IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

INDEP. SCH. DIST. NO. 71 *et al.*,
Plaintiffs,

v.

OKLA. STATE DEP'T OF EDUC., &
OKLA. STATE BOARD OF EDUC.,
Defendants.

Case: CJ-2020-2392
Judge: Stinson

MOTION TO DISMISS PARTY AND ACTION WITH BRIEF IN SUPPORT FILED ON BEHALF OF THE OKLAHOMA STATE BOARD OF EDUCATION

Defendant Oklahoma Board of Education ("Board"), by and through counsel, moves this Court to dismiss the Board from this action and dismiss this action in its entirety pursuant to 12 O.S. 2012(b)(6). The Board is not a proper party based on the nature of the action and the relief sought herein, and Plaintiffs failed to establish harm or a cause of action.

BACKGROUND

The State Aid Foundation Program is tasked with providing a base level of financial support to all school districts, and thereby provide equal opportunities to obtain a basic education to all the public-school children of Oklahoma, regardless of the wealth of their local school district. *See* 70 O.S. § 18-101. One mechanism to accomplished this is by attempting to remove funding imbalances that would otherwise exist between the various school districts. This is done using the school funding formula. As an example, when two school districts are compared, there are differences between the number of students educated, the value of property taxes attributable to the school district, the age of the students being educated, the distance each student must travel, etc. No two school district's funding needs are precisely the same. To account for this variation, a complicated funding formula was created. *See, e.g.*, 1996 Okla. Sess. Laws, ch. 215, § 4. This formula

methodically appropriated dollars in the manner deemed appropriate by the elected legislators of this State. That being said, the actual dollar amount of school funding that is available statewide depends substantially on legislative appropriations—meaning that each year there is a total amount of money appropriated to fund public education from which all school districts receive their individual allocation of State Aid. Every year the Legislature appropriates funds to the Board "or so much thereof as may be necessary for the financial support of public schools." *See, e.g.*, 2020 O.S.L 21, §§ 1-7. This sum certain represents the total amount of State Aid available for the Board to pass along to all school districts, *collectively*. So, the more State Aid one school district receives in any given year, the less other school districts can receive.

State Aid Formula

The school funding formula is governed by statute. *See generally ISD No. 52 v. Hofmeister*, 2020 OK 56 ¶ 2; 4 70 O.S. 18-200.1.[1] Although there are many moving parts, essentially, an individual school district receives three types of financial support: (1) the net amount of the "Foundation Program" minus any "Foundation Program Income"; (2) a Transportation Supplement; and (3) the Salary Incentive Aid. All parties agree that neither the Transportation Supplement or the Salary Incentive Aid are in dispute or even relevant to the pending matter. (Am. Pet. ¶ 8). That only leaves a dispute regarding the first type of funding. That amount is determined by the calculation of *two variables*: the "Foundation Program" and the "Foundation Program Income," both of which are statutorily defined but require multiple steps to calculate.

The Foundation Program is the *first variable* within the first type of funding and "shall be a district's highest weighted average daily membership . . . multiplied by the Base Foundation Support

[1] The State Aid formula has been amended seven times since the original petition in this case was filed; however, those amendments are immaterial to this action, so only the most recent law will be cited.

Level."[2] The highest weighted daily membership is based on the attendance and demographics of the students.[3] It is calculated, and audited by the State Department of Education ("Department"), every year. *See* 70 O.S. § 18-200.1(A). This value is unique to each school district. The Base Foundation Support Level, however, is essentially a per pupil dollar amount determined annually but is the same value for all school districts. When taken in combination with other sources of income, the Base Foundation Support Level is the theoretical expense to fund one student with a basic level of education. Multiplying those two numbers provides each school district with the maximum possible amount of State Aid contemplated under the first type of funding.

Next, the *second variable* used in calculating the first type of funding—the Foundation Program Income (or as it is colloquially referred to, "Chargeables")[4]—is the crux of the instant dispute. The Chargeables comprise of dedicated revenue sources unique to each district that, by law, must be used, or at least a portion thereof must be used, for the financial support of local school districts. The Legislature uses this mechanism to ensure the wealth of any given single school district does not operate to the detriment of the rest, straining scarce, statewide resources. Localities are expected to pay their share of educating Oklahoma students. If a school district raises dedicated local revenue (Chargeables) that surpasses the value of the Foundation Program (*first variable*), then that school district will not receive State Aid for the first type of funding. On the other hand, if a

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[2] 70 O.S. § 18-200.1(D)(1)(a).

