the helm, the District had financial mismanagement in each of his years as superintendent, knowingly non-working fire prevention systems, school buses that could not pass inspection, mold and exposed dangers in school facilities, antifreeze leaking in classrooms. Furthermore, students were leaving, without in-person opportunities and academic outcomes were worsening leading to June 24, 2021. (Application, Pet. Exs. 26-27; Presentation of April 9, 2021, Pet. Ex. 17; Presentation of June 24, 2021, Pet. Ex. 35 at slide 5; Response and

Objection to Supplemental Motion, 1101-1150). Barnes conveniently alleges that he never had an opportunity to present his side of the story to the State Board; however, this is patently false and was recognized by the Trial Court. Barnes (and the District) was given multiple opportunities to meet with the State and respond to the allegations against him. In each instance, he refused to engage to address the issues. (Letter of April 6, 2021, Pet. Ex. 12; Minutes, April 9, 2021, Pet. Ex. 16; Minutes, April 22, 2021, Pet. Ex. 23; Motion to Dismiss at Ex. "C," 47-103). When testifying regarding his claims that he was not given an opportunity to meet and present his side to the allegations, Barnes admitted that he had been requested to appear and discuss the matters but he had declined to do so. (Tr. Vol. I at 141, ll.13-19; (Letter of April 6, 2021, Pet. Ex. 12; Motion to Dismiss at Ex. "C," 47-103).

Having received information relating to the aforementioned egregious action and conduct of Barnes, on June 24, 2021, the State Board met to discuss and consider, in part, possible action to issue an emergency order summarily suspending Barnes's teaching certificate. The trial court correctly identified the nature of the emergency Barnes presented and ruled that the State Board not only had the authority to institute the emergency suspension, but that it was correct to do so. The agenda for this meeting expressly cites the authorizations in 75 O.S. § 314, 75 O.S. § 314.1 and State Board Rules at OAC 210:1-5-6. On June 24, 2021, the State Board issued the Emergency Order granting the Application and expressly stated across more than thirty-three (33) pages the statements of fact and conclusions of law relating to Barnes and the grounds for the emergency suspension.

Pursuant to the aforementioned State Board rules and the OAPA, the Emergency Order, its contents, and State Board rules relating to teacher certificate suspension and revocation were provided to Barnes. (Respondent's Response and Objection to Supplemental Motion at Ex. B,

1101-1150). Additionally, in the cover letter provided, the undersigned counsel advised Barnes that Oklahoma law and State Board rules require that revocation proceedings are to be promptly instituted and that Barnes would be provided with administrative remedies available to him. Shortly thereafter, Appellees began routinely requesting Barnes to provide dates he could be available for a hearing. (*Id.*, at Ex. C, pp. 1101-1150). Despite the State's attempts to promptly provide Barnes with an administrative hearing he is entitled to, only recently has one been scheduled to occur in late May 2022. Rather than rushing to the courthouses (district court and this Court, twice), Barnes should be required to follow the administrative process through to its conclusions. *Aircraft & Diesel Equipment Corp. v. Hirsch,* 331 U.S. 752, 67 S. Ct. 1493 (1947) (holding the individual is not merely to pursue the initiation of the administrative remedy, but to see it pursued to its final outcome).[26]

In the instant matter, the State Board utilized its full and exclusive discretion in matters pertaining to Oklahoma teacher licensure, in conjunction with its interest in protecting the safety of schoolchildren and determined that Barnes' suspension was in the interest of public health, safety, or welfare.

IV. APPELLANTS FAILED AND REFUSED TO EXHAUST THEIR AVAILABLE REMEDIES.

Appellants are wrong to suggest that the State violated the OAPA when it placed the District on probation and later suspended the Certificate. Instead, it is Appellants violated who

[26] In complement to the requirement to exhaust administrative remedies, Section 318 of the APA expressly sets froth the right of a party aggrieved by an agency decision. However, Section 318 plainly states that the judicial review must be brought by a "party aggrieved by a *final agency order* in an individual proceeding...." *See* 75 O.S. § 318(A)(1). (Emphasis added). The State Board's Emergency Order is not a final agency order. Absent contrary provisions in statute, an order is a "final agency order" when the administrative process ends and legal obligations resulting from that process are imposed. *See Conoco v. State Dept. of Health*, 1982 OK 94, 651 P.2d 125. Because the State Board is statutorily and administratively required to promptly institute an individual proceeding for possible revocation of the Certificate (which it sought to do, not Barnes), the administrative process has not ended.

