

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

KENNETH BUCKLEY, on behalf of)
D.D.B., a minor child, PHILLIP and)
ANDREA CONNELLY, on behalf of)
E.J.D.C., a minor child, CLINT and)
CATHY STAPLETON, on behalf of)
K.N.S., a minor child, BOBBY and)
RUTH SWEET, on behalf of M.N.S., a)
minor child, MICHELLE SUMTER,)
on behalf of M.N.S., a minor child,)
FRANCIS SHOEMAKER, on behalf of)
D.W.S,)

Plaintiffs,)

vs.)

INDEPENDENT SCHOOL DISTRICT)
NO. 4 of ROGERS COUNTY,)
OKLAHOMA, a/k/a OOLOGAH)
TALALA PUBLIC SCHOOLS, CARA)
JONES, individually, MELISSA)
GIBSON, individually, KENNETH)
KINZER, individually, RICK)
THOMAS, individually, BOBBY)
SORDO, individually, CITY OF)
OWASSO, a political subdivision,)
jointly and severally,)

Defendants.

Case No. 10-CV-240-GKF-PJC

**DEFENDANT CITY OF OWASSO’S ANSWER TO
PLAINTIFFS’ FIRST AMENDED COMPLAINT**

The Defendant City of Owasso (“Owasso”),¹ and with its answer to Plaintiffs’ First Amended Complaint (Dkt. No. 18), does hereby allege and state as follows:

¹Pursuant to the Court’s Order of May 7, 2010 (Dkt. No. 21), in lieu of an answer, Defendant Bobby Sordo, a City of Owasso police officer, will file a qualified immunity based Motion to Dismiss on or before May 17, 2010.

1. Owasso denies each and every material allegation in Plaintiffs' First Amended Complaint unless expressly admitted herein.

2. Owasso is without sufficient information to admit or deny the allegations in Paragraph 1 of Plaintiffs' First Amended Complaint.

3. Owasso is without sufficient information to admit or deny the allegations in Paragraph 2 of Plaintiffs' First Amended Complaint.

4. Owasso is without sufficient information to admit or deny the allegations in Paragraph 3 of Plaintiffs' First Amended Complaint.

5. Owasso is without sufficient information to admit or deny the allegations in Paragraph 4 of Plaintiffs' First Amended Complaint.

6. Owasso is without sufficient information to admit or deny the allegations in Paragraph 5 of Plaintiffs' First Amended Complaint.

7. Owasso is without sufficient information to admit or deny the allegations in Paragraph 6 of Plaintiffs' First Amended Complaint.

8. Owasso admits the allegations contained in Paragraph 7 of Plaintiffs' First Amended Complaint.

9. Owasso admits the allegations contained in Paragraph 8 of Plaintiffs' First Amended Complaint.

10. Owasso denies the allegations contained in Paragraph 9 of Plaintiffs' First Amended Complaint.

11. Owasso admits the allegations contained in Paragraph 10 of Plaintiffs' First Amended Complaint.

12. Owasso admits the allegations contained in Paragraph 11 of Plaintiffs' First Amended Complaint.

13. Owasso admits the allegations contained in Paragraph 12 of Plaintiffs' First Amended Complaint.

14. With respect to Paragraph 13 of Plaintiffs' First Amended Complaint, Owasso admits Defendant Sordo is a police officer employed by the City of Owasso, but denies the remaining allegations therein.

15. Owasso denies the allegations contained in Paragraph 14 of Plaintiffs' First Amended Complaint.

16. Owasso denies the allegations contained in Paragraph 15 of Plaintiffs' First Amended Complaint to the extent Paragraph 15 requires a legal conclusion.

FACTS

17. With respect to Paragraph 16 of Plaintiffs' First Amended Complaint, Owasso admits Defendant Sordo came to the Defendant Oologah-Talalah Public Schools with his K-9 police dog pursuant to an agreement with the Defendant Oologah-Talalah Public Schools. Owasso further admits Officer Sordo and his K-9 police dog went through what Officer Sordo was advised to be classrooms occupied by 8th grade students and their instructors. Owasso further admits that for the safety of the students, Officer Sordo instructs students to put their hands on their desks when his K-9 police dog is in their presence so as to keep the students from attempting to pet the police dog. Owasso is without sufficient information or knowledge regarding what activities were scheduled or being undertaken in Mr. Polk's classroom. Owasso denies the remaining allegations regarding an alleged orchestrated plan to target certain students, and demands strict proof thereof.

18. With respect to Paragraph 17 of Plaintiffs' First Amended Complaint, the allegations contained therein are conflicting and unintelligible as written. Counsel for Plaintiffs alleges the K-9 police dog "did not alert" on students, then states the K-9 police dog alerted on "at least six students" in the classroom. Owasso admits the K-9 police dog alerted on numerous students, and that subsequent interviews with students resulted in admissions of illicit drug activity and two (2) positive field tests for the possession of marijuana. Owasso denies the remaining allegations in Paragraph 17.

