

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

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.)

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

AUG 12 2022

RICK WARREN
COURT CLERK

126 _____

Case No. CJ-2020-2392

**PLAINTIFFS' COMBINED RESPONSE TO DEFENDANTS'
COUNTER-MOTION FOR SUMMARY JUDGMENT
AND RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Defendants' primary argument that this action is a collateral attack on the prior litigation against the OTC fails because this action seeks adjudication of whether Defendants improperly applied 70 O.S. § 18-200.1 resulting in the underpayment of Foundation Aid to the Plaintiffs in fiscal years 2020 and 2021. Neither the District Court nor the Court of Civil Appeals addressed this issue in the previous litigation. Defendants' continued argument that the formula for Foundation Aid is self-correcting suffers from fundamental factual and analytical errors as shown below.

I. Plaintiffs' Reply In Support Of Their Statement of Material Facts.

Statement of Material Facts (SMF) No. 2, authenticated by the OTC, clearly demonstrates the OTC's compliance with court orders in the prior litigation for the 13 monthly Adjusting Payments that the MVC received by the Plaintiffs, and other districts statewide, consisted of the amount first calculated according to the current MVC apportionment statute and then adjusted as ordered by the Court. These amounts are at the heart of the dispute in this litigation and have been regularly used by the Defendants in their various tables, such as those on pages 15 and 16 of Defendants' Response/Counter-MSJ.

SMF No. 5. As set forth in Plaintiffs' Response to Defendants' Motion in Limine, Matthew Hendricks is professionally qualified by training and experience to work with the data to which he attests in his affidavit, statements 4 through 9. As described in the affidavit, he has personal knowledge based on his review of the source records in each statement of facts by Plaintiffs, SMF Nos. 11, 12, and 13.

SMF No. 7. OTC does not determine MVC for the purpose of calculating state aid. That is the responsibility of Defendants and the point of this litigation. OSDE knew the Adjusting Payments were being made in FY 2019 and FY 2020. See Defs' EX F to Counter MSJ & Response, Clark letter to Watts dated 6/6/2019. OSDE knew well in advance that MVC in FY 2019 and FY 2020 would consist of one-time only Adjusting Payments not collected according to the MVC law as described in the formula.

II. Plaintiffs' Response To Defendants' Statement Of Material Facts.

SMF Nos. 4,5,6, and 7 are incomplete and misleading in that the relationship between MVC and Foundation Aid lags one year, i.e., as the formula statute clearly provides the amount of MVC used to calculate Foundation Aid is the amount apportioned according to its

apportionment statute the preceding year. Therefore, there is no same-year correction as the Defendants believe. Whether or not a “correction” occurs, as analysis and facts clearly show, depends on the amount of MVC apportioned that same year, not the preceding year.

SMF Nos. 8 and 9. Both District Court orders, 11/13/2018 and 5/28/2019, provided that the 13 monthly Adjusting Payments would first be apportioned according to the current apportionment statute for MVC and then adjusted to correct for the OTC’s error. EX 9 to Pltfs MSJ. OSDE, knowing its decision to “merely note the amounts” would take back the Plaintiffs’ corrective award for the OTC’s error, chose to include the adjusted payments and thus violated its duty to correctly calculate state aid.

SMF No. 10. The OSBE has an ongoing obligation to correctly allocate Foundation Aid. *Ind’t Sch. Dist. #52 of Okla. Cnty. v. Hofmeister*, 2020 OK 56 ¶ 32, 473 P.3d 475, 490.

SMF Nos. 11 and 12. These paragraphs do not state facts but merely advance Defendants’ interpretation of the statute, which Plaintiffs dispute. This construction of the State Aid statute is what is at issue in this case.

SMF No. 13. Contrary to Defendants’ agreement with Plaintiffs’ SMF No. 8, Defendants misstate the applicable fiscal years. Fiscal years are identified by the terminating end of the period, not the beginning. Defendants make this error throughout their filing unnecessarily complicating the issues.