[3] The average daily membership ("ADM") is based on the attendance of students. A weighted average daily membership ("WADM") is the ADM adjusted for the demographics of the students. *See* 70 O.S. § 18-201.1. Finally, the highest WADM is the greatest WADM when comparing the WADM based on the first nine weeks of the current school year, the previous year, and the second previous year. Therefore, it is possible that even if a school district's WADM changes annually, the highest WADM could remain constant for three years even with significant enrollment changes, essentially providing a funding buffer and budget delay for school districts with falling enrollment numbers.

[4] Collectively this amount is referred to as a Chargeable because it is "charged" against the school district's State Aid.

district were to raise less dedicated local revenue, then that district would receive the difference between the Foundation Program (*first variable*) and Chargeables (*second variable*).

To add a slight complication to the funding formula (although it provides clarity to the budgeting process) nearly all of the Chargeable items are based on amounts the school district received in the previous fiscal year.[5] By using this method, the school district cashflow predictions are based on dollars "actually received" in the previous fiscal year, so they are not merely estimates of income. They are just last year's numbers placed into the general funds of the various school districts. In this way, the Legislature created budgeting certainty for school districts.

Returning to the formula, one "Chargeable" is a portion of Motor Vehicle Collections ("MVC") under the Oklahoma Vehicle License and Registration Act—in other words, the MVC revenue is considered a source of income counted against school districts for purposes of calculating State Aid. *See* 70 O.S. § 18-200.1(D)(1)(b)(3) (including MVC in the Foundation Program Income); 47 O.S. § 1104 (describing the MVC apportionment to school districts). Plaintiffs recount the previous MVC litigation leading to the present dispute. (Am. Pet. ¶¶ 10-14). One item omitted from that history, however, is that the statute changed between then and now. The previous dispute arose when the law provided that no school district would receive less MVC than it had received in the same month of the previous fiscal year. *See* 47 O.S. Supp.2015 § 1104. If it there happened to be insufficient funds to meet that command, then a system was provided to determine how the MVC was to be distributed. *See id.* As of 2017, school districts are only entitled to "receive an amount based upon the proportion that each district's average daily attendance bears to the total average daily attendance of those districts entitled to receive funds." *See* 2017 O.S.L. § 272.[6] In short, the

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[5] In School funding the fiscal year runs from July 1st to June 30th.

[6] Additionally, no school district is entitled to receive more MVC than it received in the fiscal year ending in June 2015. 47 O.S. §§ 1104(B)(1)(d)-(e).

MVC apportioned to a school district by the Oklahoma Tax Commission ("OTC") for any given month is based on that district's *pro rata* share of statewide MVC based on average daily attendance. 47 O.S. § 1104(B)(2). At least this is the way apportionment is designed to function in a normal scenario. Here on the other hand, there are court ordered adjustments to consider. *See* 74 O.S. § 1104(A) (describing MVC apportionment "unless otherwise provided by law").

Again, the MVC apportioned in any given month does not affect the funding formula during the year of its collection. The MVC amount used in the funding formula is the total amount apportioned during the previous fiscal year. 70 O.S. § 18-200.1(D)(1)(b). Essentially, the formula calculations run on a one-year delay. This can result in some scenarios where school districts receive less funds than they had hoped for, but such is the nature of budgeting and appropriations. This one-year delayed approach was a public policy decision made by the Legislature that should not be set-aside lightly by any court.

Previous Litigation

The litigation history surrounding apportionment of MVC to the various school districts by OTC is not easily recounted. For purposes of the case at bar, many of the specific details are not legally significant and a birds-eye view of the underlying dispute will suffice. In a nutshell, OTC applied an incorrect statutory construction of 47 O.S. Supp.2015 § 1104 during its apportionment calculations back in fiscal year 2016. As a result, some school districts received more MVC than they were entitled to and some received less. *See generally, ISD No. 2 v. OTC*, 2018 OK CIV APP 49 ¶ 2. That error has since been corrected. *See* Order, *ISD No. 2 v. OTC*, No. cv-2016-1249 at 2-3 (May 28, 2019) ("Adjustment Order") (laying out the terms for OTC to meet its obligation to plaintiffs).

