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April 14, 2023

## VIA EMAIL

Bryan Cleveland  
Oklahoma State Department of Education  
2500 N. Lincoln Blvd.  
Oklahoma City, OK 73105  
[Bryan.Cleveland@sde.ok.gov](mailto:Bryan.Cleveland@sde.ok.gov)

**RE: November 9, 2021, Underpayment Complaint by [REDACTED]**

Dear Mr. Cleveland:

This firm represents Independent School District No. 7 of LeFlore County, Oklahoma, commonly known as Pocola Public Schools (the "School District") with regard to the November 9, 2021 underpayment complaint submitted to the Oklahoma State Department of Education ("OSDE") pursuant to OKLA. STAT. tit. 70, § 18-114.9(D) by [REDACTED] (the "Complaint"). Please direct future correspondence regarding this matter solely to me.

This letter serves as the School District's response to [REDACTED] Complaint. Attached for your reference are the documents requested in your letter of March 8, 2023, as well as certain other materials which are relevant to the Complaint.<sup>1</sup> I believe we have provided you with everything requested in your letter of March 8, but if you require any additional documents, please let me know.

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<sup>1</sup> As you will see, [REDACTED] extra duty contract for providing counseling services in the 2020-2021 school year contains a statement that the contract is for the 2019-2020 school year. This document is in fact the contract for the 2020-2021 school year, and accurately reflects the compensation paid to [REDACTED] for providing the services set forth in the contract in 2020-2021, but the reference to 2019-2020 was not updated due to a scrivener's error.

## **I. Background.**

At all times material to the events giving rise to the Complaint, [REDACTED] was a certified employee of the School District. Her Complaint arises out of allegations that in the 2021-2022 school year, her salary was reduced in violation of OKLA. STAT. tit. 70, § 18-114.9(A) because an increase in the number of instructional days she was required to work in that school year was not accompanied by a proportionate increase to her salary.

In the 2020-2021 school year, the School District's school year consisted of 161 instructional days, five professional days, and two days of parent-teacher conferences. Pursuant to her employment contract with the District, [REDACTED] salary for the 2020-2021 school year was [REDACTED]<sup>2</sup>

As you are aware, in the 2019 legislative session, the Legislature enacted amendments to the statute which governs the length of the school year for school districts. Under the newly amended statute, a school district was required to be in session for a minimum of 1080 hours **over the course of 165 instructional days** beginning with the 2021-2022 school year, unless the district were to meet certain requirements established by the statute itself and OSDE regulations. See OKLA. STAT. tit. 70, § 1-109(a) (2019); 210 O.A.C. § 10-1-4.

Accordingly, when the School District's Board of Education voted to approve the calendar for the 2021-2022 school year, the number of instructional days was increased in order to comply with state law. For 2021-2022, the calendar included **166** instructional days, with the number of professional days (5) and parent-teacher conference days (2) remaining unchanged from the previous year.

In 2021-2022, [REDACTED] employment contract reflected an annual salary of [REDACTED] (an increase from 2020-2021). However, as reflected in the attached attendance records for 2021-2022, [REDACTED] salary was deducted based on her election to use a total of seven days and 2.5 hours of personal business leave, which resulted in total payroll deductions of \$515, making [REDACTED] actual 2021-2022 salary [REDACTED]

During the fall of 2021, Oklahoma Education Association Southeast Advocate Cal Ware, approached Superintendent Jason Brittain and later addressed the Board at one of its meetings to discuss what he contended to be a reduction in salary of certified teachers in the School District as a result of the increase in the number of instructional days in the School District's calendar. He contended that increasing the length of the school year without a commensurate increase in salary for teachers violated the provisions of OKLA. STAT. tit. 70, § 18-114.9(A).

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<sup>2</sup> [REDACTED] also received additional compensation in the form of extra duty contracts and fringe benefits, which are reflected in the enclosed documentation. However, Ms. Luu's Complaint relates solely to her contention that her **salary** should have been increased due to the increase in instructional days for 2021-2022. Hence, this letter does not discuss these other forms of compensation paid to Ms. Luu, as they are immaterial to the Complaint.

After the School District determined that the legal arguments advanced by Mr. Ware were erroneous for the reasons set forth below, it elected not to pursue the courses of action proposed by Mr. Ware to remedy the purported legal issues associated with the lengthened school year. Thereafter, Mr. Ware filed this Complaint on behalf of [REDACTED]

## **II. [REDACTED] Salary Was Not Reduced for the 2021-2022 School Year.**

As a preliminary matter, while the compensation information attached to this letter reflects that the amount of salary paid to [REDACTED] for 2021-2022 was lower than in 2020-2021, the only reason this was the case was that [REDACTED] took several days of personal business leave, which triggered payroll deductions in the amount of \$70 per day after the first day used in a given school year, per the School District's policies and usual practice with regard to employee leave. These deductions reduced the salary actually paid to [REDACTED] for that year to a level slightly below the level it had been the previous year. Had [REDACTED] taken fewer personal days, her salary in 2021-2022 would have exceeded what she earned in 2020-2021.

