



CJ-19-6881
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IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY
STATE OF OKLAHOMA
FILED IN DISTRICT COURT
OKLAHOMA COUNTY

COMMUNITY STRATEGIES, INC., d/b/a)
EPIC CHARTER SCHOOLS, an independent)
Public School District of Oklahoma,)
)
Plaintiff,)
)
vs.)
)
RON SHARP, an Individual,)
)
Defendant.)

DEC - 9 2019

RICK WARREN
COURT CLERK

34

CASE NO.:
Judge:

CJ-2019-6881

PETITION

COME NOW, Plaintiff, Community Strategies, Inc. d/b/a Epic Charter Schools ("Plaintiff" or "Epic"), and for its public school teachers, administration, board of education, students and parents, Plaintiff brings forth this Petition and causes of action against Mr. Ron Sharp ("Defendant" or "Sharp") and alleges and states:

JURISDICTION AND VENUE

1. Plaintiff, Community Strategies Inc. d/b/a Epic Charter Schools, is a political subdivision of the State of Oklahoma with its principal place of business in Oklahoma County, Oklahoma.
2. Defendant is an individual that resides in Shawnee, OK that has engaged in conduct in Oklahoma County that gives rise to the allegations in the lawsuit.
3. The Court has subject matter jurisdiction over the claims alleged herein and may properly exercise personal jurisdiction over Defendant.
4. Pursuant to 12 O.S. § 1653(B), venue is proper in Oklahoma County.

FACTUAL BACKGROUND

5. Paragraphs 1 through 4 are incorporated by reference.

6. On or about August 26, 2019, Sharp published in writing the following public statement, "Virtual Charter School Board verifies Epic is not following law regarding enrollment practices." A full copy of the published statement is attached as Exhibit "A."
7. Sharp knew or should have known that this statement was a lie at the time he intentionally published said statement and making false accusations is beyond the scope of any duty of any public official.
8. Dr. Wilkinson, the executive director of the Statewide Virtual Charter School Board ("SVCSB"), confirmed that she has not had any discussions with Sharp regarding Epic.
9. In fact, in a letter from Dr. Wilkinson, the executive director of the SVCSB, she states "neither the Statewide Virtual Charter School Board nor I have communicated with the press regarding Epic other than responding to open records requests. The Statewide Virtual Charter School Board has not met with Senator Sharp, nor has the Board discussed Senator Sharp's public comments in any board meeting." *See* Letter from Dr. Wilkinson, attached as Exhibit "B."
10. Further, Dr. Wilkinson states in an email that the "SVCSB has made no determinations regarding Epic One-on-One Charter School's enrollment practices." *See* Email from Dr. Wilkinson, attached as Exhibit "C."
11. Sharp's published, written statements are false as the SVCSB has not verified any unlawful enrollment practices of Epic as evident from the statements of the Executive Director and the fact that there has been no action taken by the SVCSB, as a public body, in a lawful public meeting, which would be required by law.

12. Sharp also published the following statement, “SDE clarified that by law the BLCs are subject to the same attendance requirements as traditional charter schools, not virtual charter schools.” *See* Exhibit “A.”
13. Sharp knew or should have known his statement was false.
14. Sharp knew or should have known that Epic students enrolled at the blended charter in Oklahoma and Tulsa counties are not authorized by the SVCSB. Rather, these students are under jurisdiction of Rose State College, the authorizer for Epic blended charter.
15. Dr. Wilkinson also made this clear in her email stating, “The SVCSB does not have any jurisdiction over Epic Blended Charter School and cannot make such a determination.” *See* Exhibit “C.” This statement was made in response to Epic’s attorney’s question number 2 in a letter to the SVCSB, which requested Dr. Wilkinson to confirm whether Sharp’s statements accurately reflected her comments about the attendance policy for Epic Blended. *See* Letter, attached as Exhibit “D.”
16. Sharp knew or should have known that under Oklahoma law, attendance policies for a virtual school that is not a statewide virtual school are set by the school – not by the Statewide Virtual Board.
17. Sharp was informed of this legal principle in a letter sent from the Oklahoma State Department of Education. The eighth page of the Aug. 13 letter attached hereto as Exhibit “E” states:

“To be clear, while there may currently be confusion that the SVCSB is solely authorized to approve the offering of full-time virtual schools and instruction, the statutes relating to the SVCSB merely provide that only this state agency authorizes statewide virtual schools. **In other words, a traditional public-school district or a charter school sponsored by an entity other than the Statewide Virtual Board may offer full-time virtual instruction to any of its resident students.**”

18. Sharp was also informed in the SDE's General Counsel's letter about the attendance requirements related to charter schools. On page 9 of the SDE letter, it states:

"The simple answer is that traditional public schools, brick and mortar charter schools and non-statewide virtual charter schools establish their own attendance policies consistent with applicable law. ... A traditional public school with a virtual school offering and/or a non-statewide virtual charter school may adopt the attendance requirements that a statewide virtual charter school is required to adhere to" See Exhibit "E."

19. Sharp has continued to publish false statements about Plaintiff in the Shawnee News Star and other publications similar to the statements described in detail herein.
20. Upon information and belief, Sharp has also published similar false statements about Epic via email or other forms of communication to representatives of various state agencies, to include but not limited to the Oklahoma State Bureau of Investigation ("OSBI"), the Oklahoma State Department of Education ("OSDE"), the Oklahoma Auditor and Inspector ("OAI"), elected officials, and media outlets.
21. On or about September 17, 2019, Epic served a cease and desist letter on Sharp and requested a retraction of his false statements. *See* Letter, attached as Exhibit "F."
22. Sharp refused to retract his false statements and has continued to publish false, misleading and inaccurate statements about Epic.

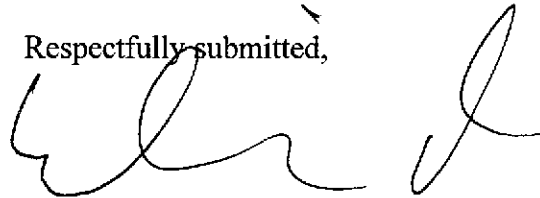
CAUSE OF ACTION – Libel / Slander

23. Plaintiff incorporates by reference paragraphs 1 – 22 herein.
24. Sharp's statements were false or malicious unprivileged publications in writing.
25. Sharp's statements have exposed Plaintiff, its staff, teachers, parents and students, to public hatred, contempt, and ridicule; and, Sharp's statements have tended to deprive

Plaintiff of public confidence in its mission; and Sharp's statements have injured Plaintiff.

26. Sharp's statements were also false and unprivileged publications, other than libel, which have imputed criminal conduct on Plaintiff and its representatives.
27. Sharp's statements were not privileged as such communications were neither made in any legislative or judicial proceeding or any other proceeding authorized by law, nor as a fair and true report of any legislative or judicial or other proceeding authorized by law or in the course thereof.
28. Sharp's statements were not privileged as they were not made in the discharge of an official duty; and, the law does not put any elected official above the law.
29. Plaintiff has been damaged by the defamatory statements of Sharp in an amount in excess of Seventy-Five Thousand Dollars (\$75,000).

Respectfully submitted,



William H. Hickman, OBA No.
HICKMAN LAW GROUP
330 W. Gray Street, Suite 170
Norman City, Oklahoma 73069
Telephone: (405) 605-2375
Facsimile: (405) 605-2374
hickman@hickmanlawgroup.com

Attorneys for Plaintiff,
Community Strategies, Inc.

Immediate Release: August 26, 2019

Virtual Charter School Board verifies Epic is not following law regarding enrollment reporting

OKLAHOMA CITY – Sen. Ron Sharp, a member of the Senate Appropriation Subcommittee on Education, said Monday his recent correspondence with the Oklahoma Statewide Virtual Charter School Board (OSVCSB) verifies his concerns of further illegal enrollment practices by Epic Charter Schools in order to receive additional state funding. The state's largest virtual charter school is currently under investigation for fraud and embezzlement.

Last month, Sen. Ron Sharp questioned Epic after they publicly admitted reporting all their Oklahoma and Tulsa County students under their brick and mortar Epic Blended Learning Centers (BLCs) whether they attended the physical locations or not.

An Epic spokesperson responded to the media at the time that they report all their students as virtual charter school students in accordance with state law and that there is no separate statute governing the reporting of attendance for those students who use physical buildings (BLCs).

However, the State Department of Education (SDE) clarified that by law the BLCs are subject to the same attendance requirements as traditional charter schools, not virtual charter schools.

OSVCSB Executive Director Dr. Rebecca Wilkinson agreed with the SDE concerning the attendance policy in email correspondence with Sharp on August 12, 2019. She verified that Rose State College authorizes/sponsors Epic Blended Charter School and it is not considered a full-time virtual charter school. Being that the board does not sponsor the blended school, the board's Title 777 of the Oklahoma Administrative Code (OAC) is not applicable to it. Other charter schools, like the BLCs, fall under Title 210 of the OAC. Subsequently, Epic Blended Charter School cannot use the virtual attendance policy of OAC 777 contrary to Epic's July statements.



Sharp also pointed out that the brick and mortar charter school cannot be in compliance with the OAC 777 virtual attendance policy, which prohibits a student from receiving more than nine hours per week of face to face instruction. The blended charter school is also violating the 180 days of instruction or 1,080 instructional hours attendance policy.

Dr. Wilkinson further verified that for a student enrolled full-time in a virtual charter school sponsored by the OSVCB to be counted in the enrollment and attendance of a charter school not sponsored by the OSVCSB would "create an illegal dual enrollment situation".

Sharp believes this is further evidence of their unethical, and possibly illegal, activities. The legislator was disappointed the State Board of Education approved Epic's accreditation given they are providing inaccurate enrollment numbers to receive state funding.

"This is a blatant misrepresentation of enrollment numbers. During the enrollment process, parents choose for their kids to either utilize the virtual learning option or the blended learning one but then Epic is listing all Oklahoma and Tulsa County students under the Blended Learning Charter School, which has different statutory requirements. The State Board of Education needs to clarify the law for Epic and request accurate enrollment numbers for the Blending Learning Centers before proceeding on with their state funding," said Sharp. "Why the State School Board didn't see this as a deficiency or question the enrollment numbers is troubling. We must hold all of our schools, regardless of whether they are virtual or brick and mortar, financially accountable. The law is crystal clear, and schools need to follow it."

Virtual charters and brick and mortar charters are considered different entities under state law. They have different attendance and sponsorship requirements and, therefore, are funded differently based on those requirements. Under Oklahoma statute, students can only be considered as "virtual" if they attend a virtual charter school sponsored by the OSVCSB. Epic One on One Virtual Charter School is sponsored by the OSVCSB. The "Contract" with its sponsor determines its statutory compliance requirements. The BLCs are sponsored by Rose State College and under their contract they are listed as traditional brick and mortar public charter schools, which fall under the oversight of the State Board of Education.