The Court of Civil Appeals ordered OTC to correct this apportionment error by determining how much MVC apportionment plaintiffs *should* have received in fiscal year 2016 (using the corrected interpretation of 47 O.S. Supp.2015 § 1104) and then use those corrected amounts to

base *future* apportionments for July 1, 2016 to August 25, 2017. Again, up until August 25, 2017, MVC apportionment was directly tied to the same month of the previous fiscal year. *See* 47 O.S. Supp.2015 § 1104(B)(2) ("[E]ach district shall receive the same amount of funds as such district received from the taxes and fees provided in this title in the corresponding month of the preceding year . . ."); 47 O.S. Supp.2017 § 1104(B)(2) (changing to an average daily attendance model). Of note, this order issued on February 9, 2018, which is well after the date of the ordered August 25, 2017 *future* apportionments were set to occur. In an effort to comply with the appeals court mandate, the district court acknowledged this oddity and ordered OTC to withhold future MVC funds from the overpaid districts and remit the same to the underpaid school districts according to a payout schedule that began in 2018. *See* Order, *ISD No. 2 v. OTC*, cv-2016-1249 at 3 (Nov. 13, 2018). One such payment was made before the Supreme Court stayed the order in February of 2019. After resolution in the Supreme Court, the twelve remaining monthly payments resumed in July 2019.

Leaving history and turning back to the pending dispute, State Aid is one step removed but directly dependent on MVC apportionment. The total amount of funds a school district is guaranteed to receive from all public sources is defined according to the school funding formula. 70 O.S. § 18-200.1. That formula uses the amount of apportioned MVC as one variable in determining how much State Aid any given school district receives directly from the Department. The interaction between the funds from MVC apportionment and State Aid is dollar for dollar. So when districts incorrectly received too little MVC, they also benefitted from too much State Aid the following year, since too little MVC was "charged" to their State Aid allocation. When the court ordered MVC adjustments, it *de facto* ordered equal and opposite State Aid adjustments. Essentially, the court-ordered relief was not so much monetary recoupment, insofar as the school district's general funds was concerned, as it was an accounting correction among the school districts adjusting the cashflow at a time when such matters directly relied on the monthly values of the previous fiscal

year. This is no longer the case.

Plaintiffs and Defendants essentially agree on the key question to be resolved in this dispute—Does a court-ordered payment of MVC under a previous statutory scheme count as MVC for purposes of the current State Aid formula? Plaintiffs assert that the court ordered transfer of MVC apportionment from a previously overpaid school district to a previously underpaid school district should be excluded from the funding formula entirely. Defendants assert that because plaintiff school districts *actually received* the court-ordered MVC funds, the funding formula should be applied as written.

LEGAL STANDARDS

A court must grant a motion to dismiss when the plaintiff fails "to state a claim upon which relief can be granted." "[T]he trial court must take as true all of the challenged pleading's allegations together with all reasonable inferences which may be drawn from them." *Reeves v. City of Durant*, 2019 OK CIV APP 12, ¶ 9 (citation omitted). There are no disputed facts in this case, only a dispute of law. *See Reynolds v. Fallin*, 2016 OK 38, ¶ 5 ("The purpose of a motion to dismiss is to test the law that governs the claim in litigation, not the underlying facts."). The financial records of State Aid paid to Plaintiffs are undisputed and a matter of public record. Because the only issue before the court is a purely a matter of law, a motion to dismiss need not be disfavored.

ARGUMENT

This case turns on whether court-ordered funds are considered a "Chargeable" amount. *Supra* at 3. Specifically, should the source of funding known as MVC include a 2018 court-ordered adjustment for fiscal years 2020 and 2021, which was intended to rectify a misapplication of 42 O.S. Supp.2015 § 1104 to funding provided in fiscal year 2016? If it does, then those court-ordered adjustments will decrease the funding Plaintiff school districts receive directly from the Department via application of the State Aid formula, and this Court is left with nothing to do other

than dismiss the action. If Plaintiffs' legal theory is correct, then those adjustments will be added after the State Aid calculation and be remitted as a bonus payment, increasing the funding certain school districts receive to an amount greater than the total amount provided for by statute and decreasing the funding to other school districts to an amount below that provided for by statute. To accomplish this, the Department would either have to divert funds the Legislature appropriated to support public education via the funding formula and use them to satisfy a court judgment, or the Department would have to somehow access unappropriated funds from the treasury.