19. Owasso denies the allegations contained in Paragraph 18 of Plaintiffs' First Amended Complaint.

20. With respect to Paragraph 19 of Plaintiffs' First Amended Complaint, the term "students" is not defined therein to properly limit the scope to those students who were alerted on by the K-9 police dog. Owasso admits the students who were alerted on by the K-9 police dog were asked to leave the classroom, and to bring their belongings. Owasso further admits the students were then asked to go to an office in the school. With respect to the remaining allegations, Owasso is unable to admit or deny the same as based upon the information known at this time.

21. With respect to Paragraph 20 of Plaintiffs' First Amended Complaint, Owasso admits the students were separated while each student was given the opportunity to privately discuss the positive alert by the K-9 police dog. Owasso denies the remaining allegations in Paragraph 20.

22. Regarding Paragraph 21 of Plaintiffs' First Amended Complaint, Owasso states that Plaintiffs and their attorney should be ashamed of themselves for alleging tactics resembling those employed by the "Gestapo" were used on their children. The Gestapo were the secret police formed by Adolph Hitler under Nazi Germany; were responsible for the consignment of people to Nazi

concentration camps; and, played a significant role in carrying out the “Final Solution,” which resulted in the torture and deaths of millions of people. For further answer to Paragraph 21, Owasso denies the students were subjected to “custodial interrogations,” denies that the circumstances required any student to be advised of *Miranda* rights; denies any unlawful or improper conduct by Officer Sordo, and is without sufficient information or belief as to what each student may have learned in school on this day.

23. Owasso admits the allegations contained in Paragraph 22 of Plaintiffs’ First Amended Complaint.

24. With respect to Paragraph 23 of Plaintiffs’ First Amended Complaint, Owasso admits a test was performed on a leafy substance, with seeds, found on the person of “E.J.D.C.” and that the substance tested positive as being marijuana. Owasso denies the remaining allegations in Plaintiffs’ Paragraph 23.

25. Regarding Paragraph 24 of Plaintiffs’ First Amended Complaint, Owasso admits the identified student was questioned regarding the source of the marijuana found in the student’s possession. Owasso is without sufficient information or knowledge regarding the remaining allegations contained in Plaintiffs’ Paragraph 24.

26. Owasso admits knowledge of student “E.J.D.C.” being suspended from school for the next 13 weeks, as alleged in Plaintiffs’ Paragraph 25, after the K-9 police dog alerted on “E.J.D.C.” which led to the discovery of a substance in the possession of “E.J.D.C.” which subsequently tested positive for marijuana in a properly performed field test. Owasso denies the remaining allegations contained in Paragraph 25 of Plaintiffs’ First Amended Complaint.

27. Regarding Paragraph 26 of Plaintiffs' First Amended Complaint, Owasso is without sufficient information or belief regarding where "D.D.B." was standing at all times subsequent to the K-9 police dog alerting on the student. Owasso admits Officer Sordo discussed the typical reasons why the K-9 police dog alerts for drugs on a person, to include the reasons articulated in Paragraph 26. Owasso is without information or knowledge at this juncture as to the answers provided by "D.D.B." and Owasso has no knowledge as to when D.D.B. returned to class. Owasso denies D.D.B. was required under the law to have any *Miranda* rights read to her under the particular circumstances at-hand, and, as such, admits she was not provided with notice of any such rights. Owasso is without sufficient information or knowledge regarding contact with D.D.B.'s parents.

28. Owasso is without sufficient information or belief to admit or deny the allegations contained in Paragraph 27 of Plaintiffs' First Amended Complaint.

29. With respect to Paragraph 28 of Plaintiffs' First Amended Complaint, Owasso denies "K.N.S." was "yelled at" or "called a liar" by Officer Sordo. Owasso is unable to admit or deny what "K.N.S." may have been told by any party other than Officer Sordo; denies Officer Sordo threatened "K.N.S." and generally denies any improper treatment by Officer Sordo at any time before or after the K-9 police dog alerted on "K.N.S." in the classroom. All other allegations are denied.

30. Owasso admits Officer Sordo questioned M.N.S. (Sweet) after the K-9 police dog alerted on M.N.S. (Sweet) in the classroom, as alleged in Paragraph 29 of Plaintiffs' First Amended Complaint. Owasso is without sufficient information or knowledge to admit or deny the remaining allegations in Paragraph 29.

31. Owasso admits Officer Sordo questioned M.N.S. (Sumter) after the K-9 police dog alerted on M.N.S. (Sumter) in the classroom, as alleged in Paragraph 30 of Plaintiffs' First Amended

Complaint. Owasso denies any questioning by Officer Sordo was conducted in an intimidating manner. Owasso is without sufficient information or knowledge to admit or deny the remaining allegations in Paragraph 30.