-END-

VIA E-MAIL WITH ORIGINAL TO FOLLOW:

Mr. William H. Hickman
Hickman Law Group
330 West Gray Street, Suite 170
Norman, OK 73069

RE: Epic Charter Schools

Dear Mr. Hickman,

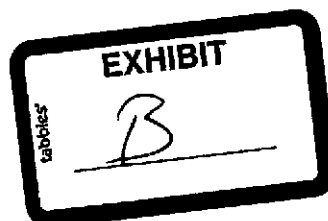
I am in receipt of your letter dated August 28, 2019. In response to your questions regarding Senator Ron Sharp's August 26, 2019 press release, neither the Statewide Virtual Charter School Board nor I have communicated with the press regarding Epic other than responding to open records requests. The Statewide Virtual Charter School Board has not met with Senator Sharp, nor has the Board discussed Senator Sharp's public comments in any board meeting.

While I understand that Epic Youth Services supports multiple schools, the Statewide Virtual Charter School Board is the authorizer of Epic One-on-One Charter School only, with no knowledge of the policies and procedures of any other Epic-related entities.

Sincerely,

Rebecca L. Wilkinson

Rebecca L. Wilkinson, Ed. D.
Executive Director, Statewide Virtual Charter School Board



William Hickman

From: Rebecca Wilkinson <Rebecca.Wilkinson@svcsb.ok.gov>
Sent: Thursday, September 05, 2019 12:52 PM
To: William Hickman; 'marie.schuble@oag.ok.gov'
Cc: 'robert.franklin@tulsatech.edu'; 'jharrington@fundsforlearning.com'; 'ethanlindsey7@gmail.com'; 'mhamrick1@gmail.com'; 'Pisshepherd@yahoo.com'; Michael Rogers; bart.banfield@epiccharterschools.org
Subject: RE: Response to August 30, 2019 Letter

Mr. Hickman,

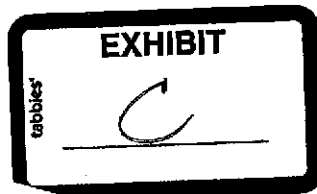
In response to your letter dated August 30, 2019:

1. The Statewide Virtual Charter School Board has made no determinations regarding Epic One-on-One Charter School's enrollment practices.
2. The Statewide Virtual Charter School Board does not have any jurisdiction over Epic Blended Charter School, and cannot make such a determination.
3. No.

We acknowledge receipt of your Open Records Request. We will review these items and respond accordingly.

Rebecca L. Wilkinson, Ed. D.

Executive Director, Statewide Virtual Charter School Board
2500 North Lincoln Boulevard, Suite 4-37
Oklahoma City, OK 73105-4599
405.522.0717
Rebecca.Wilkinson@svcsb.ok.gov



September 3, 2019

COPY

VIA E-MAIL WITH ORIGINAL TO FOLLOW:

Rebecca Wilkinson, Ed. D. & Marie Schuble
Executive Director
Statewide Virtual Charter School Board
2500 N. Lincoln Blvd., Suite 4-37
Oklahoma City, OK 73105

RE: Epic Charter Schools

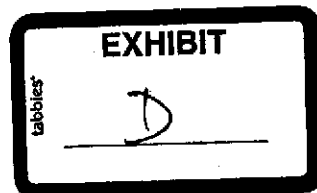
Dear Dr. Wilkinson & Ms. Schuble:

I am in receipt of your letter dated August 30, 2019. My client continues to have questions:

1. In a recent press release, Sen. Sharp states, "his recent correspondence with the Oklahoma Statewide Virtual Charter School Board (OSVCSB) verifies his concerns of further illegal enrollment practices by Epic Charter Schools in order to receive additional state funding." The records recently produced do not include any communications with Sen. Sharp. Please review your files and provide any communications with Sen. Sharp from January 1, 2019 to present. And, please confirm whether the quoted statement is accurate or not – has the OSVCSB determined that Epic has engaged in illegal enrollment practices?

2. In a recent press release, Sen. Sharp states, "the State Department of Education (SDE) clarified that by law the BLCs are subject to the same attendance requirements as traditional charter schools, not virtual charter schools. OSVCSB Executive Director Dr. Rebecca Wilkinson agreed with the SDE concerning the attendance policy in email correspondence with Sharp on August 12, 2019." The release continues by stating, "Epic Blended Charter School cannot use the virtual attendance policy of OAC 777 contrary to Epic's July statements." Please confirm whether these statements accurately reflect your communications with Sen. Sharp. Please confirm whether you have reviewed the legal opinions from the SDE General Counsel regarding these same questions and if you sought such advice prior to making these statements to Sen. Sharp. I previously attached the letter from Mr. Clark to Sen. Sharp for your convenience.

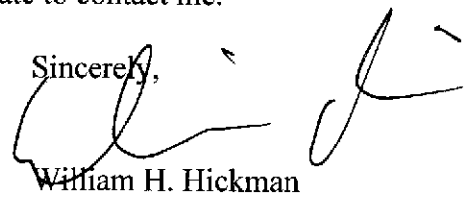
3. Have you or any representative of the OSVCSB, including legal counsel, provided any student records provided to you by Epic, such as transcripts or teacher rosters, to any person outside of the OSVCSB? If so, please describe what records and to whom they were provided.



My client respectfully requests that the next OSVCSB board meeting have an agenda item to discuss and clarify these issues in a public meeting. Please confirm at your earliest opportunity if this request will be granted as my client has parents that would like to speak to the board.

If you have any questions, please not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'William H. Hickman', written over the word 'Sincerely,'.

William H. Hickman

CC: SVCSB Board Members
Epic Charter Schools



JOY HOFMEISTER
STATE SUPERINTENDENT *of* PUBLIC INSTRUCTION
OKLAHOMA STATE DEPARTMENT *of* EDUCATION

August 13, 2019

VIA E-MAIL W/ HAND DELIVERY TO FOLLOW

Sen. Ron Sharp
2300 N. Lincoln Blvd., Rm. 412
Oklahoma City, OK 73105
sullivan@lsb.state.ok.us

Senator Sharp,

Thank you for your correspondence of July 11 and 16. I appreciate your efforts to fully explain your questions and the frustration you have felt with obtaining clarity about the complex issues that can sometimes be involved with designing and delivering virtual education options within the public schools framework.

In addition to your most recent requests for data and information, we took the opportunity to review what our office has previously provided to you and to others relating to virtual education attendance. In our review of your prior requests, it appears that the Oklahoma State Department of Education (the "OSDE") responded to every request previously sent. In an effort to continue to be responsive to you, this correspondence seeks to address each issue you raised in your July 11 and 16 correspondence. For convenience and ease of review, a copy of the July 11 and 16 correspondence is enclosed. Additionally, because the correspondence and information sent on July 11 and July 16 total approximately 70 pages, this letter will be addressed in categories attempting to correspond to the issues you raised. *See* letter dated July 11, 2019, attached as Exhibit "A." *See also* letter dated July 16, 2019, attached as Exhibit "B."

We are committed to remaining responsive to your requests for information and documentation. That commitment, however, does not negate the fact that, pursuant to your Open Records request, the OSDE must engage in months of reviewing more than 15,000 pages of information to ensure that private student information is fully protected and properly redacted on an individual basis as required by applicable state and federal laws.

Furthermore, certain information cannot be provided as it is not within our possession or authority to release it. To the extent that you raise issues relating to private school enrollments, homeschool student information, federal tax compliance, and/or



compliance with Department of Human Services laws or regulations relating to daycare centers, the OSDE is unable to respond because these are outside our jurisdiction and/or possession. As a result, and to the extent you have not already done so, I respectfully request that you address such matters to the appropriate authorities with knowledge, possession, and jurisdiction over them. Additionally, we are unable to understand the question(s) or issue(s) in a few statements in your correspondence. For example, your correspondence provides as follows:

"The Oklahoma State Board of Education did grant students [sic] Epic¹ Blended Charter School, not was [sic] the ADM requirement for funding this Charter within the "Funding For School" on page #3 of the Contract for Epic Blended Charter School-Rose State College (2017-2022)."

"210:15-34-1-16 [sic] will be referred to in a subsequent [sic]"

"Epic Blended Charter School reported 7,674.60 Weighted ADM students to the OSDE for [sic] allocation for fiscal year 2018. The OSDE provided \$23,029,667.52 for Fiscal Year 2018." See July 11 letter, attached as Exhibit "A." (Emphasis added).

Finally, you raise issues in the July correspondence which, while we would like to address such matters with you, the agency cannot comment on at this time as they are subject to pending audits and reviews by other government entities, including those by the Oklahoma State Auditor and the Oklahoma State Bureau of Investigation (the "OSBI"). As such, and in light of the foregoing, the OSDE respectfully requests that we find a mutually convenient time to meet with you and discuss anything that may remain and which we are able to address.

I. OSDE and State Board Oversight

In your recent letters, you raise questions about the oversight of public schools, including but not limited to that by the OSDE and Oklahoma State Board of Education (the "State Board").

Oklahoma statutes prioritize and value local control, relying on decision-making at the local level. In the case of a public charter school, oversight is to be provided through the local board of education. With respect to oversight and accountability of public charter schools, including but not limited to statewide virtual charter schools and university-sponsored charter schools, the Oklahoma Charter Schools Act, at 70 O.S. 3-131 *et seq.*, imposes oversight requirements on sponsors. For example, the Act requires that a sponsorship contract contain a performance framework to measure the effectiveness of charter schools and their governing boards across multiples indicators. *See* 70 O.S. § 3-

¹ "Epic Charter Schools" may be used to collectively refer to Epic Charter School, a statewide virtual charter school sponsored by the Statewide Virtual Charter School Board ("SVCSB"), and Epic Charter School, sponsored by Rose State Community College ("Rose State"). When referred to singularly, the school sponsored by Rose State will be referred to as "Epic - Rose State."

135. The required indicators include, at a minimum, the following: 1) student attendance; 2) financial performance and sustainability; 3) graduation rate; 4) postsecondary readiness; 5) student academic proficiency; 6) student academic growth; and, 7) recurrent enrollment from year to year. *Id.* These requirements are in addition to, and complementary to, a local board of education's general requirements to adopt policies and procedures for the implementation of additional oversight as required by Title 70 of the Oklahoma Statutes. To the extent that there are questions relating to the sponsors of the public charter schools identified in your correspondence and how these sponsors provide oversight, the OSDE and State Board respectfully request that you direct attention to those entities. The OSDE does not have statutory regulatory authority over charter school sponsors, including the Statewide Virtual Charter School Board (the "SVCSB"), which is a state agency separate from the OSDE.

In addition to the oversight provided through local school boards and sponsors of charter schools, the OSDE and State Board provide general oversight of public schools as provided for in federal and state law, including that provided in 70 O.S. § 3-104. There are also programmatic specifics relating to the oversight provided, such as monitoring of special education programs conducted pursuant to the requirements of the Individuals with Disabilities Education Act ("IDEA") at 20 U.S.C. 1401 *et seq.*; a public school's compliance with the requirements for reporting financial transactions through the Oklahoma Cost Accounting System ("OCAS") at 70 O.S. 5-135, *et seq.*; accreditation of public schools as provided in 70 O.S. 3-104.1; and measures of school accountability as required by the Every Student Succeeds Act ("ESSA") and Oklahoma law at 70 O.S. § 1210.545. In contrast to the oversight responsibilities of local school boards, the OSDE and State Board oversight rely on ensuring that a public school – traditional, charter, or virtual charter – comply with federal and state laws, and that their data reconciles with the state's data. For example, the statewide accountability system uses enrollment data from a school's First Quarter Statistical Report ("FQSR") and Annual Statistical Report ("ASR"), both of which are certified by sworn affidavit from the district that the information contained therein is true and correct. The ASR also provides certified data to calculate Full Academic Year (FAY) criteria used in accountability calculations, as well as identifying students who are chronically absent. The OSDE's Office of Accountability also receives certified data that reflects the courses students completed.