Despite the several legal theories on which the Board and Department may rely, there are two facts dispositive to this motion. First, The Board plays no role, either in theory or in practice, to the district-level allocation of State Aid to Plaintiffs. Therefore, the Board is not a proper party. Second, the funding formula is being applied correctly. As such, Defendants must prevail as a matter of law. Additionally, Plaintiffs have not suffered losses and subsequently lack the ability to maintain this action. Regardless of the theory, dismissal is warranted.

I. THE STATE BOARD OF EDUCATION PLAYS NO ROLE IN THE ALLOCATION OF STATE AID TO INDIVIDUAL SCHOOL DISTRICTS AND THEREFORE IS NOT A PROPER PARTY.

The Board is not a proper party based on the law of the claims and the relief sought. *See Bankers Tr. Co. v. Brown*, 2005 OK CIV APP 1, ¶ 5 ("A motion to dismiss tests the law of the claims, not the facts supporting them.") This case does not involve a simple pleading defect that is able to be corrected and should be liberally construed in favor of Plaintiffs. The facts of this case are not in dispute, and there is no need to construe them to the benefit of the nonmovant. There are, however, fundamental flaws with the causation and redressability, which turn on issues of pure law. At its core, this case is about Plaintiffs' challenge to the allocation of State Aid received by various school districts.

The Department—which has already been haled into this Court—determines the challenged district level State Aid allocations. *See* 70 O.S. § 18-200.1 ("the State Department of Education shall determine each school district's current year allocation"); (Am. Pet ¶ 8). Such allocation is the very alleged harm to which Plaintiffs seek redress. *Second*, OTC determines the amount of MVC remitted to each school district. 47 O.S. § 1104 ("all fees, taxes and penalties collected or received . . . shall be apportioned and distributed monthly by the Oklahoma Tax Commission . . ."); (Am. Pet. ¶ 8.e ("Motor Vehicle Collections are calculated and apportioned to the school districts by the OTC. [The Department] merely notes the amount of that apportionment and utilizes that amount in its calculation of Foundation Aid")). This means that both the Board and the Department (neither of which were parties in the prior §1104 litigation) have absolutely no role to play in the administration, distribution, or oversight of MVC. That responsibility lays squarely with OTC, which has fulfilled its obligations and satisfied the 2018 court order.

A. The Oklahoma State Department of Education Administers the State Aid Funding Formula Independently of the State Board of Education.

To be clear and despite Plaintiffs' assertions, disjointed quotations, and loosely tied references in case law, the Board plays no role in the district level allocation of State Aid. The Board does, admittedly, receive legislative appropriations, which it passes along to the Department by approving a proposed budget. *See, e.g.*, 2020 O.S.L. 21, §§ 1-7. There have been no allegations, and no reasonable inferences can be drawn, that the Board failed to pass along the correct appropriations to the Department. *See Reeves*, 2019 OK CIV APP 12, ¶ 9. Without any disputed allegations and no part in the district level distribution of State Aid, the Board should be dismissed as a party.

The Department has the statutory duty to determine each school districts allocation of State Aid. 70 O.S. § 18-200.1; (Am. Pet ¶ 8). The Board does not and is not required to determine or approve district level allocations of State Aid. Similarly, the Board is not responsible for correcting the alleged erroneous calculations of State Aid because the Board does not apply or audit the funding

formula. *Id.* Logically, adding the Board as a party defendant was not necessary. If ultimately successful on their theory, Plaintiffs could receive all the relief they request from the Department. (*See* Am. Pet. ¶¶ 26-27).

A closer recitation of the practical mechanics of State Aid further demonstrates why the Board is not a proper party. The Oklahoma Legislature appropriates money from the General Revenue Fund (as well as from other discrete treasury funds), as a sum certain "or so much thereof as may be necessary to the financial support of public schools." *See, e.g.*, 2020 O.S.L. 21, §§ 1-7. From there, the State Superintendent of Public Education presents the Board with a budget. This Budget does not contain State Aid amounts for individual school districts. As far as State Aid is concerned, it only includes the total amount of General Revenue that was appropriated to all school districts, *collectively*.[7] The individual apportionment of State Aid to various individual school districts is governed by 70 O.S. § 18-200.1, which is a Department responsibility. The Board plays no direct role in this process beyond passing along the "as may be necessary" amount of funding to the Department for use in the funding formula. *See, e.g.*, 70 O.S. § 18-200.1 ("the State Department of Education shall determine each school district's current year allocation"). The Board's involvement stops at approving a top-level, single lump sum of appropriations. To the extent Plaintiffs rely on potentially conflicting language of 70 O.S. §§ 18-103 or 18-117, those laws were passed in 1971 and amended in 1980—hardly later-in-time than a statute amended this year.

