

**DISTRICT COURT OF OKLAHOMA COUNTY IN DISTRICT COURT
STATE OF OKLAHOMA OKLAHOMA COUNTY**

Independent School District No. 71,)
 Kay County, Oklahoma,)
 (Ponca City Public Schools);)
 Independent School District No. 20,)
 Muskogee County, Oklahoma,)
 (Muskogee Public Schools);)
 Independent School District No. 14,)
 Ottawa County, Oklahoma)
 (Quapaw Public Schools); and)
 Independent School District No. 2,)
 Kiowa County, Oklahoma,)
 (Lone Wolf Public Schools),)
)
 Plaintiffs,)
)
 v.)
)
 Oklahoma State Department of Education; and)
 Oklahoma State Board of Education,)
)
 Defendants.)

JUL 12 2022
RICK WARREN
 COURT CLERK
 38 _____

Case No. CJ-2020-2392

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs, four independent school districts, (“Plaintiff Districts”), move for summary judgment. The undisputed facts show that Defendant Oklahoma State Department of Education (“OSDE”) misapplied the statute governing the calculation of State Aid for the Plaintiff Districts and caused them to suffer substantial underpayments in fiscal years 2020 and 2021. Defendant Oklahoma State Board of Education (“OSBE”) “is responsible for apportioning and disbursing annual appropriations to school districts which meet qualifications to receive state aid.” *Ind’t Sch. Dist. #52 of Okla. Cnty. v. Hofmeister*, 2020 OK 56, ¶ 32, 473 P.3d 475, 490. OSDE misapplied the statutes after the Oklahoma Tax Commission (“OTC”) had misapplied another statute in earlier years. Plaintiff Districts and others challenged the OTC’s actions in a prior case, District Court of Oklahoma County Case No. CV-2016-1249 (the “OTC Lawsuit”), and the court ordered OTC to remedy its misapplication of the statute by making payments to the districts over thirteen months. Plaintiffs refer to these court-ordered payments as “Adjusting Payments.” Fully aware of these Adjusting Payments, Defendant OSDE then misapplied a statute, 70 O.S. § 18-200.1, again causing losses for the Plaintiff Districts when it included the Adjusting Payments as current motor vehicle collections (“MVC”) for purposes of calculating the Foundation Aid to be paid to the Plaintiff Districts. In doing this, OSDE took from the Plaintiff Districts the benefit of the remedy ordered by the court in the OTC Lawsuit.

Accordingly, the Plaintiff Districts are entitled to judgment as a matter of law and ask the Court to enter a judgment directing the OSDE to recalculate Foundation Aid for the Plaintiff

Districts in compliance with the statute for fiscal years 2020 and 2021, and to adjust future State Aid payments to correct the underpayments suffered by the Plaintiff Districts.¹

I. INTRODUCTION

OSDE uses a document which it calls a State Aid Calculation Sheet to calculate each district’s State Aid; prior to FY 2021 the sheets are named “State Aid Allocation.” Inserted below is the relevant part of the State Aid Calculation Sheet for Ponca City as an example. (EX 1 Ponca City 2021 below). The insert shows how Foundation Aid is calculated. All sheets for all Plaintiff Districts for FY 2016-22 are attached as Exhibits 1 organized by District and FY.²

FOUNDATION AID		County: 36 - KAY		District: 1071 - PONCA CITY	
		2019	2020	2021	
	Weighted ADM	Full	Full	1st 9 Weeks	
		7,574.23	7,384.25	6,852.18	
High Year	2019				
Weighted ADM	<u>7,574.23</u>	x Foundation Aid Factor		<u>1,718.78</u>	= <u>13,018,435.04</u> (1)
SUBTRACT CHARGEABLE INCOME					
(Valuations: Up to 11% - Down to 11%)					
	Adjusted Valuation *plus increased millage because of personal property tax adjustment				= <u>4,457,698.82</u>
2019-2020 Collections (July 2019 through June 2020)					
	75% of County 4-Mill Levy		<u>1,350,888.32</u> x .75		= 1,013,166.24
	School Land				616,586.40
	Gross Production				165,383.00
	Motor Vehicle Collections				2,199,534.70
	R.E.A. Tax				53,503.04
	TOTAL CHARGEABLES			TOTAL	= <u>8,505,872.20</u> (2)
	FOUNDATION AID TOTAL	(Amount [1] Less Amount [2])			= <u>4,512,562.84</u> (3)

¹ State Aid consists of Foundation Aid, the Transportation Supplement and Salary Incentive Aid, but only Foundation Aid is affected by the OTC’s Adjusting Payments and OSDE’s erroneous calculations.

² These calculation sheets are documents prepared each year by the OSDE “setting forth its regularly conducted and regularly recorded activities...pursuant to duty imposed by law” concerning school finance. They are the OSDE’s own statement and thus not hearsay and, even if they were, they are subject to an exception to the hearsay rule. 12 O.S. §§ 2801(B)(2)(a) and 2803(8). These documents are routinely posted on the OSDE’s website.