SMF No. 15. The plain text of the Defendants’ Exhibits A and B plainly show the OTC litigation alleged underpayments of MVC. The school districts alleged the underpayment by OTC caused the districts to fall short of their Foundation Program Amount. The current litigation, as shown by Plaintiffs’ Exhibit 3 to its MSJ, alleges underpayment of Foundation Aid. These are different allegations against different parties with different statutory duties.

SMF Nos. 16, 17, 18, 19, and 20 are taken from the December 9, 2016, order in the OTC Litigation and pleadings leading up to it. That order was appealed and never implemented. In the interim, the 2017 Legislature changed the MVC apportionment statute dramatically, creating the need for compensation for the earlier underpayments of MVC by the OTC. That is why additional relief was requested in the Districts' Motion of September 11, 2018. Defs' EX E to Counter MSJ & Response.

SMF No. 25. Defendants again mislabel the fiscal years. The losses were 8/2016 – 8/2017, so they would be FY2017 and FY 2018. The Adjusting Payments were made in FY 2019 and FY 2020.

SMF No. 31. Plaintiffs deny that this is a factual issue. Instead, it defines the legal issue in the case. The MVC are from earlier years, and therefore not calculated according to the apportionment statute. Plaintiffs do not concede that “actually collected” refers to the district and not the OTC.

SMF No. 32. Denied because Defendants use the wrong fiscal year. Adjusting Payments were made in FY 2019 and FY 2020, for underpayments made in FY 2017 and FY 2018.

SMF No. 33. Denied because Defendants use the wrong fiscal years. Further denied because Defendants miscite Plaintiffs' Motion for Summary Judgment as including the word “overpayment”. The Plaintiffs' MSJ plainly shows the inclusion of the Adjusting Payments resulted in an underpayment of Foundation Aid.

SMF No. 35. Denied because Defendants use the wrong fiscal years. OSDE was fully informed of the court-ordered Adjusting Payments. Defs' EX F to Counter MSJ & Response. If OTC had a duty to do more, it failed, but that does not excuse OSDE's conscious decision to

punish Plaintiff and other underpaid districts based on their incorrect belief that the formula is “self-correcting.”

SMF No. 36. Denied because OSDE did not correctly follow the law, as set forth in Plaintiffs’ Motion for Summary Judgment. Further denied because Defendants used the wrong fiscal years again.

III. Plaintiffs Do Not Collaterally Attack The Judgment In The OTC Litigation.

This litigation and the OTC Litigation are different and seek different remedies. Equally importantly, Defendants misconstrue the scope of the collateral attack doctrine. “The conclusiveness of a judgment extends only to the question directly at issue, and not to any incidental or collateral matter, though it may have been passed on.” *Matter of Akers’ Estate*, 1975 OK CIV APP 29, 541 P.2d 284, 286.

As clearly set forth in Plaintiffs’ Amended Petition and in their Motion for Summary Judgment, Plaintiffs ask this Court to construe 70 O.S. § 18-200.1 and specifically determine that the Defendants erred when they included the Adjusting Payments as MVC when calculating Foundation Aid in FY 2020 and FY 2021. The calculation of state aid under Title 70 is the responsibility of the Defendants, not the OTC. The court in the OTC litigation correctly provided Plaintiffs with the Adjusting Payments. Plaintiffs’ allegations in this case relate to the OSDE’s incorrect calculation and provision of Foundation Aid.

Defendants are simply wrong when they describe the Court’s 2016 order as “the final judgment in the OTC Litigation”, and they go to great lengths to cite the Title 47 apportionment statute in effect at that time. However, the Court’s 2016 order was appealed and was never implemented. Before the appellate court decisions and the actual final orders in the OTC Litigation, November 13, 2018 and May 28, 2019, EX 9 to Pltfs MSJ, the 2017 Legislature substantively amended the Title 47 apportionment statute with the one in place today and when

the OSDE incorrectly calculated state aid pursuant to Title 70 in 2020 and 2021. Citations to the previous statute are irrelevant to this case. This case is simply not a collateral attack on the OTC Litigation.