Plaintiffs do not allege the Board failed to adequately appropriate State Aid authorized by the Legislature or that the amount of State Aid appropriated by the Board to all the school districts, *collectively*, is somehow legally deficient. There is no allegation stated, or readily inferred set of

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[7] *See, e.g.*, State Dep't of Educ., FY 2021 Budget, *available at* https://sde.ok.gov/sites/default/files/documents/files/FY 21 Common Education Budget Book.pdf (last visited Dec. 26, 2021).

circumstances establishing that the Board is necessary to rectify the alleged incorrect allocation of State Aid. *See Reeves*, 2019 OK CIV APP 12, ¶ 9. Plaintiffs only assert that the allocation to specific school districts by application of the State Aid formula was, and is, being incorrectly applied. (Am. Pet ¶ 15, 18-20). Again, this is a responsibility of the Department and not the Board. Even as previously stated by Plaintiffs, they once "believed that the Oklahoma State Department of Education was the sole entity responsible for apportioning the correct amount of funds to school districts in the form of State Aid." (Motion to Amend, ¶ 8 (Dec 9, 2021)). The Board agrees with this prior interpretation.

When this Court permitted Plaintiffs to amend their petition to add the Board as a party, it (likely) was done to honor the liberal and permissive pleading standards of the Oklahoma pleading code that instructs courts to grant leave "when justice so requires." 12 O.S. § 2015(A). Despite being given the opportunity to amend, Plaintiffs failed to state a claim against the Board. The Board superficially appears in the Amended Petition at paragraphs 1 (collectively with the Department), 4 (Parties, Jurisdiction, and Venue), 5 (same), and 25 (reference to two appropriations bills). There are no requests for relief against the Board or indications the Board took improper action. Arguably, this Court's powers of equity can reach the Department if necessary. Therefore, this Court would not need to go through the convoluted exercise of enjoining the Board to convene with the purpose of passing along a court ordered mandate to the Department. The Court could simply command the Department to act.

B. The Oklahoma State Board of Education lacks the authority to calculate the motor vehicle collections chargeable to any given school district because that power is vested in the Oklahoma Tax Commission.

Not only does the Board have no role in the particularized State Aid allocation, but the Department is bound by statute to calculate district level student aid based upon the MVC values reported by OTC. 70 O.S. § 18-200.1(I) ("the Oklahoma Tax Commission, notwithstanding any

provision of law, shall report monthly to the State Department of Education the monthly apportionment of the following information:...motor vehicle collections...") In fact, the law is clear and controls every calculation along the way. Serving nothing more than a ministerial role with respect to State Aid, the Department (notably not the Board) can only utilize the information reported to it by the OTC and faithfully apply those numbers to the formula as written. (Am. Pet. ¶ 8.e) ("Motor Vehicle Collections are calculated and apportioned to the school districts by the OTC. [The Department] merely notes the amount of that apportionment and utilizes that amount in its calculation of Foundation Aid"). That is precisely what has happened in the uncontested facts before this Court. The OTC reported MVC numbers for each school district and the Department used those numbers to calculate State Aid. To reiterate, the Board has no role in this process. Moreover, OTC is strictly complying with the terms of a court order, which directed the OTC to divert from its statutory command and remit the normal MVC plus or minus certain amounts, accordingly, to the various school districts. *See Adjustment Order.* There was no mention of this adjustment as it pertained to school funding. Moreover, in that case, plaintiffs were not concerned with repayment of funds at all. The relief requested was to correctly establish the amount of MVC that *should* have been remitted to plaintiffs. From there, future apportionments would be adjusted. Again, this law has changed since that holding.

Had the prior court wished to provide an unprecedented *windfall* to the Plaintiff school districts, it could have easily done so. Instead, the court decided to correct a misinterpretation of § 1104 in a precise declaratory manner, which was either an effort to correct an accounting mistake or an effort to ensure the correct future application of a now defunct law. Recall that MVC apportionments were previously based on the prior fiscal year's actual values and not the current *pro rata* share based on student attendance. Regardless, the previous court did not rule against the Department, let alone the Board. The previous judgment was against OTC only, and quite so.