These sheets show how OSDE's erroneous inclusion of the court-ordered Adjusting Payments as routine MVC has deprived Plaintiffs of their rightful Foundation Aid. Each year, the Oklahoma Legislature determines how much each school district should have available to provide a basic education for its students. Part of this amount is defined as the Foundation Program or cost of the Foundation Program, being the \$13,018,435.04 on the first line above. The Legislature has identified six sources of income to districts to fund the Foundation Program and the OSDE makes up the rest with Foundation Aid. These six sources are the "Foundation Program Income" and referred to as "chargeables" by OSDE. These chargeables are shown on the Ponca City sheet above under "SUBTRACT CHARGEABLE INCOME." OSDE subtracts the "chargeables" from the cost of the Foundation Program to determine how much more is needed to provide the Foundation Program, which is the sum referred to as FOUNDATION AID TOTAL and is the final number on the Ponca City sheet above. Foundation Aid makes up the difference between the funds available from Foundation Program Income (TOTAL CHARGEABLES) and the cost of the Foundation Program in the sheet. Foundation Aid (FOUNDATION AID TOTAL) is part of the amount of State Aid actually paid to school districts by the OSDE and is the amount wrongly reduced by the OSDE in this case.

The problems started when OTC erroneously apportioned over \$22 million of MVC in fiscal years 2016-2018. In the OTC Litigation, the Court ordered OTC to remedy its error by making the Adjusting Payments to the underpaid districts over a 13-month period. While the Adjusting Payments originated from correcting the OTC's error apportioning MVC, **the Adjusting Payments do not meet the statutory definition of MVC**, as explained below.

This lawsuit addresses OSDE's erroneous inclusion of the Adjusting Payments as **current** MVC in the calculation. This erroneous inclusion reduced the Foundation Aid paid to the Plaintiff

Districts dollar for dollar in an amount equal to the Adjusting Payments. Adding the Adjusting Payments to the MVC chargeable increased the TOTAL CHARGEABLES and decreased Foundation Aid by the same amount. Thus, the OSDE deprived the Plaintiff Districts of the remedy the Court ordered in the OTC Litigation.

OSDE understands, and Plaintiffs agree, that the Plaintiffs lost funds due to OTC's incorrect apportionments from August 2015 through August 2017, that the Adjusting Payments by OTC offset those losses by the same amounts in FY 2019 and FY 2020, and that its decision to include the Adjusting Payments in its calculations of Foundation Aid for FY 2020 and FY 2021 reduced the Plaintiffs' funding in those years by the amounts of the Adjusting Payments. OSDE believes this blatantly unfair result, i.e. taking back the court-ordered correction, is fair because its staff incorrectly believes that subsequent year adjustments in Foundation Aid corrected for the August 2015 through August 2017 losses suffered by the Plaintiffs. It believes this, and has made this construction of the statute, despite its inability to demonstrate that this occurred or to refute the clear evidence and analysis shown by the Plaintiffs, using OSDE's own analytical methods and facts as set forth in their Motion to Dismiss and Reply (EX 2), that such belief is simply wrong.

The Court should find that the OSDE erred in including the Adjusting Payments in the calculation of current Foundation Aid and direct the OSDE to correct this error by adjusting future State Aid to restore the losses suffered as a result of OSDE's error.

II. STATEMENT OF MATERIAL UNDISPUTED FACTS

1. An actual controversy exists between the parties regarding the construction and application of the statute governing the calculation and payment of State Aid to school districts, 70 O.S. § 18-200.1. (EX 3, Am. Pet. ¶ 1 ("Petition"), EX 4, OSDE Ans. to Am. Pet. ¶ 1).

2. Director of the Apportionment and Revenue Division of the OTC, Carol Shovanec's affidavit, Exhibit 5, describes the OTC's business records placed in an Excel Workbook, "Lawsuit activity" containing multiple spreadsheets. The spreadsheet named "To Indiv Schools", Exhibit 6, lists 423 school districts which receive MVC and is the only relevant spreadsheet. Plaintiffs have provided OSDE with this spreadsheet. Because of the enormous size of the spreadsheet, Plaintiffs have extracted the entries for each Plaintiff District and present these extracts as Exhibit 6 A. This extract shows the first Adjusting Payment was made from January 2019 receipts (paid in February 2019) and the remaining 12 payments were made monthly from June 2019 receipts (paid in July 2019) through May 2020 receipts (paid in June 2020). For the months when OTC paid Adjusting Payments, the spreadsheet and the extract contain separate columns showing the amount of MVC apportioned by statute in the ordinary course of business to each school district (labeled by the collections month), a second column showing the amount of the Adjusting Payment ("Adj due to Order"), and a third column showing the total amount each district received (the sum of the first and second columns called "Actual Received" with collections month). Each month, OTC apportions the MVC collected in the prior month. Therefore, OTC paid the amounts in the "Actual Received" column in the month following the month identified as the collection month in Line 5 of the spreadsheet. (EX 5, subparagraph "1").