Within its authority in law and when presented with evidence and information, the OSDE and State Board may engage in additional reviews and oversight, which may include working with investigative authorities that have jurisdiction over matters above and beyond that of the OSDE and State Board. Additionally, the OSDE and State Board frequently work with the Legislature to find reasonable mechanisms to enhance oversight of public schools.

II. Compliance with the Oklahoma Open Records Act (the "ORA") and Prior Information Requested From and Supplied by the OSDE

In the July 11 and July 16 correspondence, you state a belief that you "[do not consider the OSDE to be compliant with the Oklahoma Open Records Act/ FOIA!]" Your assertion is that because you are a State Senator and a sitting member of the Appropriations Subcommittee on Education, the OSDE must provide you with any and all requested records and information without charge and without the legal review necessary to ensure that private student information is protected in compliance with applicable state and federal laws and regulations. For the reasons set forth below, the OSDE and State Board respectfully disagree. It is important to reiterate that to the extent possible, the OSDE and State Board have consistently provided timely information pursuant to your requests.

On January 25, 2019, you provided an email to OSDE staff (copying Jim Beckham, superintendent of Blanchard Public Schools), requesting a review of "all federal non-profit tax forms filed by under [sic] the nonprofit description of Community Strategies org. [sic] which in 2011 began to be referred to as Community Strategies LLC/EPIC VIRTUAL CHARTER SCHOOL." See E-mail dated January 25, 2019, attached as Exhibit "C." The stated purpose of the request involved the potential "violation of contractual law under Oklahoma statutes." The OSDE does not have jurisdiction over tax matters and notified you that it was not able to comply with your request. Subsequently, on January 29, 2019, you submitted an email to Senator Brooks (copying OSDE staff), requesting an "explanation and request to answer legal questions." See E-mail dated January 29, 2019, attached as Exhibit "D". The email did not appear to require an OSDE response (the OSDE was only copied on the email), and therefore we did not do so.

On March 21, 2019, at 9:40 a.m., you sent an email to OSDE Chief of Government Affairs Carolyn Thompson, asking:

- a. *"Has the Oklahoma State Department of Education been informed that the non-profit Community Strategies, Inc. [trade name Epic Virtual Charter school] provides, by contractual agreement, to the for-profit, Epic Youth Services, LLC, an initial fee of \$125,000 and an additional 10% of its total gross revenue as an "indirect cost allocation"?"*
- b. *Does the OSDE have on file a request for documentation from the Community Strategies, Inc. [aka: Epic Virtual Charter School] as to the purpose for this transfer of state appropriated dollars to the for-profit Epic Youth Services, LLC?*
- c. *Please provide to my office copies of all directed emails and correspondence from anyone at OSDE to or from [sic] : Ben Harris, David Chaney, and Josh Brock [Epic Youth Services, LLC]. [If such correspondence does not exist, please make that notation].*

- d. *Please provide the amount, in dollars, that would equal the 10% Indirect Cost Allocation of state dollars that has been forwarded in gross revenue each year to Community Strategies, Inc. [aka: Epic Virtual Charter One on One school] since its opening.*
- e. *Please provide the OSDE dollar amount directed to the two brick and mortar charter school sites located on the two campus sites of Rose State College. [If these funds were directed to EPIC One on One, please indicate].*
- f. *Does the OSDE have any information that would indicate that State dollars have been transferred from one public school district to another public school district that is not within the scope of administrative or cooperative instructional purposes? If so, please provide that information." See E-mail dated March 21, 2019, attached as Exhibit "E." (Emphasis added).*

On that same evening, March 21, 2019 at 3:48 p.m., Ms. Thompson responded to your request with information and documents, responding to all questions except your request for any and all emails to or from any Epic Charter School or its representatives. *See Response, attached as Exhibit "F."* Given that the request was for records of communications potentially unlimited in scope of time, the OSDE respectfully requested that you submit an Open Records Request as a request of this nature would require the services of the Office of Management and Enterprise Services ("OMES"). Shortly thereafter, you submitted an Open Records Request for the following:

"Any correspondence to or from Ben Harris, David Chaney or Josh Brock; Any Epic school" from 2007 to present. See E-mail dated March 22, 2019, attached as Exhibit "G."

On March 29, 2019, pursuant to OMES protocol, the OSDE submitted your request for emails to the OMES, requesting that they pull all responsive email correspondence, noting that this was a legislative request.

While awaiting the retrieval of documents, on April 8, 2019, you requested OSDE staff attend a meeting in your office to discuss Epic Charter Schools. Following the meeting, you provided a written summation of your recollection of the meeting along with follow-up questions. As a result, the then-Deputy Superintendent of Finance and Federal Programs provided you with a detailed written response to your written summary, as well as other information and documents that you had requested in the April 8 meeting. A copy of the information provided to you following the April meeting is enclosed as Exhibit "H."

Subsequently, the OSDE received documents potentially responsive to your Open Records Request for 12 years of all communications between OSDE and any Epic school and/or its representatives. The volume of documents potentially responsive to your request which comprise more than 15,000 pages, much of which include personal student information. The OSDE made a determination that review of the documents to ensure compliance with

applicable laws and regulations (i.e., FERPA) would cause an excessive disruption of the essential functions of the OSDE. However, as you are aware, well before you issued your press release of July 11, 2019, the standard fee was waived for you.

On June 7, 2019, an email was again sent to Carolyn Thompson, requesting the following:

- a. *"Payment in dollars to Rose State College as the sponsor of Epic Blended Charter School from the period 2017-2018, and from the period 2018-2019?"*
 - i. *is the payment to Rose State College based on the number of students in daily attendance as reported to the OSDE/ please clarify?*
 - ii. *does the OSDE forward to the sponsor the sponsor's fee, or does the entity who represents the charter school?*
 - iii. *does the OSDE include an OCAS coding for the charter school to code the payment to the school's sponsor?*
 1. *if such an OCAS code is provided, please forward the documentation for Epic Blended Charter School for the years 2017-2018 and 2018-2019?*
- b. *Does the State Board of Education receive a sponsor's fee as the sponsor of a brick and mortar charter school?*
 - iv. *if the answer is to above question is, yes, please provide the dollar amount per charter school site received for all academic years in which the State Board of Education has been a sponsor of brick and mortar charter schools?*
- c. *Please include the statutory ADM attendance policy for brick and mortar charter schools in the State of Oklahoma in order to receive an [sic] weighted ADM allocation?*
 - v. *is the attendance policy to receive an OSDE weighted ADM allocation the same as a traditional public school?" See E-mail dated June 7, 2019, attached as Exhibit "I." (Emphasis added).*

Shortly thereafter, on June 12, 2019, your office sent an email advising that you needed this request filled "ASAP." See E-mail dated June 12, 2019, attached as Exhibit "J." On the evening of Friday, June 14, 2019, the OSDE responded to your request in full. See E-mail dated June 14, 2019, attached as Exhibit "K." Then, on June 17, 2019, and again on June 24, 2019, you emailed the undersigned counsel, asking about student attendance requirements, asking specifically in the former, if there is *"any exception in statute to a Blended Charter School operating under the OK Brick and Mortar Charter School Act where child [sic] do not have to show up for daily attendance. If so, please cite the statute."* See E-mails dated June 17, 2019, and June 24, 2019, attached as Exhibit "L." A response to these requests about student attendance was provided on July 2, 2019. See E-mail dated July 2, 2019, attached as Exhibit "M."

A. Open Records and Authorized Fees

Some have suggested that an Epic Charter School request for certified teacher information may have been prioritized over yours. However, unlike your request for a unique set of documents comprising thousands of pages over a 12-year period, the requested teacher information is already configured and is a commonly requested item under the Open Records Act. In fact, this type of dataset has been requested and provided approximately 80 times over the past 6 years, and therefore it is possible to fulfill it quickly upon request.

Others have argued that teacher contact information is not subject to disclosure pursuant to the ORA. Under the Oklahoma Open Records Act, "All records of public bodies and public officials shall be open to any person for inspection, copying, or mechanical reproduction during regular business hours," with the exception of certain information identified in statute as confidential (51 O.S. § 24A.5). Unless there is an exception that applies under a state or federal law to identify a specific type of information as confidential, the Open Records Act requires government bodies in Oklahoma—including state agencies and licensing entities—to release information from the records of the public body upon request:

"Except where specific state or federal statutes create a confidential privilege, persons who submit information to public bodies have no right to keep this information from public access nor reasonable expectation that this information will be kept from public access; provided, the person, agency or political subdivision shall at all times bear the burden of establishing such records are protected by such a confidential privilege." 51 O.S. § 24A.2

The plain language of the ORA authorizes certain information supplied to a licensing entity to be permissibly classified by the entity as confidential for purposes of the ORA, such as a licensee's Social Security number. However, the ORA does not allow the withholding of non-personnel contact information from being disclosed when requested. *See* 51 O.S. § 24A.5(2). Under this authorization, the OSDE redacts all Social Security numbers from teacher certification information requested under the ORA. With the exception of Social Security numbers, however, the OSDE is limited in the types of information it is authorized to redact from teacher certification data requested. This is because while the OSDE is the licensing entity for teacher certification, Oklahoma law does not classify teachers as state employees. Further, the ORA expressly provides that any information voluntarily supplied to a state agency *shall* be subject to full disclosure. *See* 51 O.S. § 24A.10. Addressing this issue would be the purview of the state legislature, but OSDE must follow current law. A cursory review of laws in states neighboring Oklahoma reveals similar language in their versions of the ORA. For example, non-personnel contact information is required to be disclosed in Texas, Arkansas, and other neighboring states. If the Legislature intends to prohibit the disclosure of such information in the future, the OSDE will implement the law.

III. Grade-levels, Enrollment and Attendance

In your July correspondence, you ask “*did Epic Blended Charter School report grade-level enrollment and attendance to the OSDE in which the Charter School did not provide ‘instruction’?*” As the OSDE understands the question, it must be broken into subparts, as follows:

- A. Did Epic – Rose State report students as having enrolled in the school in grade levels that were not able to be offered at the school; and,
- B. Was the attendance information certified by Epic – Rose State consistent with statutory requirements for attendance at non-statewide virtual charter schools? See letters dated July 11 and 16, 2019, attached as Exhibits “A” and “B.”

A. Enrollment and Grade Levels Offered

In your letters of July 11 and 16, you question why the OSDE has been provided with information certified by Epic Charter Schools to show that Epic – Rose State has enrolled students in grades Pre-K through 12, when their website identifies only students in grades Pre-K through 5 being able to access the blended learning centers. With that question, you allege that the two cannot co-exist such that “[t]hese federal and state dollars are apparently without sufficient oversight.” *Id.* Initially, on its face, information in certified reports relating to enrollment and grade levels offered by Epic – Rose State do not conflict with statements on a website about what grade levels may access physical facilities for instruction. In other words, the two statements in two separate places about two separate matters do not necessarily equate to a requirement that students in higher grade levels may not enroll in and attend the school, albeit virtually.