went afoul of the requirement by failing to exhaust all remedies available. *See* 75 O.S. § 306(A).[27] The Oklahoma Supreme Court has long held that "relief must be sought from the administrative body and this remedy exhausted before the courts will act. The rule itself is settled with scarcely any conflict. *It is not a matter of judicial discretion, but is a fundamental rule of procedure laid down by courts of last resort*, followed under the doctrine of stare decisis, and binding upon all courts."[28] *Oklahoma Pub. Welfare Comm'n v. State ex rel. Thompson*, 1940 OK 364, 105 P.2d 547, 550 (emphasis added); *see also Allen v. State ex rel. Bd. of Trustees*, 1988 OK 99, 769 P.2d 1302, 1307.[29] An action filed before first exhausting administrative remedies "is to be viewed as fraught with a fatal remedial impediment that bars judicial relief." *Lone Star Helicopters, Inc. v. State*, 1990 OK 111, 800 P.2d 235, 237.

The gravamen of Barnes's complaint relates to the State Board's Emergency Order to suspend the Certificate pursuant to 75 O.S. §§314-314.1 and OAC 210:1-5-6. These sections of the OAPA and the rules expressly authorize an agency to suspend a certificate on an emergency basis. *See* 75 O.S. §§ 314-314; *see also* OAC 210:1-5-6(e). If an emergency suspension order is entered, an administrative hearing to possibly revoke a certificate must be "promptly instituted and determined." *Id.*

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[27] Review in the District Courts of Oklahoma was available under 75 O.S. § 306. Although review was available in the District Courts under 75 O.S. 306, Respondents maintain that Petitioners first should have filed a petition for review before the State Board itself under OAC 210:1-5-3, as noted herein.

[28] Exhaustion of administrative remedies exists to allow the State Board to exercise its discretion and apply its expertise in the area it is charged with administering, and is more efficient to allow the process to move forward without interruption. *See Martin v. Harrah Independent School Dist., et al.*, 1975 OK 154, 543 P.2d 1370. Similarly, exhaustion requirements should apply to the lower court's orderly proceeding and disposition of issues currently pending.

[29] *See also Sanders v. Oklahoma Employment Security Commission*, 1948 OK 116,195 P.2d 272; *see also Speaker v. Board of County Com'rs of Oklahoma County, Okl.*, 1957 OK 100, 312 P.2d 438.

After the State Board issued the Emergency Order, undersigned counsel requested that Barnes provide dates he could be available for a hearing on revocation of the Certificate.[30] Despite the State Board's attempt to promptly provide Barnes with the administrative hearing he is entitled to, only recently has Barnes responded to the State's requests to schedule a hearing, and that hearing is scheduled to occur in May 2022. Barnes should be required to follow the administrative process through its conclusion.[31] *Aircraft & Diesel Equipment Corp. v. Hirsch*, 331 U.S. 752, 67 S. Ct. 1493 (1947) (holding the individual is not merely to pursue the initiation of the administrative remedy, but to see it pursued to its final outcome).

CONCLUSION

The situation in Western Heights was dire and only getting worse by the day. The State has the statutory and constitutional authority, and in fact the duty, to emergency suspend Barnes' Certificate and to intervene in the District when it became necessary. On the part of the State, no rights were violated and no laws were broken. The State cares about the educational outcomes of students, the health, safety and wellbeing of both students and staff and the viability of the district

[30] On June 29, 2021, counsel for Respondents was advised that counsel was "hired to represent Mannix Barnes in connection with the present dispute between the State Department of Education and the Western Heights Public Schools." (Respondent's Response and Objection to Supplemental Motion at Exs. B-C, 1101-1150). Subsequently, counsel for Respondents was advised that the District's legal counsel would be representing the District *and* Barnes in is individual proceeding matter for the possible revocation of the Certificate. *Id.*

[31] In complement to the requirement to exhaust administrative remedies, Section 318 of the APA expressly sets forth the right of a party aggrieved by an agency decision. However, and detrimental to Barnes's claims, Section 318 plainly states that the judicial review must be brought by a "party aggrieved by a *final agency order* in an individual proceeding...." *See* 75 O.S. § 318 (A)(1). (Emphasis added). The State Board's Emergency Order is not a final agency order. Absent contrary provisions in statute, an order is a "final agency order" when the administrative process ends and legal obligations resulting from that process are imposed. *See Conoco v. State Dept. of Health*, 1982 OK 94, 651 P.2d 125. Because the State Board is statutorily and administratively required to promptly institute an individual proceeding for possible revocation of the Certificate (which it has sought to do), the administrative process has not ended. Therefore, judicial review is not proper at this stage of the proceeding.

for the students and community served, even if the District and its superintendent clearly have not.

Appellees pray that this Court affirm the decision of the district court.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

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