3. The OSDE contends that the Adjusting Payments ordered by the Court in the OTC Lawsuit are required by law to be included in the amount of MVC used to calculate current State Aid. (EX 2 Motion to Dismiss p. 12; EX 7 Def First Disc. Response, Int. 4)

4. In the OTC Lawsuit the Oklahoma Court of Civil Appeals determined by order (EX 8, Paragraph 36) on February 9, 2018:

The Tax Commission has misinterpreted the effect of a 2015 amendment to section 1104 and consequently apportioned the wrong amount of motor

vehicle collections to eligible school districts, including the plaintiffs. Between July 1, 2015, and August 25, 2017, the school districts should have received each month a percentage of the available funds based on the amount each district received in the corresponding month of the 2015 fiscal year. Any excess funds collected during September and December of 2015 and March of 2016 should have been distributed "so that each district shall first receive the cumulative total of the monthly apportionments for which it is otherwise eligible under subparagraph a . . . " 47 O.S. Supp. 2015 § 1104(B)(2)(b). The Tax Commission shall recalculate the amount that should have been apportioned to the school districts pursuant to this method and base the apportionment of motor vehicle collections on the recalculated amounts for the July 1, 2016 to August 25, 2017 time period.

5. In compliance with COCA’s order, the OTC recalculated to determine how much each of the plaintiff districts in the OTC Litigation had been underpaid. The District Court incorporated these recalculations in its November 13, 2018 Order, stating:

2. Pursuant to the Order of the Court of Civil Appeals the Tax Commission Defendants have recalculated the amount that should have been apportioned to the school Districts pursuant to the correct method of applying 47 O.S. Supp. § 1104 and base the apportionment of motor vehicle collections on the recalculated amounts for the July 1, 2016 to August 25, 2017 time period. There is no genuine issue of material fact about the correctness of this recalculation as set forth in the OTC spreadsheet which is Exhibits 4-1, 4-2, and 4-3 to the Motion and which are attached hereto and incorporated herein.

(EX 9 Exhibit 1 thereto, Orders.) Order Exhibit 4-1 states the amounts plaintiffs were underpaid by the OTC. (EX 9):

These are the totals the plaintiffs will receive from the judgement.

County	Account	School	13 Month Total
JACKSON	331018	ALTUS	370,670.64
BLAINE	081105	CANTON	41,848.37
KIOWA	381002	LONE WOLF	32,601.71
OKLAHOMA	551052	MIDWEST CITY-DEL CITY	2,066,277.18
MUSKOGEE	611020	MUSKOGEE	462,505.17
KAY	381071	PONCA CITY	460,047.54
OTTAWA	581014	QUAPAW	61,487.06
TULSA	721002	SAND SPRINGS	465,832.09
			3,961,269.76

6. On May 28, 2019, the District Court ordered OTC to make the remaining twelve Adjusting Payments in FY 2020, beginning in July 2019 and ending June 2020. (EX 9, pp. 1-3).

7. OTC properly complied with the November 13, 2018 and May 28, 2019 Orders in the OTC litigation. (EX 5, EX 6, EX 6A).

8. OSDE and school districts operate on a fiscal year which begins on July 1 and ends on the following June 30. Each year is denoted by the year in which it ends. Thus, fiscal year 2020 begins on July 1, 2019, and ends on June 30, 2020.

9. In calculating State Aid for each of the Plaintiff Districts in 2020, OSDE included the sum of the amounts which OTC apportioned monthly for fiscal year 2019 pursuant to 47 O.S. § 1104, **plus** 1/13 of the total amount ordered by the Court to remedy the underpayments which was paid in February 2019. (EX 9, Ex. 4-1 to Ex.9; EX 1, 2020; EXS 6 & 6A; EX 5, ¶ 1).

10. Likewise, in calculating State Aid for each of the Plaintiff Districts in 2021, OSDE used the amounts which OTC routinely apportioned monthly for fiscal year 2020 pursuant to 47 O.S. § 1104 **together with** 12/13th of the total amount the court had ordered OTC to pay to remedy its earlier underpayment. (EX 9, Ex. 4-1 to Ex.9; EX 1, 2021; EXS 6 & 6A; EX 5, ¶ 1).

11. Table 1 below summarizes (1) the amounts the court ordered OTC to pay to each Plaintiff School District, (2) the amounts apportioned by statute to that school district in FY 2019 and 2020, and (3) the amounts of the Adjusting Payments in FY 2019 and 2020. These amounts inflated the MVC chargeable for each Plaintiff in FY 2020 and FY 2021 yielding, (4) the amounts OSDE used for MVC to calculate Foundation Aid in FY 2020 and 2021. OSDE entries are incorrect and the issue in this litigation. Table 1:

		Exhibits Summary			
	District	Ponca City	Lone Wolf	Muskogee	Quapaw
(1)	Court Order	460,047.54	32,601.71	462,505.17	61,487.06
(2)	OTC Apportioned FY 2019	1,844,379.73	42,194.18	2,190,658.68	238,190.23
(3)	1/13 Adjusted Payments FY 2019	35,388.27	2,507.82	35,577.32	4,729.77
(4)	OSDE Calculation 2020	1,879,768.00	44,702.00	2,226,236.00	242,920.00
(2)	OTC Apportioned FY 2020	1,774,875.43	34,329.11	2,090,798.92	223,222.04
(3)	12/13 Adjusted Payments FY 2020	424,659.27	30,093.89	426,927.85	56,757.29
(4)	OSDE Calculation 2021	2,199,534.70	64,423.00	2,517,726.77	279,979.33

(EX 1, 2020, 2021; EX 6, EX 5, ¶ 1; Hendricks EX 10).