A review of supporting documents makes this clearer. The answer as to why enrollment in grades Pre-K through 12 appear is simple: the application for sponsorship submitted to Rose State Community College (“Rose State”), and the subsequent sponsorship contract entered into between Rose State and Community Strategies, Inc., states that the academic program shall include providing educational services (i.e., to students enrolled) in grades PK-12. See Contract, attached as Exhibit “N.” Furthermore, in the official request for site codes submitted to the OSDE, Epic – Rose State identified a request for site codes Elementary (Grades Pre-K to 5), Middle School (Grades 6-8), and High School (Grades 9-12). See request for site codes, attached as Exhibit “O.” In other words, the request for site codes was for grade levels consistent with the grade levels provided and authorized in the sponsorship contract for Epic – Rose State. Additionally, the OSDE has received certified enrollment reports from Epic – Rose State, with accompanying student contact information for such enrolled students that are consistent with the aforementioned grade-level offerings.

Further, in your July correspondence, you in part describe Epic – Rose State as a Blended Charter School and in another part describe it as a “brick and mortar” charter school. A review of the sponsorship contract for Epic – Rose State describes the school as a charter school serving students by utilizing both a blended and full-time virtual option for students enrolled. To be clear, while there may currently be confusion that the SVCSB

is solely authorized to approve the offering of full-time virtual schools and instruction, the statutes relating to the SVCSB merely provide that only this state agency authorizes *statewide* virtual schools. In other words, a traditional public school district or a charter school sponsored by an entity other than the Statewide Virtual Board may offer full-time virtual instruction to any of its resident students. Oklahoma law, at 70 O.S. § 3-145.5(A) expressly provides:

Notwithstanding any other provision of law, beginning July 1, 2014, **no school district shall offer full-time virtual education to students who are not residents of the school district** or enter into a virtual charter school contract with a provider to provide full-time virtual education to students who do not reside within the school district boundaries. (*Emphasis added*).

The term “resident students” applies to students entitled to attend a school district because they actually live in its attendance boundaries, as opposed to students who are entitled to attend a school because they have been accepted through an inter-district transfer. With respect to Rose State, as you acknowledge in your correspondence, there are two locations (Oklahoma County and Tulsa County), and students who are residents of either county may openly enroll and receive instruction via a blended learning model or via full-time online delivery. Although full-time online education is an option a district may only provide to its residents, **a school district may offer part-time virtual education to any of its enrolled students**, regardless of whether they live in the district or attend under a transfer. In order for virtual education to be considered “part-time,” a student must be enrolled in and attending at least one course in a traditional classroom setting at a school in the district.

B. Attendance Requirements

While charter schools are exempt from certain state regulations and statutes relating to public schools, the Charter Schools Act mandates that a “charter school shall provide instruction each year for at least the number of days required” for traditional public schools under the law that establishes the minimum length of a school year. 70 O.S. § 3-136(A)(11). Charter schools, like traditional public schools, must also keep records of attendance for each student. 70 O.S. § 3-135(C)(4).

As you know, specific attendance provisions apply to statewide virtual charter schools approved and sponsored by the SVCSB, requiring said schools to adopt attendance policies consistent with the requirements set forth in that statute. 70 O.S. § 3-145.8. For charter schools authorized by sponsors other than the SVCSB, the Charter Schools Act does not specifically address attendance determinations. What then, are the requirements for attendance in traditional schools, brick-and-mortar charter schools, and non-statewide virtual charter schools? The simple answer is that traditional public schools, brick-and-mortar charter schools, and non-statewide virtual charter schools establish their own attendance policies consistent with applicable law. These two contexts *may* not be mutually exclusive. A traditional public school with a virtual school offering and/or a non-statewide virtual charter school *may* adopt the attendance requirements that a statewide virtual charter school is *required* to adhere to, provided students with a solely brick-and-mortar schedule

meet the requirements that the law historically requires. In fact, a number of traditional public school districts have adopted attendance requirements for the virtual programs within their districts that are substantially similar to those required for statewide virtual charter schools. It appears that Epic – Rose State has adopted an attendance policy that parallels that which has been adopted by Epic One on One Virtual as required pursuant to 70 O.S. § 3-145.8. Because attendance policies are locally determined, this question could reasonably be directed to officials for Epic Charter Schools.

An overview of academic calendar requirements may help contextualize a general shift toward offering school districts greater flexibility in designing the school year for their students while still maintaining effective standards. Historically, all public schools were required to be in session for at least six instructional hours per day for at least 180 days per school year, which is still one model available to Oklahoma school districts. 70 O.S. § 1-109(A). In 2009, however, the statute was amended to authorize school districts to use a calendar model based instead on a minimum of 1,080 instructional hours.

Because student attendance and the systems used to track it were originally designed around a standardized school day of six instructional hours, Oklahoma's traditional "seat time" attendance provisions were historically tied to that model. The administrative rule addressing the audit of attendance records in the school accreditation context states:

A student must be in attendance for two-thirds (2/3) of the first half of the school day to be recorded as present for one-half day; likewise, a student must be in attendance for two-thirds (2/3) of the second half of the school day to be recorded present for one-half day. Oklahoma Administrative Code ("OAC") 210:10-1-5(f)(2).

Further Oklahoma law includes an authorization that entitles public school students to be classified "in attendance" when they are "participat[ing] in an online course approved by the district board of education." 70 O.S. § 1-111(C). With the same legal and pedagogical foundations as the other part-time online instruction options authorized in Oklahoma, **"blended" instructional models** have begun emerging that combine online instruction with in-person teacher interaction. How a school district determines student attendance for blended courses falls under district authority, as it is authorized under current law for districts to provide instruction in a combination of traditional classroom settings and online content delivery.

A blended instructional model may fall anywhere along a spectrum of primarily in-person instruction with computer-based enrichment activities to predominantly online courses with in-person support available to students as needed. Because many instructional approaches are possible within blended learning, it is appropriate for school districts to determine whether attendance for any given blended course or program is based on a

traditional seat time model or a competency-based model as referenced in 70 O.S. §§ 11-130.6 and 1-111(C)(6). Many districts already include both in-person and online participation as components of attendance for virtual coursework.

IV. School Report Cards

In your July correspondence, you ask the following:

- A. Did the OSDE provide an "A-F Letter Grade" to Epic – Rose State for Middle School and High School sites that students were not provided admission or facilities?*
- B. Did the OSDE provide school report cards to Epic Blended Schools where a facility is not provided?*
- C. Did the OSDE provide in 2018 an "A-F letter grade" for Epic Blended Charter School sites that were not allowed grade-level entry for those grade levels were not provided: [sic] Epic Blended Charter School allowed entry to grades Pre-K to 5th grades on its website for fiscal year 2017-18. Grades 6th-12th grades were not allowed entry during 2017-18 at its two (2) Epic Blended Charter site locations during the 2017-18 school year.*
- D. There were 91 public school sites that received a "No Grade" for the 2018 Oklahoma School Report Card. While Epic – Rose State high school sites (OKC and Tulsa) received a No Grade for 2018, it was included along with 89 other school sites.*
- E. All Epic Blended Schools A-F letter grades were listed by the OSDE under Oklahoma County and the site locations were listed as: Tulsa County was not listed by the OSDE in its annual 2018 A-F report card as containing site locations for Epic Blended Charter School. See Letters date July 11 and 16, 2019, attached as Exhibits "A" and "B." (Emphasis added).*

The OSDE understands your questions to mean:

- A. Did the OSDE provide school report cards to Epic – Rose State for the middle school grade span (i.e., middle school site) and separately at the high school grade span when students were not enrolled at such sites?*
- B. The OSDE provided school report cards to Epic – Rose State for the middle schools and separately for the high schools where a facility and school site code were not provided.*
- C. Did the OSDE provide school report card grades for Epic – Rose State sites with indicator information derived from grade levels that were not authorized to be offered by Epic Rose State?*
- D. Why were certain Epic – Rose State sites among the 153 school sites in the State to not receive an overall grade on the 2018 school report card?*
- E. Why is Epic – Rose school report card identified as Oklahoma County?*

With these understandings in mind, the following responses are provided:

A. Enrollment

The OSDE did not provide school report cards for school sites where students were not reported as being enrolled. The accountability system uses certified enrollment data from a school's Annual Statistical Report (ASR). The ASR also provides certified data to calculate Full Academic Year (FAY) criteria as well as identifying students who are chronically absent. The OSDE Office of Accountability also receives certified data that reflects the courses students took and the grades students received in grades 11 and 12 for approved postsecondary opportunity types. Further, the OSDE receives certified course information from CareerTech for students whom CareerTech shows students enrolled in said courses.

The Oklahoma School Report Cards for the Epic Blended Charter middle schools were calculated using the school's enrollment information, student-level daily attendance, and state test scores. The School Report Cards for both Epic Blended Charter School's high schools were calculated by using enrollment information, student-level daily attendance, state test scores, and participation in postsecondary opportunities.

B. Site Codes

The OSDE did not provide a school report card for a site that was not requested and authorized. Upon establishment of a new public charter school, the following information must be filed with the OSDE: 1) copy of the sponsor's board minutes approving the charter school application; 2) copy of the charter application; 3) approved contract; and, 4) letter to the OSDE Office of Accreditation, with the following: a) request for the school to be assigned a county – district – site code; b) address of the charter school; c) contact information for school administrator or designee; d) grades served; and, e) month and year the charter will begin operation. *See* OAC 210:40-81-5. This information, including a request for site codes was provided by Epic – Rose State in July 2017 to serve elementary, middle, and high school level students in both Oklahoma and Tulsa counties. *See* Exhibit "O." On July 24, 2017, county, district and site codes were approved and provided by the Office of Accreditation. *Id.*; *see also*, Section III, herein.

C. 2017-18 Certified Data – Grade – Levels and Enrollment

The OSDE did not provide a school report card with information derived from students who were not authorized to be enrolled at such school. In addition to the response set forth above, the certified data the OSDE receives, includes but is not limited to evidence of student enrollment in Epic – Rose State with student name, gender, race, attendance dates, school calendar, entry date and/or exit date. *See* Sections III and IV, hereinabove. The certified October 1 report is a report of enrollment on October 1. Since October 1, 2017, was a Sunday, this report captured student enrollment on Monday, October 2, 2017. The certified First Quarter Annual Statistical Report (FQSR), certifies enrollment information for the first quarter of the year. The Annual Statistical Report (ASR) is a

certified annual report accounting for all enrollment records for a school year. For SY 2017-2018, Epic – Rose State reported and certified its enrollment data as follows:

- October 1 report was certified on October 17, 2017.
- FQSR report was certified on November 13, 2017.
- ASR report was confirmed on June 20, 2018.

