

No. 21-124205-S

IN THE SUPREME COURT OF THE STATE OF KANSAS

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BUTLER, KRISTEN and BOZARTH, SCOTT
Plaintiffs

OCT 04 2021

DOUGLAS T. SHIMA
CLERK OF APPELLATE COURTS

v.

SHAWNEE MISSION SCHOOL DISTRICT BOARD OF EDUCATION,
Defendant—Appellee

ATTORNEY GENERAL DEREK SCHMIDT,
Intervenor—Appellant

SUPPLEMENTAL BRIEF OF KRISTIN BUTLER & SCOTT BOZARTH

Appeal from the District Court of Johnson County
Honorable David Hauber, District Judge
District Court Case No. 21-CV-2385

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Question

Is a timely request for a hearing under Section 1(c)(1) of 2021 SB 40, L, 2021 ch. 7, § 1(c)(1), to challenge "an action taken, order issued, or policy adopted by" a board of education of a school district, a jurisdictional prerequisite for a civil action under Section 1(d)(1) of 2021 SB 40, L, 2021, ch. 7 § 1(d)(1)?

Argument

No, a timely request for a hearing under Section 1(c)(1) of 2021 SB 40, L, 2021 ch. 7, § 1(c)(1), to challenge "an action taken, order issued, or policy adopted by" a board of education of a school district, is not a jurisdictional prerequisite for a civil action under Section 1(d)(1) of 2021 SB 40, L, 2021, ch. 7 § 1(d)(1).

A timely request for a hearing (challenging a decision by the BOE) under Section 1(c)(1) of 2021 SB 40, L, 2021 ch. 7, § 1(c)(1) is superfluous to the court. The criteria necessary to file a civil action under Section 1(d)(1) of 2021 SB 40, L, 2021, ch. 7 § 1(d)(1) is that the plaintiff is an employee, a student or the parent or guardian of a student aggrieved by a decision of the board of education (1(d)(1)), and that individual(s) made a request for a hearing to the board of education (1(c)(2)).

The BOE is given discretion to decide what "timely" is as it pertains to a grievance filed against an "action taken, order issued, or policy adopted" by the BOE. In the case of Butler et al v. SMSD BOE, the SMSD chose to deny a hearing citing the date of the adoption of a policy and ignoring any other criteria. That is their prerogative. The BOE made a decision within 72 hours of the complaint and

their decision was to not to conduct a hearing. Procedure to file a complaint with the BOE was followed and exhausted. Section 1(d)(1) of 2021 SB 40, L, 2021, ch. 7 § 1(d)(1) prescribes an option for escalation to the district court and that carries a separate timeline not connected to the "timely" timeline in Section 1(c)(1). The petition to the district court in Butler et al v. SMSD BOE is the same claim Kristin Butler and Scott Bozarth made to the SMSD BOE. The district court was not and should not be beholden to the BOE's claim of timely. Rather the district court needed to ask 1. Was a complaint (as described in paragraph 1) made to a 2. BOE while in a state of emergency, 3. was a decision made, and 4. was the complaint filed in district court within 30 days of that decision.

Summary

No, a timely request for a hearing to challenge "an action taken, order issued, or policy adopted" by a board of education of a school district, is not a jurisdictional prerequisite for a civil action. Furthermore, it's not even a question the district court should consider. The district court's jurisdictional prerequisite resides within 1(c)(2) "upon receipt of a request under paragraph (1), the board of education shall conduct a hearing within 72 hours of receiving such request for the purposes of reviewing, amending or revoking such action, order or policy. The board shall issue a decision within seven days after the hearing is conducted." Did this happen? If so, a suit should proceed.

Dated: October 3, 2021.

/s/ Kristin Butler

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was filed electronically on this 4th day of October 2021, which sent notification to all counsel of record. Additionally, a courtesy copy by personal service was sent via email to the following counsel of record:

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