12. As a result, Plaintiff Districts received less State Aid in FY 2020 and 2021 than they would have received had the OSDE properly calculated Foundation Aid using only the statutory amounts properly and routinely apportioned by the OTC pursuant to 47 O.S. § 1104. (EX 1, 2020, 2021; EX 6 & 6A; Motion EX 2 pp 7-8; Hendricks EX 10)

13. OSDE’s inclusion of the Adjusting Payments in the amount of MVC used as Foundation Program Income caused each plaintiff school district to receive a dollar for dollar decrease in State Aid during FY 2020 and 2021. The resulting decrease in State Aid is equal to the total amount the court ordered OTC to pay in adjusted payments, effectively negating the relief ordered by the district court. (EX 6 & 6A; EX 1, 2020, 2021; EX 9; EX 10 Hendricks). OSDE has no evidence that raises a genuine question of material fact about this decrease in State Aid paid to each Plaintiff district. (Motion EX 2 pp. 7-8).

III. SUMMARY JUDGMENT STANDARD

A court must grant a motion for summary judgment when the moving party shows that the “pleadings, the discovery and disclosure materials on file, and any affidavits . . .” 12 O.S. § 2056(C), “viewed in the light most favorable to non-moving party,” show “no genuine issue of any material fact” and that she “is entitled to judgment as a matter of law.” *Howell v. Texaco, Inc.*, 2004 OK 94, ¶ 12, 112

P.3d 1154; *see also* Okla. Dist. Ct. R. 13; 12 O.S. § 2056. “A fact is material if proof of that fact would have the effect of establishing or refuting one of the essential elements of a claim or defense.” *Cinco Enters. v. Benso*, 1994 OK 135, ¶ 12, 890 P.2d 866. Even if the non-moving party disputes a material fact, there is no “genuine issue,” and the fact is deemed admitted for purposes of summary judgment, unless she can specifically controvert the statement of fact and support her own position with “acceptable evidentiary materials.” *See* Okla. Dist. Ct. R. 13(b). Summary judgment must be granted unless “reasonable men might reach different conclusions from undisputed facts.” *Id.* at ¶ 15.

IV. ARGUMENT AND AUTHORITY

A. DEFENDANTS HAVE IMPROPERLY APPLIED 70 O.S. § 18-200.1.

OSDE improperly applied 70 O. S. § 18-200.1 resulting in the underpayment of Foundation Aid to the Plaintiffs in fiscal years 2020 and 2021. OSBE has not corrected this error and has failed in its statutory duty to make the correct apportionment to school districts. 70 O.S. § 18-117 (“All apportionments of State Aid to school districts shall be made by the State Board of Education ...”). The State Aid allocation and calculation sheets created and published by the OSDE, Exhibit 1, demonstrate that OSDE has misapplied the law.

Title 70 § 18-200.1(D)(1)(b) provides as follows:

b. The Foundation Program Income shall be the **sum of the following**:

(1) The adjusted assessed valuation of the **current school year** of the school district, minus the previous year protested ad valorem tax revenues held as prescribed in Section 2884 of Title 68 of the Oklahoma Statutes, multiplied by the mills levied pursuant to subsection (c) of Section 9 of Article X of the Oklahoma Constitution, if applicable, as adjusted in subsection (c) of Section 8A of Article X of the Oklahoma Constitution. For purposes of this subsection, the “adjusted assessed valuation of the current school year” shall be the adjusted assessed valuation on which tax revenues are collected during the current school year, and

(2) Seventy-five percent (75%) of the amount received by the school district from the proceeds of the county levy during the **preceding fiscal year**, as levied pursuant to subsection (b) of Section 9 of Article X of the Oklahoma Constitution, and

(3) **Motor Vehicle Collections**, and

- (4) Gross Production Tax, and
- (5) State Apportionment, and
- (6) R.E.A. Tax.

The items listed in divisions (3), (4), (5), and (6) of this subparagraph shall consist of the **amounts actually collected from such sources during the preceding fiscal year** calculated on a **per capita basis on the unit provided for by law for the distribution of each such revenue**. (emphasis added).

The Adjusting Payments ordered by the Court simply do not meet these requirements as MVC. The primary goal in construing a statute is to ascertain legislative intent, if possible, from a reading of the statutory language in its plain and ordinary meaning. *In re Initiative Pet. No. 397, State Ques. No. 767*, 2014 OK 23, ¶ 14, 326 P.3d 496. The plain words of a statute are deemed to express legislative intent in the absence of any ambiguity or conflict in language. *Id.* The Court should ascertain the intent of all the various portions of the legislative enactments upon the particular subject, construing them together and giving them effect as a whole. *Independent Sch. Dist. No. 89 v. Okla. City Fed. of Teachers*, 1980 OK 89, ¶ 11, 612 P.2d 719, 721.