D. Overall Grade

As an initial matter, for reasons including those identified below, there were 153 school sites (not 91) in the state that did not receive an overall grade on the 2018 Oklahoma School report card. The overall grade on the Oklahoma School Report Cards for high schools is calculated for schools that have at least the academic achievement, postsecondary opportunities, graduation, and chronic absenteeism indicator. Schools that do not have one or more of these indicators will not receive an overall grade. High schools that also have the English Language Proficiency Assessment progress indicator have an overall grade. Epic Blended Charter Schools began serving students in the 2017-2018 academic year. The 2018 Oklahoma School Report Cards reflect a schools' graduation score by calculating a school's 4-year Adjusted Cohort Graduation Rate (ACGR) from the 2017 cohort and a school's 5-year Adjusted Cohort Graduation Rate (ACGR) from the 2016 cohort. Since the school was not open for 2015-2016 (2016 cohort) or 2016-2017 (2017 cohort), the OSDE could not calculate the indicator for both Epic – Rose State high schools. Therefore, the graduation indicator did not apply and the schools did not receive an overall grade.

E. County Code – Oklahoma County

The public dashboard (oklaschools.com) populates schools for each county by their county code, which is part of the unique school identifier assigned to all schools by the Office of Accreditation, which is '55' for Oklahoma County.¹ Since the primary mailing address of the local education agency (LEA) is in Oklahoma County, Epic – Rose State is associated with County Code "55", indicating Oklahoma County. As reflected on the public dashboard for school report cards, Epic – Rose State is identified with the following sites, which correspond with the county-district-site codes requested and subsequently assigned to Epic – Rose State.

- 1) Epic Blended Tulsa-High School
- 2) Epic Blended Tulsa-Middle School
- 3) Epic Blended Tulsa-Elementary School
- 4) Epic Blended Oklahoma City-High School
- 5) Epic Blended Oklahoma City-Middle School
- 6) Epic Blended Oklahoma City-Elementary School

¹ The unique identifier is commonly referred to as the "county-district-site code." For example, Epic – Rose State High School has the unique identifier: 55 G008 961.

This is not uncommon, as a cursory review reveals a number of school sites whose physical address is identified in a given county, yet is different than the county where the district's primary mailing address is located. Therefore, in those instances as well, the public dashboard populates the school site to be identified with the county where the district is located.

V. Request for an Audit

As you are aware, on July 19, 2019, the Governor and State Superintendent requested that the State Auditor and Inspector conduct an audit of Epic Charter School and all related entities. As such, and given the pending reviews by additional entities that have jurisdiction outside that afforded to the OSDE, the OSDE is not able to comment on certain matters requested in your July 11 and July 16 correspondence.

VI. Conclusion

The OSDE and State Board strongly believe they have exercised the oversight for which they are statutorily authorized. Thousands of students and families choose virtual and blended instructional models, and it is important that we all stay informed, knowledgeable, and proactive to ensure the faithful implementation of such models within the requirements of existing laws and regulations. In fact, this is true regardless of the type of school. Because some of the issues raised in your recent questions have implications for traditional school districts as well as charter schools, you were also provided with a copy of a memo earlier this summer that our office prepared to make clarifications for OSDE Staff about questions received relating to attendance issues affecting public schools.

Online platforms for instruction, whether in a traditional classroom setting or in a full-time virtual setting, are here to stay. That being said, additional measures may be needed to provide greater oversight. We look forward to continuing our work with you and other education stakeholders to ensure Oklahoma taxpayer dollars are accounted for and all Oklahoma public school students are provided with a high-quality education that gives them access to a successful future.

If you have questions or wish to discuss these matters further, please do not hesitate to contact me.

Sincerely,



Brad Clark
General Counsel



Hickman Law Group

attorneys counselors mediators

William Hickman
hickman@hickmanlawgroup.com

September 17, 2019

VIA PROCESS SERVER:

Ron Sharp
1835 N. Oklahoma Ave.
Shawnee, OK 74804

RE: Cease & Desist Demand

Dear Mr. Sharp:

I am sending you this correspondence on behalf of the Board of Education (the "Board") of Epic Charter Schools ("EPIC" or the "School"). If you are represented by legal counsel, please forward this letter to your attorney and have your attorney notify our office of said representation.

You are hereby put on notice to **CEASE AND DESIST ALL DEFAMATION OF EPIC, ITS STAFF AND FALSE ACCUSATIONS RELATED TO THE SCHOOL**. Epic has learned that you have engaged in publishing, disseminating or otherwise promoting false, destructive, defamatory, and baseless allegations about the School. Your allegations are baseless and without merit. Under Oklahoma law, it is unlawful to defame another by libel or slander.

Your defamatory statements include but are not limited to, those made in a press release dated August 26, 2019. For example, the headline of said release states, "Virtual Charter School Board verifies Epic is not following law regarding enrollment practices." This statement is a lie. Further, Dr. Wilkinson, the executive director of the Statewide Virtual Charter School Board ("SVCSB"), has confirmed that she has not had any discussions with you regarding Epic. What makes matters worse for you, is that you knew that your statements were false. For example, attached as Exhibit "A" is a letter from Dr. Wilkinson, the executive director of the SVCSB, in which she states "neither the Statewide Virtual Charter School Board nor I have communicated with the press regarding Epic other than responding to open records requests. The Statewide Virtual Charter School Board has not met with Senator Sharp, nor has the Board discussed Senator Sharp's public comments in any board meeting." Further, attached as Exhibit "B" is an email from Dr. Wilkinson stating that the "SVCSB has made no determinations regarding Epic One-on-One Charter School's enrollment practices. Clearly, the SVCSB has not verified any unlawful enrollment practices of Epic as evident from the statements of the Executive Director and the fact that there has been no action taken by the SVCSB, as a public body, in a lawful public meeting, which would be required by law.

Your press release also states the "SDE clarified that by law the BLCs are subject to the same attendance requirements as traditional charter schools, not virtual charter schools." This statement is also a lie. As you are aware, Epic students in the blended charter in Oklahoma and Tulsa counties are not authorized by the SVCSB. Rather, these students fall under the jurisdiction of Rose State College, the authorizer for Epic blended charter virtual students. Again, Dr. Wilkinson makes this clear in her email stating, "The SVCSB does not have any jurisdiction over Epic Blended Charter School and cannot make such a determination." This statement was made in response to my question number 2 in a letter to the SVCSB attached as Exhibit "C" requesting her to confirm whether your statements accurately reflected her comments about the attendance policy for Epic Blended.



Additionally, under Oklahoma law, attendance policies for a virtual school that is not a statewide virtual school are set by the school – not by the Statewide Virtual Board. This fact was relayed clearly to you in a letter sent from the Oklahoma State Department of Education. The eighth page of the Aug. 13 letter attached as Exhibit “D” states:

“To be clear, while there may currently be confusion that the SVCSB is solely authorized to approve the offering of full-time virtual schools and instruction, the statutes relating to the SVCSB merely provide that only this state agency authorizes statewide virtual schools. In other words, a traditional public-school district or a charter school sponsored by an entity other than the Statewide Virtual Board may offer full-time virtual instruction to any of its resident students.”

The letter also informed you about attendance requirements related to charter schools. On page 9 of the SDE letter, it states:

“The simple answer is that traditional public schools, brick and mortar charter schools and non-statewide virtual charter schools establish their own attendance policies consistent with applicable law. ... A traditional public school with a virtual school offering and/or a non-statewide virtual charter school may adopt the attendance requirements that a statewide virtual charter school is required to adhere to”

You have elected to double down on your position by publishing your statements in the Shawnee News Star and other local newspapers. Your statements in these other publications contain similar false statements that constitute defamation.

Pursuant to Oklahoma law, libel is a false or malicious unprivileged publication by writing, which exposes any person/entity to public hatred, contempt, ridicule, or which tends to deprive such person / entity of public confidence, etc. Furthermore, your statements are not privileged under Oklahoma law and therefore you have no defense to making false statements about a public school. Based on your prior knowledge that your statements were false, your actions are with malice and in bad faith. As such, your false statements constitute libel under Oklahoma law.

You shall immediately cease any further publication of any false or misleading statements regarding Epic, its staff and the School. Further, you shall publish a retraction of your previous statements to address the false and misleading statements therein. You have until close of business 7 (seven) days from the receipt of this letter to inform me as to whether you agree to abide by this cease and desist and to publish a retraction of your statements.

Your continued efforts in violation of this cease and desist demand may result in immediate legal action. You are required to comply with these directives **immediately** to avoid legal action. In the event Epic pursues legal action, you may be responsible for any legal fees and costs associated with such a lawsuit. We recommend that you consult with an attorney regarding this matter.



Hickman Law Group
attorneys counselors mediators

Epic sincerely hopes that you will end your hostilities, and there will no more false and defamatory accusations or other harassment of the School. Epic service nearly 1,500 students in your senate district, which represents thousands of families and friends.

If you have any questions, please do not hesitate to contact me.

Sincerely,



William Hickman

Enclosures

VIA E-MAIL WITH ORIGINAL TO FOLLOW:

Mr. William H. Hickman
Hickman Law Group
330 West Gray Street, Suite 170
Norman, OK 73069

RE: Epic Charter Schools

Dear Mr. Hickman,

I am in receipt of your letter dated August 28, 2019. In response to your questions regarding Senator Ron Sharp's August 26, 2019 press release, neither the Statewide Virtual Charter School Board nor I have communicated with the press regarding Epic other than responding to open records requests. The Statewide Virtual Charter School Board has not met with Senator Sharp, nor has the Board discussed Senator Sharp's public comments in any board meeting.

While I understand that Epic Youth Services supports multiple schools, the Statewide Virtual Charter School Board is the authorizer of Epic One-on-One Charter School only, with no knowledge of the policies and procedures of any other Epic-related entities.

Sincerely,

Rebecca L. Wilkinson

Rebecca L. Wilkinson, Ed. D.
Executive Director, Statewide Virtual Charter School Board



From: Rebecca Wilkinson

Sent: Thursday, September 05, 2019 12:52 PM

To: William Hickman <hickman@hickmanlawgroup.com>; 'marie.schuble@oag.ok.gov' <marie.schuble@oag.ok.gov>

Cc: 'robert.franklin@tulsatech.edu' <robert.franklin@tulsatech.edu>; 'jharrington@fundsforlearning.com' <jharrington@fundsforlearning.com>; 'ethanlindsey7@gmail.com' <ethanlindsey7@gmail.com>; 'mhamrick1@gmail.com' <mhamrick1@gmail.com>; 'Pisshepherd@yahoo.com' <Pisshepherd@yahoo.com>; Michael Rogers <Michael.Rogers@sos.ok.gov>; bart.banfield@epiccharterschools.org

Subject: RE: Response to August 30, 2019 Letter

Mr. Hickman,

In response to your letter dated August 30, 2019:

1. The Statewide Virtual Charter School Board has made no determinations regarding Epic One-on-One Charter School's enrollment practices.
2. The Statewide Virtual Charter School Board does not have any jurisdiction over Epic Blended Charter School, and cannot make such a determination.
3. No.

We acknowledge receipt of your Open Records Request. We will review these items and respond accordingly.

Rebecca L. Wilkinson, Ed. D.