IV. Plaintiffs Have Suffered A Loss Of Foundation Aid Funding.

Defendants are equally incorrect in arguing Plaintiffs have not suffered a loss of Foundation Aid funding. Defendants misrepresent or fail to understand the Tables 1 and 2 of Plaintiffs' MSJ (p.17). On page 17 of Defendants' Response/Counter-MSJ, Defendants claim that in their original table analysis (p. 18 of their Motion to Dismiss) "Defendants kept all values constant..." That is false. Their tables clearly show in Year 1 "MVC (prior year) as 20, which means in Year 0 it was 20, not the constant 30 they state. This false representation of their own analysis is not helpful to the Court. Defendants use the wrong facts in the Motion to Dismiss by showing a rebound of MVC. Defendants are simply confused. They state that Plaintiffs' Table 2 "inaccurately returns a gain of 10," which is false since the Net Benefits under the Totals column is 0. The Court cannot rely on the Defendants for accurate analysis or information. Plaintiffs' Tables 1 and 2, using the Defendants' method of analysis, accurately show the Court what happened, Table 1, and what should have happened, Table 2.

The Defendants continued reliance on *Stroud* and their inability to distinguish the impact on the calculation of Foundation Aid in the case of an error in the assessment of property taxes, which impacts Program Income the same year aid is calculated, from its impact where the error is made in the apportionment of one of the five lagging chargeables, including MVC, which are included in Program Income, is not supported by their own analysis or calculations. When the error was made in property tax assessments in *Stroud*, the error was reflected in the Foundation Program Income amount used to calculate Foundation Aid for the same year. Therefore, the

error did not cause a deviation in the actual revenues received that year, being Foundation Aid and Program Income, when compared to the legislative Foundation Program amount determined by OSDE for that year. When property tax assessments were less than they should have been, that lower amount was fully offset, IN THE SAME YEAR, by the resulting greater Foundation Aid Calculation.

Stroud clearly doesn't apply to the five lagging chargeables such as MVC. When OTC incorrectly underpaid MVC to districts in FY 2016, Foundation Aid had already been calculated, using prior year MVC as an estimate, so the districts' actual revenue was less than the target Foundation Program amounts calculated by OSDE. These losses are acknowledged by Defendants and they occurred, not because of any error in calculating state aid, but simply because MVC apportionments were less than the prior year amounts. Also 141 districts received a windfall that year when they were overpaid due to the same miscalculations by OTC.

What happened the following year is where the Defendants completely misunderstand the effect of the formula calculations. The calculation of Foundation Aid using the now lower estimate of MVC to which the OTC's error contributed, absolutely results in greater Foundation Aid than if the OTC had apportioned correctly the year before. But this calculation of Foundation is not an "overpayment," it is the correct payment based on what occurred. Nor is the greater Foundation Aid "self-correcting." It has been determined by subtracting the Foundation Program Income, which includes the five lagging chargeables based on prior year amounts, from the target Foundation Program amount as calculated by OSDE. The payment of this correctly calculated Foundation Aid amount cannot cause any "overpayment" or underpayment; rather a district will only know its total actual revenue when that year's revenues from the lagging chargeables, including MVC, are finally received.

If the MVC received is greater than the prior year amount, then that is an “overpayment” that can result in total actual revenue being greater than the district’s Foundation Program. But if MVC received is the same or less than the prior year, as was the case for each of the plaintiff districts in 2017 (Chart A at p.4 of Pltfs Response to Defs MTD), then there is no “overpayment” and no “self-correction” because the Foundation Aid amount paid is entirely needed to offset the still lower amount of MVC received. The Defendants’ own tables set forth in their Motion illustrate how their belief in the “self-correction” myth is wrong.