32. With respect to Paragraph 31 of Plaintiffs' First Amended Complaint, Owasso is without sufficient information to admit or deny whether "D.W.S." was in his second hour class, or what subject was being presented in the classroom when the K-9 police dog alerted on D.W.S. Owasso admits the K-9 police dog alerted on D.W.S., but denies the remaining allegations contained in Paragraph 31.

33. Regarding Paragraph 32 of Plaintiffs' First Amended Complaint, Owasso admits that after the K-9 police dog alerted on D.W.S., residue taken from the clothing of D.W.S. tested positive for marijuana. Owasso denies the remaining allegations in Paragraph 32 of Plaintiffs' First Amended Complaint.

34. Owasso denies any unlawful interrogation of D.W.S., as alleged in Paragraph 33 of Plaintiffs' First Amended Complaint, and further denies Officer Sordo provided D.W.S. with any false information. Owasso is without sufficient information or knowledge regarding whether the room D.W.S. was in was selected by Defendant Jones, and further is without sufficient information or knowledge as to the time frame referenced in this Paragraph regarding the room in which D.W.S. alleges he was told to wait.

35. Owasso denies the allegations in Paragraph 34 of Plaintiffs' First Amended Complaint.

36. With respect to Paragraph 35 of Plaintiffs' First Amended Complaint, "[t]hey" are not properly identified, and it appears the referenced time was hours after Officer Sordo left the school premises. As such, Owasso is unable to admit or deny the allegations in the Paragraph 35.

37. Owasso is without sufficient information to admit or deny the allegations contained in Paragraph 36 of Plaintiffs' First Amended Complaint.

COUNT I
FOURTH AMENDMENT VIOLATION

38. Regarding Paragraph 37 of Plaintiffs' First Amended Complaint, Owasso is without sufficient information to admit or deny what "explicit" policy the Defendant Oologah-Talala Public Schools may or may not have.

39. With respect to Paragraph 38 of Plaintiffs' First Amended Complaint, Owasso admits a K-9 police dog, professionally trained to identify and alert upon the scent of drugs, was walked through the aisles of 8th grade classrooms to identify the existence of illegal drugs. Owasso denies any use of the K-9 police dog was done in an intrusive or improper manner, and further denies Officer Sordo falsely claimed the K-9 police dog alerted on certain students, as alleged and for the alleged intended purposes stated in Paragraph 38.

40. Regarding Paragraph 39 of Plaintiffs' First Amended Complaint, the allegation regarding a "pattern and policy of utilizing drug dogs to perform search on the students" is poorly drafted and unintelligible as written. Owasso admits it has provided K-9 services to Defendant Oologah-Talala Public Schools in the past in an effort to provide the patrons and children of the Oologah-Talalah Public School system with a safe and drug-free learning environment. Owasso denies the remaining allegations in Plaintiffs' Paragraph 39.

41. Owasso is without sufficient information to admit or deny the allegations contained in Paragraph 40 of Plaintiffs' First Amended Complaint.

42. With respect to Paragraph 41 of Plaintiffs' First Amended Complaint, Owasso cannot discern what "conduct" or "final policy making authority" Plaintiffs are referencing in this allegation. Owasso admits agreeing to assist Defendant Oologah-Talala Public Schools by making Officer Sordo and the K-9 police dog available in an effort to provide the patrons and children of the Oologah-Talalah Public School system with a safe and drug-free learning environment.

43. Owasso denies the allegations in Paragraph 42 of Plaintiffs' First Amended Complaint.

44. Owasso denies the allegations contained in Paragraph 43 of Plaintiffs' First Amended Complaint.

45. Paragraph 44 is directed to the individual defendants and not to the City of Owasso. Owasso, however, denies any unlawful search or seizure transpired.

46. With respect to Paragraph 45 of Plaintiffs' First Amended Complaint, Owasso denies any unlawful or unconstitutional search or seizure transpired; denies *Miranda* rights were legally required or necessary in this matter; denies any "custodial interrogations" took place, and further denies Plaintiffs' allegations of false arrest and imprisonment.

47. The allegations contained in Paragraph 46 of Plaintiffs' First Amended Complaint are not directed in whole or part to Owasso. Owasso, however, denies the absence of reasonable suspicion or the violation of any constitutional right as alleged in Plaintiffs' Paragraph 46.

48. The allegations contained in Paragraph 47 of Plaintiffs' First Amended Complaint are not directed in whole or part to Owasso. Owasso, however, denies the absence of reasonable suspicion or the violation of any constitutional right as alleged in Plaintiffs' Paragraph 47.