Executive Director, Statewide Virtual Charter School Board

2500 North Lincoln Boulevard, Suite 4-37

Oklahoma City, OK 73105-4599

405.522.0717

Rebecca.Wilkinson @svcsb.ok.gov



September 3, 2019

VIA E-MAIL WITH ORIGINAL TO FOLLOW:

Rebecca Wilkinson, Ed. D. & Marie Schuble
Executive Director
Statewide Virtual Charter School Board
2500 N. Lincoln Blvd., Suite 4-37
Oklahoma City, OK 73105

RE: Epic Charter Schools

Dear Dr. Wilkinson & Ms. Schuble:

I am in receipt of your letter dated August 30, 2019. My client continues to have questions:

1. In a recent press release, Sen. Sharp states, "his recent correspondence with the Oklahoma Statewide Virtual Charter School Board (OSVCSB) verifies his concerns of further illegal enrollment practices by Epic Charter Schools in order to receive additional state funding." The records recently produced do not include any communications with Sen. Sharp. Please review your files and provide any communications with Sen. Sharp from January 1, 2019 to present. And, please confirm whether the quoted statement is accurate or not – has the OSVCSB determined that Epic has engaged in illegal enrollment practices?

2. In a recent press release, Sen. Sharp states, "the State Department of Education (SDE) clarified that by law the BLCs are subject to the same attendance requirements as traditional charter schools, not virtual charter schools. OSVCSB Executive Director Dr. Rebecca Wilkinson agreed with the SDE concerning the attendance policy in email correspondence with Sharp on August 12, 2019." The release continues by stating, "Epic Blended Charter School cannot use the virtual attendance policy of OAC 777 contrary to Epic's July statements." Please confirm whether these statements accurately reflect your communications with Sen. Sharp. Please confirm whether you have reviewed the legal opinions from the SDE General Counsel regarding these same questions and if you sought such advice prior to making these statements to Sen. Sharp. I previously attached the letter from Mr. Clark to Sen. Sharp for your convenience.


3. Have you or any representative of the OSVCSB, including legal counsel, provided any student records provided to you by Epic, such as transcripts or teacher rosters, to any person outside of the OSVCSB? If so, please describe what records and to whom they were provided.



My client respectfully requests that the next OSVCSB board meeting have an agenda item to discuss and clarify these issues in a public meeting. Please confirm at your earliest opportunity if this request will be granted as my client has parents that would like to speak to the board.

If you have any questions, please not hesitate to contact me.

Sincerely,



William H. Hickman

CC: SVCSB Board Members
Epic Charter Schools



JOY HOFMEISTER
STATE SUPERINTENDENT of PUBLIC INSTRUCTION
OKLAHOMA STATE DEPARTMENT of EDUCATION

August 13, 2019

VIA E-MAIL W/ HAND DELIVERY TO FOLLOW

Sen. Ron Sharp
2300 N. Lincoln Blvd., Rm. 412
Oklahoma City, OK 73105
sullivan@lsb.state.ok.us

Senator Sharp,

Thank you for your correspondence of July 11 and 16. I appreciate your efforts to fully explain your questions and the frustration you have felt with obtaining clarity about the complex issues that can sometimes be involved with designing and delivering virtual education options within the public schools framework.

In addition to your most recent requests for data and information, we took the opportunity to review what our office has previously provided to you and to others relating to virtual education attendance. In our review of your prior requests, it appears that the Oklahoma State Department of Education (the "OSDE") responded to every request previously sent. In an effort to continue to be responsive to you, this correspondence seeks to address each issue you raised in your July 11 and 16 correspondence. For convenience and ease of review, a copy of the July 11 and 16 correspondence is enclosed. Additionally, because the correspondence and information sent on July 11 and July 16 total approximately 70 pages, this letter will be addressed in categories attempting to correspond to the issues you raised. See letter dated July 11, 2019, attached as Exhibit "A." See also letter dated July 16, 2019, attached as Exhibit "B."

We are committed to remaining responsive to your requests for information and documentation. That commitment, however, does not negate the fact that, pursuant to your Open Records request, the OSDE must engage in months of reviewing more than 15,000 pages of information to ensure that private student information is fully protected and properly redacted on an individual basis as required by applicable state and federal laws.

Furthermore, certain information cannot be provided as it is not within our possession or authority to release it. To the extent that you raise issues relating to private school enrollments, homeschool student information, federal tax compliance, and/or



compliance with Department of Human Services laws or regulations relating to daycare centers, the OSDE is unable to respond because these are outside our jurisdiction and/or possession. As a result, and to the extent you have not already done so, I respectfully request that you address such matters to the appropriate authorities with knowledge, possession, and jurisdiction over them. Additionally, we are unable to understand the question(s) or issue(s) in a few statements in your correspondence. For example, your correspondence provides as follows:

"The Oklahoma State Board of Education did grant students [sic] Epic¹ Blended Charter School, not was [sic] the ADM requirement for funding this Charter within the "Funding For School" on page #3 of the Contract for Epic Blended Charter School-Rose State College (2017-2022)."

"210:15-34-1-16 [sic] will be referred to in a subsequent [sic]"

"Epic Blended Charter School reported 7,674.60 Weighted ADM students to the OSDE for [sic] allocation for fiscal year 2018. The OSDE provided \$23,029,667.52 for Fiscal Year 2018." See July 11 letter, attached as Exhibit "A." (Emphasis added).

Finally, you raise issues in the July correspondence which, while we would like to address such matters with you, the agency cannot comment on at this time as they are subject to pending audits and reviews by other government entities, including those by the Oklahoma State Auditor and the Oklahoma State Bureau of Investigation (the "OSBI"). As such, and in light of the foregoing, the OSDE respectfully requests that we find a mutually convenient time to meet with you and discuss anything that may remain and which we are able to address.

I. OSDE and State Board Oversight

In your recent letters, you raise questions about the oversight of public schools, including but not limited to that by the OSDE and Oklahoma State Board of Education (the "State Board").

Oklahoma statutes prioritize and value local control, relying on decision-making at the local level. In the case of a public charter school, oversight is to be provided through the local board of education. With respect to oversight and accountability of public charter schools, including but not limited to statewide virtual charter schools and university-sponsored charter schools, the Oklahoma Charter Schools Act, at 70 O.S. 3-131 *et seq.*, imposes oversight requirements on sponsors. For example, the Act requires that a sponsorship contract contain a performance framework to measure the effectiveness of charter schools and their governing boards across multiples indicators. *See* 70 O.S. § 3-

¹ "Epic Charter Schools" may be used to collectively refer to Epic Charter School, a statewide virtual charter school sponsored by the Statewide Virtual Charter School Board ("SVCSB"), and Epic Charter School, sponsored by Rose State Community College ("Rose State"). When referred to singularly, the school sponsored by Rose State will be referred to as "Epic - Rose State."

135. The required indicators include, at a minimum, the following: 1) student attendance; 2) financial performance and sustainability; 3) graduation rate; 4) postsecondary readiness; 5) student academic proficiency; 6) student academic growth; and, 7) recurrent enrollment from year to year. *Id.* These requirements are in addition to, and complementary to, a local board of education's general requirements to adopt policies and procedures for the implementation of additional oversight as required by Title 70 of the Oklahoma Statutes. To the extent that there are questions relating to the sponsors of the public charter schools identified in your correspondence and how these sponsors provide oversight, the OSDE and State Board respectfully request that you direct attention to those entities. The OSDE does not have statutory regulatory authority over charter school sponsors, including the Statewide Virtual Charter School Board (the "SVCSB"), which is a state agency separate from the OSDE.

In addition to the oversight provided through local school boards and sponsors of charter schools, the OSDE and State Board provide general oversight of public schools as provided for in federal and state law, including that provided in 70 O.S. § 3-104. There are also programmatic specifics relating to the oversight provided, such as monitoring of special education programs conducted pursuant to the requirements of the Individuals with Disabilities Education Act ("IDEA") at 20 U.S.C. 1401 *et seq.*; a public school's compliance with the requirements for reporting financial transactions through the Oklahoma Cost Accounting System ("OCAS") at 70 O.S. 5-135, *et seq.*; accreditation of public schools as provided in 70 O.S. 3-104.1; and measures of school accountability as required by the Every Student Succeeds Act ("ESSA") and Oklahoma law at 70 O.S. § 1210.545. In contrast to the oversight responsibilities of local school boards, the OSDE and State Board oversight rely on ensuring that a public school – traditional, charter, or virtual charter – comply with federal and state laws, and that their data reconciles with the state's data. For example, the statewide accountability system uses enrollment data from a school's First Quarter Statistical Report ("FQSR") and Annual Statistical Report ("ASR"), both of which are certified by sworn affidavit from the district that the information contained therein is true and correct. The ASR also provides certified data to calculate Full Academic Year (FAY) criteria used in accountability calculations, as well as identifying students who are chronically absent. The OSDE's Office of Accountability also receives certified data that reflects the courses students completed.

Within its authority in law and when presented with evidence and information, the OSDE and State Board may engage in additional reviews and oversight, which may include working with investigative authorities that have jurisdiction over matters above and beyond that of the OSDE and State Board. Additionally, the OSDE and State Board frequently work with the Legislature to find reasonable mechanisms to enhance oversight of public schools.

II. Compliance with the Oklahoma Open Records Act (the "ORA") and Prior Information Requested From and Supplied by the OSDE

In the July 11 and July 16 correspondence, you state a belief that you "[do not consider the OSDE to be compliant with the Oklahoma Open Records Act/ FOIA!]" Your assertion is that because you are a State Senator and a sitting member of the Appropriations Subcommittee on Education, the OSDE must provide you with any and all requested records and information without charge and without the legal review necessary to ensure that private student information is protected in compliance with applicable state and federal laws and regulations. For the reasons set forth below, the OSDE and State Board respectfully disagree. It is important to reiterate that to the extent possible, the OSDE and State Board have consistently provided timely information pursuant to your requests.

On January 25, 2019, you provided an email to OSDE staff (copying Jim Beckham, superintendent of Blanchard Public Schools), requesting a review of "all federal non-profit tax forms filed by under [sic] the nonprofit description of Community Strategies org. [sic] which in 2011 began to be referred to as Community Strategies LLC/EPIC VIRTUAL CHARTER SCHOOL." See E-mail dated January 25, 2019, attached as Exhibit "C." The stated purpose of the request involved the potential "violation of contractual law under Oklahoma statutes." The OSDE does not have jurisdiction over tax matters and notified you that it was not able to comply with your request. Subsequently, on January 29, 2019, you submitted an email to Senator Brooks (copying OSDE staff), requesting an "explanation and request to answer legal questions." See E-mail dated January 29, 2019, attached as Exhibit "D". The email did not appear to require an OSDE response (the OSDE was only copied on the email), and therefore we did not do so.