The language of the statute presents no ambiguity. Title 70 O. S. § 18-200.1(D) says that to determine the amount of Foundation Aid, one must subtract the Foundation Program Income (the six chargeables) from the cost of the Foundation Program to arrive at the Foundation Aid due from the OSDE. Title 70 O.S. § 18-200.1(D)(1)(b) then explains that the amount of MVC that should be used to estimate Foundation Program Income “shall consist of the **amounts actually collected** from such sources during the **preceding fiscal year** calculated **on a per capita basis on the unit provided for by law for the distribution of each such revenue**.” *Id.* (emphasis added).

The statute for the “law for the distribution” of MVC, 47 O.S. § 1104, provides:

The monies apportioned pursuant to subparagraphs a through e of paragraph 1 of this subsection shall be apportioned to the various school districts so that each district shall 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 pursuant to this section as certified by the State Department of Education.

Each district gets its per capita share of motor vehicle collections which is the proportional share its average daily attendance is of the total average daily attendance during the preceding year. In the OTC Lawsuit, the Court did not compute Adjusting Payments in this way because the version of 47 O.S. § 1104 effective when the OTC Lawsuit was decided did not apportion funds based on this average daily attendance method. The Adjusting Payments were made to correct underpayments of MVC from FY 2016-2018 as the difference between what was actually paid during those periods and what should have been paid during those periods. They were not amounts actually collected in the preceding year based on the current version of 47 O.S. § 1104. Under the current State Aid formula law, the court-ordered Adjusting Payments are not legally MVC and should not be treated as such.

This case boils down to one concept: Foundation Aid must be calculated by subtracting the Foundation Program Income (the total of the chargeables) from the total Foundation Program amount. MVC are part of the Foundation Program Income and, on Ponca City's FY 2021 calculation sheet (above and EX 1), the larger the Motor Vehicle component is, the larger the TOTAL CHARGEABLES component is. When the OSDE subtracts the wrongly inflated TOTAL CHARGEABLES number from the top line Foundation Program number, the Foundation Aid is reduced dollar for dollar by the amount the MVC component was improperly inflated. Table 1 in paragraph 11 of the statement of undisputed facts demonstrates that in FY 2020 Ponca City received 12/13 of the Adjusting Payments equaling \$424,659.27. Using the 2021 Ponca City Calculation Sheet, (EX 1) after removing this improperly included \$424,659, the properly computed Motor Vehicle chargeable in Table 1 is \$1,774,875 instead of the \$2,199,535 used by OSDE. The Total Chargeables would have been \$8,081,283 instead of \$8,505,872, and Foundation

Aid paid to Ponca City would have been \$4,937,222 instead of the \$4,512,563 paid to it. Thus, Ponca City was shorted \$424,659 in state aid. Other Plaintiffs would be similarly affected.

To properly calculate Foundation Aid, the MVC must be that **“actually collected... during the preceding fiscal year calculated on a per capita basis on the unit provided for by law for the distribution of ... such revenue.”** According to the plain and ordinary meaning of the language in the “law for the distribution” of MVC, 47 O.S. § 1104(B)(2), there is no room to include the court-ordered Adjusting Payments.

Including the Adjusting Payments in the MVC for purposes of calculating Foundation Aid ignores the reference to “per capita” in 70 O.S. § 18-200.1. MVC are specifically defined in the statute as having been apportioned in a certain “per capita” fashion; the Adjusting Payments were not apportioned by the Court in this “per capita” method, and thus do not qualify as MVC under the statute. OSDE’s inclusion of the Adjusting Payments makes no sense in terms of that subparagraph’s plain language because those amounts are not **“calculated on a per capita basis on the unit provided for by law for the distribution of each such revenue.”** Ignoring the “per capita” language fails to give effect to the Legislature’s clearly stated intent. Further, if the Court were to ignore the “per capita” language, it would violate the rule of statutory construction requiring interpreting legislation to give effect to every word and sentence rather than rendering some provisions meaningless. *Globe Life and Accident Ins. Co., v. Okla. Tax Comm’n*, 1996 OK 39 ¶ 15, 913 P.2d 1322, 1328.

The Adjusting Payments made up for the underpayment of MVC resulting from the OTC’s miscalculation and had nothing to do with a “per capita” distribution. By improperly inflating Foundation Program Income, the OSDE improperly *reduced* Foundation Aid. Sound principles

of statutory construction show that that OSDE has erred in its construction and should be ordered to restore the Foundation Aid lost because it wrongly calculated the amount due Plaintiffs.