Therefore, neither the Board nor the Department have any authority to disregard the clear dictate to include MVC, 70 O.S 18-200.1(D)(1)(b)(3), as reported by the OTC, *id.* at (I)(b).

II. BECAUSE THE STATE AID FUNDING FORMULA IS BEING APPLIED CORRECTLY, THERE CAN BE NO CLAIM AS A MATTER OF LAW AND DISMISSAL IS PROPER.

Although facially complicated with multiple moving parts, the State Aid formula is being applied correctly. One area where the parties seem to be talking past each other is the alleged harm experienced by Plaintiff school districts. It is important to note that OTC remits MVC funds to the school districts and reports those amounts to the Department. 70 O.S. § 18-200.1(I). This means that the MVC funds are sent directly from OTC. *See* 47 O.S. § 1104(B)(2) ("Each district's allocation of funds shall be remitted to the county treasurer."). They do not come from the Department and certainly not from the Board.

Although much has been said about MVC in this case thus far, the real focus should not be on MVC *per se*, but rather the focus should be placed on the Foundation Program itself. After all, the Foundation Program is the total sum that guarantees the basic level of education. Take a simple demonstrative example to highlight this:

Faulty Focus: **(Funds from SDE) = (Formula Funds) – (MVC)**
Proper Focus: **(Funds Received) = (Funds from SDE) + (MVC)**

Plaintiff school districts received all of the Formula Funds to which the State Aid system was designed to provide, regardless of the actual source. Despite how the formula is laid out in statute, the funding formula is based on the mathematics behind reaching a fundamental basic level of funding, "Funds Received." This means that regardless of where the funds originate, the purpose of State Aid is to reach a sum total of the yearly program level.

Excluding corrective MVC payments from that calculation would not only provide an unfair advantage to some, but it would also leave other school districts with less than their statutorily guaranteed share. Again, this is the amount of funding that is intended to provide a basic level of

education for all public school students in Oklahoma. To put it another way, Plaintiffs request this Court to construe the statute in such a way that would have the Board (or rather the Department) ignore 70 O.S. § 18-200.1(I) and 47 O.S. § 1104(B)(2) and decide for itself how much MVC was remitted to the school district. From the point of view of a non-benefiting school district, such a construction would short their State Aid. Essentially, Plaintiffs want the plain text of the statute to control when it suits them and ignored when it does not.

Oddly enough, the scenario presented by Plaintiffs is not a completely unaddressed, novel question. The Oklahoma Supreme Court has addressed an analogous (albeit not factually controlling) case. *See generally ISD No. 54 v. ISD No. 67*, 2018 OK 34. That case is analogous insofar as it involved an incorrect allocation of dedicated revenue—ad valorem tax assessments—which directly affected school funding. In that case, ISD 54 ("Stroud") brought suit against ISD 67 ("Cushing") and ISD 4 ("Wellston") because ad valorem taxes rightfully belonging to Stroud were erroneously paid to Cushing and Wellston. Although the case also addressed the nuance between a school district's general fund and its sinking fund, those distinctions are inapplicable here. What is instructive, however, is the Court's approval of the district court's analysis in the State Aid formula. The district court notes that the erroneous apportionment of Chargeables are, essentially, offset—at least from the perspective of a school district. *ISD 54*, 2018 OK 34 ¶¶ 13-17. Had Stroud received the appropriate ad valorem taxes, which like MVC are dedicated in-part to school funding, then Stroud would have received less in State Aid. *See ISD 54*, 2018 OK 34 ¶ 16 ("Stroud admits that a school district in Oklahoma typically received greater State Aid in proportion to decreased ad valorem revenue, and that its State Aid would have decreased under the Oklahoma school funding formula if Stroud had received the misdirected tax revenues. . . "). Comparing the actual values against the theoretical values, and due to formula rounding, the court found a discrepancy of $0.26 in plaintiff's favor. That is 26 cents on an assessment error of more than $15 million. *Id.* Similar to

this case, each dollar previously withheld from Plaintiffs was eventually replaced by a State Aid dollar. This is as true in today's scheme as it was in fiscal year 2016. In the application of MVC, the formula is similarly straightforward but on a one-year delay.