On March 21, 2019, at 9:40 a.m., you sent an email to OSDE Chief of Government Affairs Carolyn Thompson, asking:

- a. *"Has the Oklahoma State Department of Education been informed that the non-profit Community Strategies, Inc. [trade name Epic Virtual Charter school] provides, by contractual agreement, to the for-profit, Epic Youth Services, LLC, an initial fee of \$125,000 and an additional 10% of its total gross revenue as an "indirect cost allocation"?*
- b. *Does the OSDE have on file a request for documentation from the Community Strategies, Inc. [aka: Epic Virtual Charter School] as to the purpose for this transfer of state appropriated dollars to the for-profit Epic Youth Services, LLC?*
- c. *Please provide to my office copies of all directed emails and correspondence from anyone at OSDE to or from [sic] : Ben Harris, David Chaney, and Josh Brock [Epic Youth Services, LLC]. [If such correspondence does not exist, please make that notation].*

- d. *Please provide the amount, in dollars, that would equal the 10% Indirect Cost Allocation of state dollars that has been forwarded in gross revenue each year to Community Strategies, Inc. [aka: Epic Virtual Charter One on One school] since its opening.*
- e. *Please provide the OSDE dollar amount directed to the two brick and mortar charter school sites located on the two campus sites of Rose State College. [If these funds were directed to EPIC One on One, please indicate].*
- f. *Does the OSDE have any information that would indicate that State dollars have been transferred from one public school district to another public school district that is not within the scope of administrative or cooperative instructional purposes? If so, please provide that information." See E-mail dated March 21, 2019, attached as Exhibit "E." (Emphasis added).*

On that same evening, March 21, 2019 at 3:48 p.m., Ms. Thompson responded to your request with information and documents, responding to all questions except your request for any and all emails to or from any Epic Charter School or its representatives. *See Response, attached as Exhibit "F."* Given that the request was for records of communications potentially unlimited in scope of time, the OSDE respectfully requested that you submit an Open Records Request as a request of this nature would require the services of the Office of Management and Enterprise Services ("OMES"). Shortly thereafter, you submitted an Open Records Request for the following:

"Any correspondence to or from Ben Harris, David Chaney or Josh Brock; Any Epic school" from 2007 to present. See E-mail dated March 22, 2019, attached as Exhibit "G."

On March 29, 2019, pursuant to OMES protocol, the OSDE submitted your request for emails to the OMES, requesting that they pull all responsive email correspondence, noting that this was a legislative request.

While awaiting the retrieval of documents, on April 8, 2019, you requested OSDE staff attend a meeting in your office to discuss Epic Charter Schools. Following the meeting, you provided a written summation of your recollection of the meeting along with follow-up questions. As a result, the then-Deputy Superintendent of Finance and Federal Programs provided you with a detailed written response to your written summary, as well as other information and documents that you had requested in the April 8 meeting. A copy of the information provided to you following the April meeting is enclosed as Exhibit "H."

Subsequently, the OSDE received documents potentially responsive to your Open Records Request for 12 years of all communications between OSDE and any Epic school and/or its representatives. The volume of documents potentially responsive to your request which comprise more than 15,000 pages, much of which include personal student information. The OSDE made a determination that review of the documents to ensure compliance with

applicable laws and regulations (i.e., FERPA) would cause an excessive disruption of the essential functions of the OSDE. However, as you are aware, well before you issued your press release of July 11, 2019, the standard fee was waived for you.

On June 7, 2019, an email was again sent to Carolyn Thompson, requesting the following:

- a. *"Payment in dollars to Rose State College as the sponsor of Epic Blended Charter School from the period 2017-2018, and from the period 2018-2019?"*
 - i. *is the payment to Rose State College based on the number of students in daily attendance as reported to the OSDE/ please clarify?*
 - ii. *does the OSDE forward to the sponsor the sponsor's fee, or does the entity who represents the charter school?*
 - iii. *does the OSDE include an OCAS coding for the charter school to code the payment to the school's sponsor?*
 1. *if such an OCAS code is provided, please forward the documentation for Epic Blended Charter School for the years 2017-2018 and 2018-2019?*
- b. *Does the State Board of Education receive a sponsor's fee as the sponsor of a brick and mortar charter school?*
 - iv. *if the answer is to above question is, yes, please provide the dollar amount per charter school site received for all academic years in which the State Board of Education has been a sponsor of brick and mortar charter schools?*
- c. *Please include the statutory ADM attendance policy for brick and mortar charter schools in the State of Oklahoma in order to receive an [sic] weighted ADM allocation?*
 - v. *is the attendance policy to receive an OSDE weighted ADM allocation the same as a traditional public school?" See E-mail dated June 7, 2019, attached as Exhibit "I." (Emphasis added).*

Shortly thereafter, on June 12, 2019, your office sent an email advising that you needed this request filled "ASAP." See E-mail dated June 12, 2019, attached as Exhibit "J." On the evening of Friday, June 14, 2019, the OSDE responded to your request in full. See E-mail dated June 14, 2019, attached as Exhibit "K." Then, on June 17, 2019, and again on June 24, 2019, you emailed the undersigned counsel, asking about student attendance requirements, asking specifically in the former, if there is *"any exception in statute to a Blended Charter School operating under the OK Brick and Mortar Charter School Act where child [sic] do not have to show up for daily attendance. If so, please cite the statute."* See E-mails dated June 17, 2019, and June 24, 2019, attached as Exhibit "L." A response to these requests about student attendance was provided on July 2, 2019. See E-mail dated July 2, 2019, attached as Exhibit "M."

A. Open Records and Authorized Fees

Some have suggested that an Epic Charter School request for certified teacher information may have been prioritized over yours. However, unlike your request for a unique set of documents comprising thousands of pages over a 12-year period, the requested teacher information is already configured and is a commonly requested item under the Open Records Act. In fact, this type of dataset has been requested and provided approximately 80 times over the past 6 years, and therefore it is possible to fulfill it quickly upon request.

Others have argued that teacher contact information is not subject to disclosure pursuant to the ORA. Under the Oklahoma Open Records Act, "All records of public bodies and public officials shall be open to any person for inspection, copying, or mechanical reproduction during regular business hours," with the exception of certain information identified in statute as confidential (51 O.S. § 24A.5). Unless there is an exception that applies under a state or federal law to identify a specific type of information as confidential, the Open Records Act requires government bodies in Oklahoma—including state agencies and licensing entities—to release information from the records of the public body upon request:

"Except where specific state or federal statutes create a confidential privilege, persons who submit information to public bodies have no right to keep this information from public access nor reasonable expectation that this information will be kept from public access; provided, the person, agency or political subdivision shall at all times bear the burden of establishing such records are protected by such a confidential privilege." 51 O.S. § 24A.2

The plain language of the ORA authorizes certain information supplied to a licensing entity to be permissibly classified by the entity as confidential for purposes of the ORA, such as a licensee's Social Security number. However, the ORA does not allow the withholding of non-personnel contact information from being disclosed when requested. See 51 O.S. § 24A.5(2). Under this authorization, the OSDE redacts all Social Security numbers from teacher certification information requested under the ORA. With the exception of Social Security numbers, however, the OSDE is limited in the types of information it is authorized to redact from teacher certification data requested. This is because while the OSDE is the licensing entity for teacher certification, Oklahoma law does not classify teachers as state employees. Further, the ORA expressly provides that any information voluntarily supplied to a state agency *shall* be subject to full disclosure. See 51 O.S. § 24A.10. Addressing this issue would be the purview of the state legislature, but OSDE must follow current law. A cursory review of laws in states neighboring Oklahoma reveals similar language in their versions of the ORA. For example, non-personnel contact information is required to be disclosed in Texas, Arkansas, and other neighboring states. If the Legislature intends to prohibit the disclosure of such information in the future, the OSDE will implement the law.

III. Grade-levels, Enrollment and Attendance

In your July correspondence, you ask *"did Epic Blended Charter School report grade-level enrollment and attendance to the OSDE in which the Charter School did not provide 'instruction'?"* As the OSDE understands the question, it must be broken into subparts, as follows:

- A. Did Epic – Rose State report students as having enrolled in the school in grade levels that were not able to be offered at the school; and,
- B. Was the attendance information certified by Epic – Rose State consistent with statutory requirements for attendance at non-statewide virtual charter schools? See letters dated July 11 and 16, 2019, attached as Exhibits "A" and "B."

A. Enrollment and Grade Levels Offered

In your letters of July 11 and 16, you question why the OSDE has been provided with information certified by Epic Charter Schools to show that Epic – Rose State has enrolled students in grades Pre-K through 12, when their website identifies only students in grades Pre-K through 5 being able to access the blended learning centers. With that question, you allege that the two cannot co-exist such that *"[t]hese federal and state dollars are apparently without sufficient oversight."* *Id.* Initially, on its face, information in certified reports relating to enrollment and grade levels offered by Epic – Rose State do not conflict with statements on a website about what grade levels may access physical facilities for instruction. In other words, the two statements in two separate places about two separate matters do not necessarily equate to a requirement that students in higher grade levels may not enroll in and attend the school, albeit virtually.

A review of supporting documents makes this clearer. The answer as to why enrollment in grades Pre-K through 12 appear is simple: the application for sponsorship submitted to Rose State Community College ("Rose State"), and the subsequent sponsorship contract entered into between Rose State and Community Strategies, Inc., states that the academic program shall include providing educational services (i.e., to students enrolled) in grades PK-12. See Contract, attached as Exhibit "N." Furthermore, in the official request for site codes submitted to the OSDE, Epic – Rose State identified a request for site codes Elementary (Grades Pre-K to 5), Middle School (Grades 6-8), and High School (Grades 9-12). See request for site codes, attached as Exhibit "O." In other words, the request for site codes was for grade levels consistent with the grade levels provided and authorized in the sponsorship contract for Epic – Rose State. Additionally, the OSDE has received certified enrollment reports from Epic – Rose State, with accompanying student contact information for such enrolled students that are consistent with the aforementioned grade-level offerings.

Further, in your July correspondence, you in part describe Epic – Rose State as a Blended Charter School and in another part describe it as a "brick and mortar" charter school. A review of the sponsorship contract for Epic – Rose State describes the school as a charter school serving students by utilizing both a blended and full-time virtual option for students enrolled. To be clear, while there may currently be confusion that the SVCSB

is solely authorized to approve the offering of full-time virtual schools and instruction, the statutes relating to the SVCSB merely provide that only this state agency authorizes *statewide* virtual schools. In other words, a traditional public school district or a charter school sponsored by an entity other than the Statewide Virtual Board may offer full-time virtual instruction to any of its resident students. Oklahoma law, at 70 O.S. § 3-145.5(A) expressly provides:

Notwithstanding any other provision of law, beginning July 1, 2014, **no school district shall offer full-time virtual education to students who are not residents of the school district** or enter into a virtual charter school contract with a provider to provide full-time virtual education to students who do not reside within the school district boundaries. (*Emphasis added*).

The term “resident students” applies to students entitled to attend a school district because they actually live in its attendance boundaries, as opposed to students who are entitled to attend a school because they have been accepted through an inter-district transfer. With respect to Rose State, as you acknowledge in your correspondence, there are two locations (Oklahoma County and Tulsa County), and students who are residents of either county may openly enroll and receive instruction via a blended learning model or via full-time online delivery. Although full-time online education is an option a district may only provide to its residents, **a school district may offer part-time virtual education to any of its enrolled students**, regardless of whether they live in the district or attend under a transfer. In order for virtual education to be considered “part-time,” a student must be enrolled in and attending at least one course in a traditional classroom setting at a school in the district.

B. Attendance Requirements

While charter schools are exempt from certain state regulations and statutes relating to public schools, the Charter Schools Act mandates that a “charter school shall provide instruction each year for at least the number of days required” for traditional public schools under the law that establishes the minimum length of a school year. 70 O.S. § 3-136(A)(11). Charter schools, like traditional public schools, must also keep records of attendance for each student. 70 O.S. § 3-135(C)(4).