Oklahoma law specifically authorizes districts to condition certified employees' use of personal business leave on a payroll deduction, as long as the amount of the deduction does not exceed the cost of a substitute teacher. OKLA. STAT. tit. 70, § 6-104(A)(1). It also authorizes reductions in teacher compensation as long as they are accompanied by reductions in hours worked, such as where an employee's compensation is reduced due to taking leave which is not fully paid. OKLA. STAT. tit. 70, § 18-114.9(A). For these reasons, the fact that certain salary payments to [REDACTED] were reduced in 2021-2022 due to payroll deductions associated with taking personal business leave does not entitle her to additional payment.

## **III. The School District Had No Obligation to Increase [REDACTED] Compensation for the 2021-2022 School Year.**

Turning to the legal argument raised explicitly in the Complaint, the basis for [REDACTED] claim of underpayment by the School District is her belief that when the School District approved a school calendar with more instructional days than the previous year, OKLA. STAT. tit. 70, § 18-114.9 required the School District to increase [REDACTED] salary proportionally to the increase in the number of days/hours she would work that year.

The only legal authority [REDACTED] provides to support her position is Section 18-114.9 itself. However, her position is contrary to the plain meaning of Section 18-114.9(A), which provides in relevant part:

- A. If a teacher, as defined in Section 6-101.3 of this title, is employed by the same school district for the next school year as the preceding school year, **the total compensation, consisting of salary and fringe benefits, of the teacher shall not be decreased the next school year unless the hours or the duties of the teacher are reduced proportionately.** Compensation shall not include one-time incentive pay that is provided by the school district to a teacher nor retention incentive pay for returning the next year.

OKLA. STAT. tit. 70, § 18-114.9(A) (emphasis added). Clearly, the statute prohibits teachers' total compensation from being **decreased** unless hours or duties are reduced, but it is completely silent as to situations in which a teacher's hours or job duties are **increased**. It simply does not include any language which requires teachers' compensation to be increased under the circumstances [REDACTED] claims, or under any circumstances.

If the Legislature had intended to provide a rule which required certified employees' pay to be increased when the length of the school year increased, it could have easily included language which would effectuate that purpose in Section 18-114.9, but it did not do so. According to the canon of statutory interpretation known as "*expressio unius est exclusio alterius*," under which the "the mention of one thing in a statute implies exclusion of something else," the fact that Section 18-114.9 addresses reductions in compensation when hours decrease but does not mention increases in compensation where hours increase, indicates a legislative intent not to provide for a rule addressing the latter situation. *Elias v. City of Tulsa*, 2021 OK CIV APP 18, ¶ 15, 512 P. 3d 385 (quoting *Greenberg v. Wolfberg*, 1994 OK 147, ¶ 24, 890 P.2d 895, 906 and *OCA Impact, Inc. v. Sheehan*, 2016 OK 84, ¶ 6, 377 P.3d 138, 146).

Nor is [REDACTED] reading of Section 18-114.9 consistent with other legal authorities governing the compensation of career teachers in Oklahoma. The statute governing the length of school years for Oklahoma school districts, provides that "school shall actually be in session and classroom instruction offered . . . for **not less than** one thousand eighty (1,080) hours with a minimum of one hundred sixty-five (165) days of instruction each school year[.]" OKLA. STAT. tit. 70, § 1-109(a) (emphasis added) This statute provides a **minimum** length for a district's school year, but it does not contain a **maximum**, nor does it place any restrictions on a district's discretion to increase the length of its school year in a subsequent year. Indeed, it was the Legislature's 2019 amendment to this very statute which **required** the School District to increase the length of its school year.

The Legislature has also enacted OKLA. STAT. tit. 70, § 18-114.14, which provides a minimum salary schedule for certified employees such as [REDACTED]. It provides different salary levels based on an employee's years of experience and whether they have certain specific qualifications. *See generally* OKLA. STAT. tit. 70, § 18-114.14. The salary schedule does not account for how many days per school year the teacher is required to work. *Id.* If Section 18-114.9(A) was intended by the Legislature to be construed in the manner urged by [REDACTED] the salary schedule would have to include some provision by which the salary levels could be adjusted upward or downward to account for a longer/shorter school year. Again, neither the Oklahoma School Code nor the relevant OSDE regulations include such a provision, indicating a legislative intent not to provide a rule requiring teachers' compensation to be increased if the school year is lengthened.

For the above reasons, [REDACTED] arguments that she was entitled to a pro rata salary increase as a result of the increase in the number of instructional days in the 2021-2022 school year are completely unsupported by applicable law. The School District had no obligation under Oklahoma law to increase [REDACTED] compensation. [REDACTED] was not underpaid in the 2021-2022 school year and is not entitled to any additional payment from the School District or the OSDE.

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I trust this letter is fully responsive to your questions, but if you require any additional information or have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'ASB', with a stylized, sweeping flourish extending to the right.

Adam S. Breipohl  
**ROSENSTEIN, FIST & RINGOLD**

ASB  
Enclosures  
Cc: Jason Brittain and Bryan Drummond (via email)