49. With respect to Paragraph 48 of Plaintiffs' First Amended Complaint, Owasso denies there was any so-called "raid" at the Oologah-Talala middle school, and is unable to admit or deny what the policies of the Defendant school district may be.

50. Owasso denies the allegations contained in Paragraph 49 of Plaintiffs' First Amended Complaint.

51. Owasso denies the allegations contained in Paragraph 50 of Plaintiffs' First Amended Complaint.

52. Owasso denies the allegations contained in Paragraph 51 of Plaintiffs' First Amended Complaint.

**COUNT II
PERMANENT INJUNCTION**

53. Owasso denies the allegation contained in Paragraph 52 of Plaintiffs' First Amended Complaint.

54. Owasso denies the allegations contained in Paragraph 53 of Plaintiffs' First Amended Complaint.

55. Owasso denies the allegations contained in Paragraph 54 of Plaintiffs' First Amended Complaint.

56. Owasso denies the allegations contained in Paragraph 55 of Plaintiffs' First Amended Complaint.

57. Owasso denies the allegations contained in Paragraph 56 of Plaintiffs' First Amended Complaint to the extent no wrongdoing by the Defendant occurred. As such, no constitutional freedom was imperiled.

58. Owasso denies the allegations contained in Paragraph 57 of Plaintiffs' First Amended Complaint to the extent that it contains the underlying allegation or inference that illegal or constitutional conduct transpired by the Defendants, which is false.

**COUNT III
PERMANENT INJUNCTION AND DECLARATORY RELIEF**

59. Owasso denies the allegation contained in Paragraph 58 of Plaintiffs' First Amended Complaint.

60. Owasso admits the allegation contained in Paragraph 59 of Plaintiffs' First Amended Complaint.

61. Owasso admits Plaintiffs correctly paraphrased a portion of the cited Oklahoma statute, but denies the statute applies to the case at-hand, or that any conduct of the Defendants was in violation of Oklahoma law, as alleged in Paragraph 60 of Plaintiffs' First Amended Complaint.

62. Owasso denies the allegations contained in Paragraph 61 of Plaintiffs' First Amended Complaint.

**COUNT IV
PETITION FOR TEMPORARY INJUNCTION REINSTATING E.J.D.C.**

63. Owasso states that the allegations contained in Paragraphs 62 through 71 of Plaintiffs' First Amended Complaint do not require an answer as this entire Count of associated allegations were rendered moot by Order of the Court, as pronounced at the conclusion of the hearing on Count before the Honorable Gregory Frizzell, on May 6, 2010.

COUNT V
PROCEDURAL AND SUBSTANTIVE DUE PROCESS - E.J.D.C. ONLY

64. Owasso restates and alleges its answer to the preceding Paragraphs 1-70 of Plaintiffs' First Amended Complaint in answer to Paragraph 71 of Plaintiffs' First Amended Complaint.

65. Owasso denies the allegations contained in Paragraph 72 of Plaintiffs' First Amended Complaint.

66. Owasso denies the allegations contained in Paragraph 73 of Plaintiffs' First Amended Complaint.

67. Owasso denies Plaintiffs are entitled to recover any of the alleged damages or relief requested in the unnumbered paragraph immediately subsequent to the bolded and underlined "Conclusion" section of Plaintiffs' First Amended Complaint.

AFFIRMATIVE DEFENSES

1. Plaintiffs' First Amended Complaint fails to state a claim for which relief may be granted.

2. None of the students were subjected to any activity or conduct by the Defendants in violation of any law or the constitutions of the State of Oklahoma or United States of America.

3. Plaintiffs have failed to properly identify the parties.

4. Officer Sordo is entitled to qualified immunity from this lawsuit.

5. Owasso reserves the right to amend its answer and/or affirmative defenses as discovery merits.

WHEREFORE, having fully answered, the Defendant City of Owasso prays Plaintiffs' First Amended Complaint be dismissed, that Plaintiffs takes nothing by way of their First Amended

Complaint, and that Owasso be awarded its costs and attorneys' fees incurred in the defense of this action, and for all other relief this Court deems just and equitable.

Respectfully submitted,

NEWTON, O'CONNOR, TURNER & KETCHUM,
A PROFESSIONAL CORPORATION

By: /s/ Keith A. Wilkes

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**ATTORNEYS FOR CITY OF OWASSO
AND BOBBY SORDO**

CERTIFICATE OF SERVICE

- I hereby certify that on May 10, 2010, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Brendan M. McHugh, Esq.
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Eric D. Wade, Esq.
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Matthew J. Ballard, Esq.
mballard@rflaw.com

- I hereby certify that on May 10, 2010, I served the foregoing document by mail on the following, who are not registered participants of the ECF System:

None

/s/ Keith A. Wilkes
Keith A. Wilkes