This one-year delay becomes important. Plaintiffs claim that by considering corrective payments, Defendants are undoing the courts previous order. This is not true. Taken in a three-year phase it is apparent that errors in the State Aid formula basically work themselves out, even for MVC corrective payments. The competing approaches are depicted in the tables below:

Table 1. *Applying MVC corrections to the Formula*

	Year 1	Year 2	Year 3	
Formula Target	100	100	100	
- *MVC (prior year)*	*20*	*40*	*30*	
State Aid	80	60	70	
+ MVC *(current)*	30	30	30	
+ OTC *(correction)*	10	--	--	
Total to District	120	90	100	
Net Benefit	20	(10)	--	**10**

Table 2. *Ignoring MVC corrections*

	Year 1	Year 2	Year 3	
Formula Target	100	100	100	
- *MVC (prior year)*	*20*	*30*	*30*	
State Aid	80	70	70	
+ MVC *(current)*	30	30	30	
+ OTC *(correction)*	10	--	--	
Total to District	120	100	100	
Net Benefit	20	--	--	**20**

Depicted in Tables 1 and 2 are two approaches to dealing with an MVC apportionment error. For purposes of illustration, the hypothetical holds constant the Total amount of Funds as determined by the State Aid formula and considers MVC as the only chargeable. Obviously, this is

greatly simplified and illustrative only. Attendance rates and the Base Foundation Support Level can change annually. In this hypothetical, the school district is also entitled to and collects the same MVC each year. Again, a proposition for illustrative purposes.

The hypothetical begins with an "Error Year," (essentially Year 0) in which instead of receiving from OTC an MVC of 30, only 20 was apportioned to the school district. The mistake was discovered and OTC sought to remit the missing 10. This is going to occur in the following year, Year 1. Again, State Aid is on a one-year delay for MVC.

Turning to Year 1 in both Tables, the MVC charged against the school district and used in the funding formula is that of the "Error Year," only 20, but the school district actually collected its proper amount of 30 for the current year. That is, the money that was actually collected and sent to the school district is 30. Instead of that amount, however, the Department uses the erroneous 20 (previous fiscal year per the formula) to reach the target of 100, arriving at a State Aid of 80. Then, OTC remits the actual collected 30 and, in addition, remits the missing 10 from the previous Error Year. At this point, both approaches reach the same result. Instead of 100, the school district puts 120 into its coffers.

The first "extra" 10 was because the formula relies on the low "Error Year" value as a cashflow predictor of the current year, and the second "extra" 10 was an OTC correction given in the current year to correct for the previous "Error Year." Basically, (70+10) + 30 + 10 = 120. Now, Year 2 is where the hypotheticals diverge.

Plaintiffs urge ignoring the OTC correction and Defendants insist on counting it. Under Plaintiffs' model, Table 2, Year 2 is completely normal. The expected 30 MVC is collected and the State Aid is set at 70, sending 100 to the school district. The problem with this way of thinking becomes clear when the Net benefit is examined. In Year 1, the district doubled its benefit using either approach. OTC made a 10 error, yet 20 was remitted: 10 from OTC and 10 from the

Department. On the other hand, if Defendants' Table 1 approach is applied, and the OTC correction is taken into account for Year 2, the school district suffers an adjustment loss for Year 2. That loss is precisely half of the double benefit the district previously received. Essentially, the school district benefits double in Year 1 (20) and loses the "extra" half (10) in Year 2, resulting in a total correction of precisely the original "Error Year" 10.

It may be the case that this double benefit half loss system can be improved upon, but those are policy choices left to the elected members of government. Regardless, when viewed correctly, there is no harm to Plaintiff school districts and the action should be dismissed. To read the statute otherwise, would result in a bizarre overpayment scheme of not only providing harmed school districts with *double* their losses but also doing so at double the penalty to innocent school districts.

Turning to the facts at bar, previously the Court of Civil Appeals ordered future apportionments to use the correct amount, only that order came too late. The district court then awarded thirteen equal MVC adjustment payments. The first was made in February 2019, within fiscal year 2019 (FY19)[8]. Because of the one-year delay in the State Aid funding formula, that FY19 payment provided an extra benefit to Plaintiff school districts, whose State Aid was based on the theoretically lower FY18 collections, assuming for the moment that the school district WADM remains the same and statewide MVC remains constant. The next year, however, the FY19 payment is considered as actually collected because that is the amount that went into the general fund of the school district to support education. This means that for FY20 State Aid, that payment was considered as actually collected in FY19. A similar fund transfer was completed twelve times in FY20, meaning those funds were considered as actually received for the FY21 funding formula.

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[8] The remaining payments did not resume until the next fiscal year.