Further, including the Adjusting Payments in the calculation of Foundation Aid leads to an absurd result divorced from the legislative language and intent. *See TRW/Reda Pump v. Brewington*, 1992 OK 31, ¶ 5, 829 P.2d 15, 20 (interpretations should avoid absurd consequences). The Legislature seeks to provide equity in funding year to year and employs a mechanism for calculating Foundation Aid using prior year amounts for MVC to estimate the amounts expected to be received in the current year. Including the Adjusting Payments frustrates the accuracy of these estimates because those Payments were “extraordinary” in that they corrected an unforeseeable error by the OTC. One-time Adjusting Payments do not assist in the overall goal of the statute to predict as closely as possible the amounts to be received by a district in a given year.

The Court must give effect to all of the defining sentence. *Hamilton v. Northfield Ins. Co.*, 2020 OK 28 ¶8, 473 P.3d 22, 26. The statute requires that the OSDE use the “amounts actually collected from such sources during the preceding fiscal year calculated on a per capita basis on the unit provided for by law for the distribution of each such revenue.” OSDE’s preferred construction gives effect only to the words “amounts actually collected” even though the Adjusting Payment part of the amounts collected did not qualify as MVC under the statute. It gives precedence to the single part of the sentence and not to the whole, thus violating the rules of statutory construction. *Independent School Dist. No. 89*, 1980 OK 89, ¶ 11, 612 P.2d at 721.

More specifically, the undisputed facts demonstrate that OSDE erred when it included the Adjusting Payments with the MVC actually and routinely collected during the preceding year in calculating state aid due to Plaintiff Districts in FY 2020 and 2021 (EX 1). As a matter of law, OSDE should have used only the amount of MVC actually collected during the preceding year as

shown by the OTC in the Apportioned Column for each Plaintiff District in the OTC Spreadsheet “To Indiv Schools”. Again, as shown in Table 1 above, OSDE’s error wrongly reduced Foundation Aid for Ponca City in FY 2020 by \$35,388.27, the amount of the one Adjusting Payment made the previous year. When calculating Foundation Aid for Ponca City in FY 2021, OSDE should have used the amount of MVC actually collected in FY 2020 on the statutory per capita basis, without including the 12 Adjusting Payments Ponca City received in FY 2020 totaling \$424,659.27. OSDE should not have included the Adjusting Payments in the calculation of Foundation Aid at all, because including them wrongly and artificially inflated MVC as an amount to be *subtracted* from the cost of the Foundation Program to arrive at the Foundation Aid payment Plaintiffs actually received from OSDE. OSDE’s error wrongly reduced the Foundation Aid paid to Ponca City in 2021 by \$424,659.27. The other Plaintiffs were similarly affected as shown in Table 1 above.

Plaintiff Districts seek a simple application of the plain language of the statute to give them the resources the Legislature intended they have. The courts have already determined that the OTC wrongfully deprived these Plaintiff Districts of MVC and ascertained the amounts of those deprived funds. The Courts ordered the Adjusting Payments to remedy this wrongful deprivation. OSDE’s actions cause the Plaintiff Districts to lose the benefit of the Court ordered remedy.

B. OSDE’S INCLUSION OF THE ADJUSTING PAYMENTS IN MVC FOR PURPOSES OF CALCULATING STATE AID IN SUBSEQUENT YEARS DEPRIVED THE PLAINTIFFS OF THEIR COURT ORDERED REMEDY.

The Defendants rely on their argument that the state aid formula is self-correcting so that for each loss of MVC the Plaintiffs received an offsetting gain in Foundation Aid the following year, thus justifying their decision to include the Adjusting Payments as Foundation Program Income and taking back the Plaintiffs’ remedy. While the Defendants alluded to their self-correcting argument in depositions (EX 11 & 12), the clearest explanation of their position to date was set forth in OSBE’s Motion to Dismiss (EX

2). But instead of affirming their position, the Defendants' arguments in that Motion show why they are wrong.

The OTC in the OTC Lawsuit presented an argument similar to Defendants' assertion, also citing *Independent Sch. Dist. No. 54 v. Ind't Sch. Dist. No. 67*, 2018 OK 34, 418 P.3 693 ("*Stroud*"). The *Stroud* case dealt with the Ad Valorem chargeable, for which the current year amount is used in the formula the same year it is paid. If Ad Valorem taxes are erroneously reduced, increased Foundation Aid offsets the error in the year it happens. The *Stroud* case, with its different facts, does not show the Plaintiff Districts were compensated for the underpayments of MVC by OTC by increased state aid in the following years.

By contrast the remaining five sources of Foundation Program Income (Title 70 § 18-200.1(D)(1)(b)(2-6)), referred to as the "lagging chargeables" (Hendricks' paper EX 13) are based on the "amounts actually collected from such sources during the preceding fiscal year calculated on a per capita basis on the unit provided for by law for the distribution of each such revenue." It is true that each year the OTC shorted the Plaintiff Districts their MVC payments, their Foundation Aid was greater in the next year by the amounts they were shorted. But, that extra Foundation Aid did not replace their lost MVC. Rather the increased Foundation Aid in the following year was entirely needed to provide the correct resources for that current year when MVC remained below the prior year's lower amount as it did for each Plaintiff District. It does not replace any of the revenues lost in the prior year. *Stroud* cannot help the OSDE in this case.