The Defendants set forth their definition of “self-correction” in discussion surrounding Table 1 on page 15 of their Motion to Dismiss, EX 2 Pltf’s MSJ, namely that the bottom line “Net Benefit” of their tables, which is “Total to District” (i.e., actual revenues) less “Formula Target” (target Foundation Program), should total to zero after the correction. Yet note that in their Counter MSJ/Response at page 17, they present Table B which correctly assumes the district’s MVC declined to 20 in Year 1 and remained at that level, unlike their Tables 1 and 2 in Def’s MTC cited above that assume MVC rebounds to 30 in Year 2. The result as shown by their Table B is that the district’s cumulative Net Benefit is -10, meaning there was no correction.

The Defendants also proudly double down on their “Plaintiffs’ Exhibit 4 (Corrected by Defendants)” submitted with their Reply, June 16, 2022, the complete version is at page 9 of EX 2a of Pltfs MSJ, stating, “...Plaintiffs...even concede Defendant’s “Corrected Actual Revenue” is correct ... Plaintiffs cannot dispute Defendant’s corrected chart because it fully and accurately demonstrates what occurred: a Foundation Aid overpayment corrected by the MVC Adjustment Payments”. Actually, Plaintiffs can dispute the numbers they add to the chart. The Court should note that the resulting bottom line “Net Benefit”, or Cumulative Gain/Loss in the original

exhibit, which should be zero if the formula is “self-correcting” as the Defendants believe, is found by subtracting the cumulative total of the Foundation Program being \$80,230,655 from their “Correct Actual Revenue” of \$79,231,504, which is a cumulative loss of \$1,008,151. The Defendants simply cannot square that cumulative loss with their “self-correcting” belief in the formula. The Plaintiffs, with mathematical analysis the Defendants expect every Oklahoma high school graduate to master, and with Exhibit 15 to the MSJ show clearly how that loss has occurred, \$460,048 of which was caused by the Defendants’ wrongful inclusion of the Adjusted Payments when calculating state aid for FY 2020 and FY 2021.


Lastly, Defendants present again their “correction” of Plaintiffs Chart A at page 15 of their Counter MSJ/Response and seem to believe it is dispositive. Plaintiffs Chart A is an accurate replication of the MVC amounts paid by OTC to Ponca City district from FY 2015 through FY 2021, with the Adjusting Payments amounts separated in FY 2019 and FY 2020. These are facts that are undisputed. Their “correction,” showing Ponca City received through the Adjusted Payments the amount that the OTC wrongly underpaid in FY 2017 and FY 2018, simply affirms the resulting correction this Court ordered in November 2018 and May 2019 in the OTC litigation—the correction the Defendants took back from Ponca City by incorrectly calculating state aid in FY 2020 and FY 2021. It has no other relevance.

What is likely most difficult for the Court in deciding this case is accepting that the Defendants have not correctly analyzed the impact of the state aid formula over time on these Plaintiffs. At the heart of the Defendants’ confusion is their belief, unsubstantiated by analysis or facts, that the subsequent year adjustment in Foundation Aid caused by the prior year deviation of MVC from the amount used to calculate aid in the prior year corrects for that

deviation. Their methods of analysis begin with the answer they believe is true and ignore the actual results and impacts that are shown.

The Plaintiffs, and more than 260 other districts, were shorted \$22.7 million in MVC by the OTC's apportionment errors in FY 2016 through FY 2018. Because the MVC apportionment statute had been amended, this Court, with knowledge of the *Stroud* decision, correctly ordered additional relief that provided for the Adjusted Payments that corrected the \$22.7 million OTC apportionment error. Contrary to the Defendants' unsubstantiated belief, actual revenues received by underpaid districts from Foundation Program Income and Foundation Aid had not previously restored the \$22.7 million in underpayments. Then, after this litigation had been filed and knowing their decision would take back the \$22.7 million correction ordered by this Court from the Plaintiffs and other underpaid districts, the Defendants did include the Adjusting Payments amounts as MVC when calculating Foundation Aid for FY 2020 and FY 2021.

Respectfully submitted,



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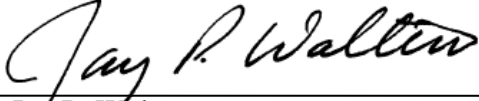
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CERTIFICATE OF SERVICE

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

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