April 6, 2020



**VIA E-MAIL ONLY**

Mannix Barnes

c/o Jerry Colclazier

[Jerry@colclazier.com](mailto:Jerry@colclazier.com)

Re: Western Heights – Distance

Learning & Child Nutrition Services

Dear Mr. Colclazier,

I am writing to follow up with you on your client’s, Western Heights Public Schools (the “District”), recent hesitations related to the payment of support personnel, as well as its recently submitted and approved Distance Learning Plan (the “Plan”). As an initial matter, it is my understanding the District is been reluctant to continue paying for the services provided by support personnel, under the premise that support personnel efforts during the interruptions caused by the COVID-19 pandemic may be considered a “gift” of services and funds in contravention of the Oklahoma Constitution. The Oklahoma State Department of Education (“OSDE”) respectfully disagreed with the District’s interpretation, but believes the Governor’s recent [Executive Order](https://www.sos.ok.gov/documents/executive/1928.pdf) resolves any concerns that the District might have had. With OSDE’s prior guidance and this Executive Order, OSDE believes the District will do what is right and lawful to ensure support personnel, and their compensation and benefits, continue during these unprecedented times. If you have any concerns or questions about this issue, please do not hesitate to let me know and we can further discuss.

In addition, I was pleased to recently review the District’s Plan as it was submitted to OSDE on March 30, 2020. As you are aware, in order to obtain the waivers and flexibility granted by the State Board of Education at its March 25, 2020, special meeting, each district was required to submit a set of assurances and accompanying distance learning plan that it would implement for the remainder of the year (ending on or after May 8, 2020). At the outset of the District’s Plan, it was explicit that the purpose was to “provide a sense of stability for our students and families” and to “[s]upport our patrons during this unprecedented time.” In furtherance of these efforts, the Plan provides that “[f]ood service and Transportation will continue with feeding the students daily…This will be coordinated through the director of operations and each department director.” These provisions of the Plan were not only consistent with the requirements of the State Board of Education, but also with the guidance recently issued by the United States Department of Agriculture (USDA) relating to child nutrition program meal service during the COVID-19 pandemic. In this guidance, the USDA encourages schools to ensure that the needs of low-income children are met during extended school dismissals and interruptions. *See* [USDA Memo](https://schoolnutrition.org/uploadedFiles/5_Learning_Center/13_Emergency_Planning/USDA-Child-Nutrtion-Program-Meal-Service-During-COVID-19-Outbreaks.pdf).

As such, OSDE was surprised to learn, effective immediately, the District ceased the provision of child nutrition services until the “pandemic is controlled or eradicated.” In the document expressing the stoppage, the basis for the District’s decision was the auspices of the U.S. Centers for Disease and Control and Prevention (CDC) guidelines, the Oklahoma Governor’s Executive Order (as amended) and the Mayor of Oklahoma City’s proclamation. However, while concern for employee and student safety is well-guided and understood, the District’s reliance on these Orders, Proclamations, and guidance is entirely misplaced and unnecessary. Simply, in each of the aforementioned documents, an exception is plainly made for the provision of essential services all the while adhering to CDC guidelines, which essential services include the provision of meals to schoolchildren. *See* [Executive Order](https://www.sos.ok.gov/documents/executive/1928.pdf) and [Executive Memo](https://www.sos.ok.gov/documents/executive/1921.pdf). Given prior statements by District representatives and given the District’s assurances and plain statements to the OSDE just five (5) days ago, OSDE fears the actual reason for the District’s decision may instead be an effort to not discontinue paying support personnel. This concern is bolstered by the District’s prior resistance to paying these essential support personnel during the interruptions of services caused by COVID-19 and these unprecedented times.

Furthermore, despite the District providing assurances to OSDE that it would begin implementation of its Distance Learning Plan on April 6, 2020, it was reported to OSDE that the District has advised its patrons that it will be delaying implementation of instructional services for students. As evidenced by a review of the District’s announcement on its website, the District underestimated and did not adequately plan for the implementation of its instructional services to students. As a consequence, at least some, and perhaps many, students will not be receiving instructional services to which they are entitled and which were assured to be provided.

In light of the foregoing, it is respectfully requested that the District reconsider and reverse its announcement of ceasing nutrition services to students. Further, the District is requested to provide an assurance that it will be providing compensatory services to students as a result of its failure to properly deliver on its distance learning plan today and/or will extend the length of the school year, as required as a result thereof. Should the District not reconsider and reverse this decision, the District is hereby on notice of monetary and accreditation penalties, including non-compliance with the State Board of Education's First Amended Order and resulting withdrawal of waivers granted that day for a district's compliance (length of school term, school day, and financial penalties related thereto). Please advise by the close of business on April 7, 2020, as to the District’s decision(s).

Sincerely,



Brad Clark,

General Counsel

Cc: The Honorable Joy Hofmeister, State Superintendent of Public Instruction

Mannix Barnes, District Superintendent