The analytical method Defendants used in their Motion to Dismiss, the actual historical numbers, and mathematical analysis show that the formula did not correct for the under payments caused by OTC. The Defendants' belief that the subsequent year adjustment in Foundation Aid corrects an underpayment or overpayment of one of the lagging chargeables is easily demonstrated as false. In the Defendants' Table examples (EX 2, p. 15), the Legislature expects (Formula

Target) OTC with MVC and OSDE with State Aid to provide a District 100 per year. OSDE pays State Aid based on what OTC paid the year before, which was 30 for Year 0. So, for Year 1, OSDE pays 70 to District, only to learn that OTC paid only 20. OSDE believes it will make up the deficiency of 10 with Year 2's payment when OSDE pays District 80 in Year 2. Has the Year 1 deficiency of 10 and the Year 2 Formula Target of 100 been paid in full? The Defendants would assert that it has, that nothing more need be known. But clearly the answer is not known until we know how much OTC pays in Year 2. If it pays 30, the answer is yes; but if it pays 20 again, there remains the Year 1 deficiency of 10. The dynamic is no more complicated than this, that the result is determined by future receipts of MVC, not Foundation Aid, yet the Defendants persist in their unsupported belief.

Here is what actually happened to Ponca City's MVC from FY2015 through FY2021:

Chart A	2015	2016	2017	2018	2019	2020	2021
Ponca City	2,542,308	2,140,885	1,902,400	1,852,973	1,844,379	1,774,875	1,858,895
correction					35,388	424,659	

The amounts in FY2019 and FY2020 split out the Adjusting Payments received those years as shown in Exhibit 6A. The other three Plaintiffs also received MVC well below FY2015 receipts.

Using the Table analysis adopted by Defendants in their Motion (but abandoned in their Reply), Plaintiffs present the Court with the correct way to understand the effect of the state aid formula on the MVC Adjusting Payments ordered by this Court. Unlike the Defendants' Tables 1 & 2 (in their Motion) where MVC rebounds and corrects the OTC's error in the subsequent year, the following Tables 1 and 2 make the correct assumption that MVC does not rebound. In real time, Year 0 is FY 2015, Year 1 is FY 2016 – 2017 (and July 2017), Year 2 is FY 2018, Year 3 is FY 2019 & 2020, Year 4 is FY 2020 & 2021, and Year 5 is FY 2022.

Table 1	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5	Totals
Formula Target	100	100	100	100	100	100	600
less MVC prior year	30	30	20	20	30	20	
State Aid	70	70	80	80	70	80	
plus MVC (current)	30	20	20	20	20	20	
plus OTC (correction)				10			
Total to District	100	90	100	110	90	100	590
Net Benefit	0	-10	0	10	-10	0	-10

Table 2	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5	Totals
Formula Target	100	100	100	100	100	100	600
less MVC prior year	30	30	20	20	20	20	
State Aid	70	70	80	80	80	80	
plus MVC (current)	30	20	20	20	20	20	
plus OTC (correction)				10			
Total to District	100	90	100	110	100	100	600
Net Benefit	0	-10	0	10	0	0	0

A successful legal conclusion would result in the total of the bottom row, Net Benefit, being zero. This would mean that the legislative goal, over the years, was realized in that the actual revenues received, “Total to District”, equaled the Foundation Program amount, or “Formula Target”. The method of analysis correctly captures the simple dynamics of the subsequent year adjustment in State Aid in response to a lower MVC than the amount charged in the formula in each table, and the difference between the tables in whether the adjusting payment, “OTC (correction)”, in Year 3 is charged in Year 4, Table 1, as the Defendants advocate, or not charged, Table 2, as the Plaintiffs advocate. Plaintiffs’ Table 2 is preferred since the total “Net Benefit” over the years is zero.

Again, the position of the Plaintiffs, shown by Table 2 that the adjusting payments not be charged, is the result that is fair, that implements the correction intended by this Court’s orders, and that is consistent with the legislative intent.

Basic mathematical analysis (EX 10) shows that the deviation of actual Foundation Program revenue received by a district over a number of years (1 to N) from the target Foundation Program amounts set by the legislature caused by one of the lagging chargeables such as MVC, depends “only on the difference between the district’s final year’s chargeable revenue and the chargeable revenue in the year prior to the initial year used to calculate cumulative revenues and foundation program costs: $(C_N - C_0)$.” (EX 13, p. 10). For example, using the numbers for MVC from Tables 1 and 2 where MVC does not recover, the calculations would be MVC (current) for Year 5 less MVC (current) for Year 0, or $20 - 30 = -10$. This clearly shows and justifies the need for the OTC (correction) in Year 3 of +10, AND that it should not be charged in Year 4 calculation of state aid.

Using Ponca City’s numbers, its decline in MVC revenue from 2016 to 2021 caused a loss of \$683,413 of which \$460,048 was caused by the OTC’s error in FY2016-2018. The Adjusting Payments in FY2019 and FY2020 corrected this error. But the same amounts were lost again due to the Defendants’ incorrect calculations and payments of state aid in FY2020 & 2021. The remaining loss of \$223,366, is simply the resulting deviation of the actual revenue being less than the prior year amounts used each year as predictions in the formula calculations.