As illustrated above, if Defendants were to simply ignore these additional payments, then Plaintiffs would reap twice the amount of the previous erroneous apportionments, which incidentally are no longer legally relevant to future funding amounts due to motor vehicle apportionment amendments. 47 O.S. § 1104. The Table 2 approach of ignoring MVC cannot stand in law or equity, and thus the case should be dismissed.

III. PLAINTIFF SCHOOL DISTRICTS FAIL TO DEMONSTRATE A CAUSE OF ACTION

Plaintiffs seek declaratory relief and permanent injunction to apply a statute in a scenario that is unlikely to ever occur again. *See Waste Connections, Inc. v. Oklahoma Dep't of Env't Quality*, 2002 OK 94, ¶ 15 ("Declaratory relief will be granted only when the interest of justice will be advanced and an adequate and effective judgment may be rendered"). The anomaly that occurred here is that the governing statue has been amended repeatedly. There was a court order based on one amendment but entered after the statute was amended yet again, undercutting the reasoning behind the *Adjustment Order*, which is no longer a live statutory concern. *See Tyree v. Cornman*, 2019 OK CIV APP 66, ¶ 38 ("The Declaratory Judgment Act is not a vehicle by which a party can obtain the answer to a hypothetical question."). To be sure, this situation is entirely unique. If it were to ever occur again, a fact-based suit would be appropriate. Plaintiffs have not requested that the Department locate additional funds, the OTC locate additional funds, any additional financial compensation to Plaintiff school districts, or *any* action from the Board. Rightfully so given the *Hofmeister* decision, which instructed school districts in that case to first demonstrate standing regarding non-lapsed funding and whether there is a right to compel payment of a State Aid claim—this briefing has yet to be attempted, let alone completed. *See Hofmeister*, 2020 OK 56, ¶ 102. All that to say, this is an unsteady foundation on which to base a declaratory judgment. Without any damages, remedies, or benefit of a declaratory construction, Plaintiffs ask this court to weigh in on matters that will have little to no practical effect on any party to this suit. *See Waste Connections*, 2002 OK 94,

¶ 15 This counsels for not only dismissal of the Board, but dismissal of the action *in toto*.

This Court should also keep in mind that the entirety of the MVC dispute in this case has already occurred. The pre-2017 version of § 1104 was properly construed by the court and then subsequently amended by the legislature, rending that opinion on statutory interpretation, essentially, a relic of history. OTC has made all the payments to which it was ordered, meaning that its duty has been discharged. In its previous opinion, the Oklahoma Court of Civil Appeals makes a point that the aggrieved parties did not seek monetary damages or the diversion of funds from OTC or any school district. *ISD No. 2*, 2018 OK Civ APP 49 ¶ 10. They only sought declaratory and injunctive relief as to the correct interpretation of 47 O.S. Supp.2015 § 1104 going forward. *Id.* The district court then proceeded to do its best to effectuate the mandate considering the unanticipated timeline and legislative developments. This is critically important because of the multiple amendments to § 1104. The purpose for creating the adjustment was not necessary for school funding amounts in total, but for monthly cashflow to the districts. Notably, that case did not address, *arguendo*, the excessive State Aid received *in lieu* of MVC. Previous plaintiffs were silent on that front. Prior to 2017, each school district was to receive no less MVC than they received in the same month in the previous fiscal year. Obviously, incorrect apportionment numbers would have significant effects in that sort of system. In 2017, however, the apportionment statute was amended to provide that each school district was only to receive its *pro rata* share of MVC from the previous month. 47 O.S. Supp.2017 § 1104. This prevents incorrect MVC apportionments from propagating *ad infinitum*. With the history and dollar for dollar interaction of State Aid taken into account, it is unclear what cause of action and what remedy exists.

Despite allegations of misallocated funds, an open question remains as to whether an aggrieved school district can sue to recover past allocation of funds absent a Board initiated audit. There are no allegations that Plaintiff school districts were not able to meet their responsibilities

because of the MVC allocations. Moreover, there is nothing that protects any given school district's cashflow which is now based on actual collections and not tied to some historical base level of funding.

CONCLUSION

The Board plays no role in the individual allocation of State Aid. Additionally, neither the Board nor the Department are free to deviate from the State Aid formula, which is being applied correctly. For this and the foregoing reasons, dismissal of the Board and the action is warranted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This certifies that on this MOTION TO DISMISS was mailed, postage prepaid to the following:

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