As you know, specific attendance provisions apply to statewide virtual charter schools approved and sponsored by the SVCSB, requiring said schools to adopt attendance policies consistent with the requirements set forth in that statute. 70 O.S. § 3-145.8. For charter schools authorized by sponsors other than the SVCSB, the Charter Schools Act does not specifically address attendance determinations. What then, are the requirements for attendance in traditional schools, brick-and-mortar charter schools, and non-statewide virtual charter schools? The simple answer is that traditional public schools, brick-and-mortar charter schools, and non-statewide virtual charter schools establish their own attendance policies consistent with applicable law. These two contexts *may* not be mutually exclusive. A traditional public school with a virtual school offering and/or a non-statewide virtual charter school *may* adopt the attendance requirements that a statewide virtual charter school is *required* to adhere to, provided students with a solely brick-and-mortar schedule

meet the requirements that the law historically requires. In fact, a number of traditional public school districts have adopted attendance requirements for the virtual programs within their districts that are substantially similar to those required for statewide virtual charter schools. It appears that Epic – Rose State has adopted an attendance policy that parallels that which has been adopted by Epic One on One Virtual as required pursuant to 70 O.S. § 3-145.8. Because attendance policies are locally determined, this question could reasonably be directed to officials for Epic Charter Schools.

An overview of academic calendar requirements may help contextualize a general shift toward offering school districts greater flexibility in designing the school year for their students while still maintaining effective standards. Historically, all public schools were required to be in session for at least six instructional hours per day for at least 180 days per school year, which is still one model available to Oklahoma school districts. 70 O.S. § 1-109(A). In 2009, however, the statute was amended to authorize school districts to use a calendar model based instead on a minimum of 1,080 instructional hours.

Because student attendance and the systems used to track it were originally designed around a standardized school day of six instructional hours, Oklahoma's traditional "seat time" attendance provisions were historically tied to that model. The administrative rule addressing the audit of attendance records in the school accreditation context states:

A student must be in attendance for two-thirds (2/3) of the first half of the school day to be recorded as present for one-half day; likewise, a student must be in attendance for two-thirds (2/3) of the second half of the school day to be recorded present for one-half day. Oklahoma Administrative Code ("OAC") 210:10-1-5(f)(2).

Further Oklahoma law includes an authorization that entitles public school students to be classified "in attendance" when they are "participat[ing] in an online course approved by the district board of education." 70 O.S. § 1-111(C). With the same legal and pedagogical foundations as the other part-time online instruction options authorized in Oklahoma, **"blended" instructional models** have begun emerging that combine online instruction with in-person teacher interaction. How a school district determines student attendance for blended courses falls under district authority, as it is authorized under current law for districts to provide instruction in a combination of traditional classroom settings and online content delivery.

A blended instructional model may fall anywhere along a spectrum of primarily in-person instruction with computer-based enrichment activities to predominantly online courses with in-person support available to students as needed. Because many instructional approaches are possible within blended learning, it is appropriate for school districts to determine whether attendance for any given blended course or program is based on a

traditional seat time model or a competency-based model as referenced in 70 O.S. §§ 11-130.6 and 1-111(C)(6). Many districts already include both in-person and online participation as components of attendance for virtual coursework.

IV. School Report Cards

In your July correspondence, you ask the following:

- A. *Did the OSDE provide an "A-F Letter Grade" to Epic – Rose State for Middle School and High School sites that students were not provided admission or facilities?*
- B. *Did the OSDE provide school report cards to Epic Blended Schools where a facility is not provided?*
- C. *Did the OSDE provide in 2018 an "A-F letter grade" for Epic Blended Charter School sites that were not allowed grade-level entry for those grade levels were not provided: [sic] Epic Blended Charter School allowed entry to grades Pre-K to 5th grades on its website for fiscal year 2017-18. Grades 6th-12th grades were not allowed entry during 2017-18 at its two (2) Epic Blended Charter site locations during the 2017-18 school year.*
- D. *There were 91 public school sites that received a "No Grade" for the 2018 Oklahoma School Report Card. While Epic – Rose State high school sites (OKC and Tulsa) received a No Grade for 2018, it was included along with 89 other school sites.*
- E. *All Epic Blended Schools A-F letter grades were listed by the OSDE under Oklahoma County and the site locations were listed as: Tulsa County was not listed by the OSDE in its annual 2018 A-F report card as containing site locations for Epic Blended Charter School. See Letters date July 11 and 16, 2019, attached as Exhibits "A" and "B." (Emphasis added).*

The OSDE understands your questions to mean:

- A. Did the OSDE provide school report cards to Epic – Rose State for the middle school grade span (i.e., middle school site) and separately at the high school grade span when students were not enrolled at such sites?
- B. The OSDE provided school report cards to Epic – Rose State for the middle schools and separately for the high schools where a facility and school site code were not provided.
- C. Did the OSDE provide school report card grades for Epic – Rose State sites with indicator information derived from grade levels that were not authorized to be offered by Epic Rose State?
- D. Why were certain Epic – Rose State sites among the 153 school sites in the State to not receive an overall grade on the 2018 school report card?
- E. Why is Epic – Rose school report card identified as Oklahoma County?

With these understandings in mind, the following responses are provided:

A. Enrollment

The OSDE did not provide school report cards for school sites where students were not reported as being enrolled. The accountability system uses certified enrollment data from a school's Annual Statistical Report (ASR). The ASR also provides certified data to calculate Full Academic Year (FAY) criteria as well as identifying students who are chronically absent. The OSDE Office of Accountability also receives certified data that reflects the courses students took and the grades students received in grades 11 and 12 for approved postsecondary opportunity types. Further, the OSDE receives certified course information from CareerTech for students whom CareerTech shows students enrolled in said courses.

The Oklahoma School Report Cards for the Epic Blended Charter middle schools were calculated using the school's enrollment information, student-level daily attendance, and state test scores. The School Report Cards for both Epic Blended Charter School's high schools were calculated by using enrollment information, student-level daily attendance, state test scores, and participation in postsecondary opportunities.

B. Site Codes

The OSDE did not provide a school report card for a site that was not requested and authorized. Upon establishment of a new public charter school, the following information must be filed with the OSDE: 1) copy of the sponsor's board minutes approving the charter school application; 2) copy of the charter application; 3) approved contract; and, 4) letter to the OSDE Office of Accreditation, with the following: a) request for the school to be assigned a county – district – site code; b) address of the charter school; c) contact information for school administrator or designee; d) grades served; and, e) month and year the charter will begin operation. *See* OAC 210:40-81-5. This information, including a request for site codes was provided by Epic – Rose State in July 2017 to serve elementary, middle, and high school level students in both Oklahoma and Tulsa counties. *See* Exhibit "O." On July 24, 2017, county, district and site codes were approved and provided by the Office of Accreditation. *Id.*; *see also*, Section III, herein.

C. 2017-18 Certified Data – Grade – Levels and Enrollment

The OSDE did not provide a school report card with information derived from students who were not authorized to be enrolled at such school. In addition to the response set forth above, the certified data the OSDE receives, includes but is not limited to evidence of student enrollment in Epic – Rose State with student name, gender, race, attendance dates, school calendar, entry date and/or exit date. *See* Sections III and IV, hereinabove. The certified October 1 report is a report of enrollment on October 1. Since October 1, 2017, was a Sunday, this report captured student enrollment on Monday, October 2, 2017. The certified First Quarter Annual Statistical Report (FQSR), certifies enrollment information for the first quarter of the year. The Annual Statistical Report (ASR) is a

certified annual report accounting for all enrollment records for a school year. For SY 2017-2018, Epic – Rose State reported and certified its enrollment data as follows:

- October 1 report was certified on October 17, 2017.
- FQSR report was certified on November 13, 2017.
- ASR report was confirmed on June 20, 2018.

D. Overall Grade

As an initial matter, for reasons including those identified below, there were 153 school sites (not 91) in the state that did not receive an overall grade on the 2018 Oklahoma School report card. The overall grade on the Oklahoma School Report Cards for high schools is calculated for schools that have at least the academic achievement, postsecondary opportunities, graduation, and chronic absenteeism indicator. Schools that do not have one or more of these indicators will not receive an overall grade. High schools that also have the English Language Proficiency Assessment progress indicator have an overall grade. Epic Blended Charter Schools began serving students in the 2017-2018 academic year. The 2018 Oklahoma School Report Cards reflect a schools' graduation score by calculating a school's 4-year Adjusted Cohort Graduation Rate (ACGR) from the 2017 cohort and a school's 5-year Adjusted Cohort Graduation Rate (ACGR) from the 2016 cohort. Since the school was not open for 2015-2016 (2016 cohort) or 2016-2017 (2017 cohort), the OSDE could not calculate the indicator for both Epic – Rose State high schools. Therefore, the graduation indicator did not apply and the schools did not receive an overall grade.

E. County Code – Oklahoma County

The public dashboard (oklaschools.com) populates schools for each county by their county code, which is part of the unique school identifier assigned to all schools by the Office of Accreditation, which is '55' for Oklahoma County.¹ Since the primary mailing address of the local education agency (LEA) is in Oklahoma County, Epic – Rose State is associated with County Code "55", indicating Oklahoma County. As reflected on the public dashboard for school report cards, Epic – Rose State is identified with the following sites, which correspond with the county-district-site codes requested and subsequently assigned to Epic – Rose State.

- 1) Epic Blended Tulsa-High School
- 2) Epic Blended Tulsa-Middle School
- 3) Epic Blended Tulsa-Elementary School
- 4) Epic Blended Oklahoma City-High School
- 5) Epic Blended Oklahoma City-Middle School
- 6) Epic Blended Oklahoma City-Elementary School

¹ The unique identifier is commonly referred to as the "county-district-site code." For example, Epic – Rose State High School has the unique identifier: 55 G008 961.

This is not uncommon, as a cursory review reveals a number of school sites whose physical address is identified in a given county, yet is different than the county where the district's primary mailing address is located. Therefore, in those instances as well, the public dashboard populates the school site to be identified with the county where the district is located.

V. Request for an Audit

As you are aware, on July 19, 2019, the Governor and State Superintendent requested that the State Auditor and Inspector conduct an audit of Epic Charter School and all related entities. As such, and given the pending reviews by additional entities that have jurisdiction outside that afforded to the OSDE, the OSDE is not able to comment on certain matters requested in your July 11 and July 16 correspondence.

VI. Conclusion

The OSDE and State Board strongly believe they have exercised the oversight for which they are statutorily authorized. Thousands of students and families choose virtual and blended instructional models, and it is important that we all stay informed, knowledgeable, and proactive to ensure the faithful implementation of such models within the requirements of existing laws and regulations. In fact, this is true regardless of the type of school. Because some of the issues raised in your recent questions have implications for traditional school districts as well as charter schools, you were also provided with a copy of a memo earlier this summer that our office prepared to make clarifications for OSDE Staff about questions received relating to attendance issues affecting public schools.

Online platforms for instruction, whether in a traditional classroom setting or in a full-time virtual setting, are here to stay. That being said, additional measures may be needed to provide greater oversight. We look forward to continuing our work with you and other education stakeholders to ensure Oklahoma taxpayer dollars are accounted for and all Oklahoma public school students are provided with a high-quality education that gives them access to a successful future.

If you have questions or wish to discuss these matters further, please do not hesitate to contact me.

Sincerely,



Brad Clark
General Counsel