Exhibit 4 to the Plaintiffs’ Response (EX 14) shows the correct way to analyze the real data by calculating and comparing the Foundation Program (Formula Target) for each district from FY2016 through FY2021, to its actual revenue (Total to District). This actual data shows that Ponca City suffered a cumulative loss of \$1,008,151 of which \$460,048 was caused by the Defendants’ incorrect calculations of state aid, and that the other Plaintiffs suffered similar losses over the period caused in large part by the Defendants’ incorrect calculations of state aid. This amount can also be reconciled using the mathematical analysis shown above. (EX 15)

These actual losses over the six-year period demonstrate how ridiculous are the Defendants’ unsupported claims of “too much state aid”, “a bonus payment” and “an unfair advantage” (EX 2). They believe it is so, but they have not shown it is so because they cannot. When this Court ordered the additional relief in November 2018, as modified in May 2019, it understood the harm caused by the OTC erroneous apportionments and the amounts necessary to offset the losses caused to 271 districts statewide. That is why the Adjusting Payments were ordered, not to “correct an accounting mistake or ... ensure the correct future application of a now (footnote 8) defunct law,” (EX 2) but rather to redress actual financial losses.

Even more ridiculous is the “Plaintiffs’ Exhibit 4 (Corrected by Defendants)” (EX 2A) they produce in their Reply in support of their belief that the plaintiff district Ponca City has not been harmed. They go to great lengths to re-arrange and re-calculate numbers, inexplicably alleging amounts as “Correct Actual Revenue” received by Ponca City that cannot be found on their own state aid calculation sheets (EX 1) from which we enter the actual amounts.

Ponca City	Actual Revenue*						Totals
	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	
Chargeables (except MVC)**	5,972,171	5,965,341	6,098,203	6,131,032	6,273,591	6,305,391	36,745,729
Actual Motor Vehicle (MVC)	2,140,885	1,902,400	1,852,973	1,879,768	2,199,535	1,858,895	11,834,456
Actual Foundation Aid	4,651,726	4,692,814	4,991,673	5,967,876	5,834,667	4,512,563	30,651,319
Actual Revenue	12,764,782	12,560,555	12,942,849	13,978,676	14,307,793	12,676,850	79,231,504
Foundation Program	13,203,156	12,959,106	12,914,943	13,988,606	14,155,409	13,018,435	80,239,655
Correct MVC	2,573,330	1,930,002	1,852,973	1,844,380	1,774,875	1,858,895	11,834,456
MVC Gain/Loss	(432,445)	(27,602)	-	35,388	424,659	-	(0)
MVC Gain/Loss (cumulative)	(432,445)	(460,048)	(460,048)	(424,659)	(0)	(0)	(1,777,200)
Correct Foundation Aid	4,651,726	4,260,368	4,964,071	5,967,876	5,870,056	4,937,222	30,651,319
Foundation Aid Gain/Loss	-	432,445	27,602	-	(35,388)	(424,659)	(0)
Foundation Aid G/L (cumulative)	-	432,445	460,048	460,048	424,659	(0)	1,777,200
Correct Actual Revenue	13,197,228	12,155,712	12,915,247	13,943,287	13,918,522	13,101,509	79,231,504
Revenue Gain/Loss	432,445	(404,843)	(27,602)	(35,388)	(389,271)	424,659	(0)
Revenue G/L (cumulative)	432,445	27,602	0	(35,388)	(424,659)	(0)	(0)

Still, their “bottom line” mathematical result, “Correct Actual Revenue”, is the same as ours, that Ponca City’s “Correct Actual Revenue” received from FY2016 through FY2021 totaled

\$79,231,504, which is the same \$1,008,151 amount less than the five-year Foundation Program legislative target of \$80,239,655 as we showed in our Exhibit 4 (EX 14). How does a loss of over \$1 million support their claim that Ponca City enjoyed “too much state aid”, “a bonus payment” and “an unfair advantage”?

CONCLUSION

The year-to-year calculation of state aid did not provide a remedy for OTC’s underpayment because, without the Adjusting Payments, all Plaintiff districts failed to cover the amount required to pay for the Foundation Program. The Plaintiff Districts received a remedy for that underpayment only through the court-ordered Adjusting Payments. OSDE’s inclusion of the Adjusting Payments in MVC for purposes of calculating state aid, reduced Plaintiffs’ State Aid by an amount equal to the amount of the Adjusting Payments, negating the remedy ordered by the Court.

Plaintiffs have no remedy at law to undo the financial loss caused by OSDE’s misapplication of the statute because the agency charged with applying the law has misapplied it and will not voluntarily correct its error. Plaintiffs respectfully ask the Court to declare the OSDE has mis-applied **70 O. S. §18-200.1** and order the OSDE to restore to Plaintiffs the amount of the Adjusting Payments previously ordered by the Court in thirteen equal installments entirely outside the usual formula for calculating state aid.

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CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2022, a true and correct copy of the foregoing document was sent by mail to the following recipients:

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