IN THE SUPREME COURT OF THE STATE OF OHIO

STATE OF OHIO, EX REL. MARRISA SIEBOLD, Relator, v. COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, Respondent.	:	Case No. 2024-1263 **On Complaint for Writ of Mandamus**

REPLY BRIEF OF RELATOR MARRISA SIEBOLD

DONN PARSONS
[redacted]
JORDAN SEKULOW**
[redacted]
BENJAMIN P. SISNEY*
[redacted]
NATHAN J. MOELKER*
[redacted]
LIAM R. HARRELL**
[redacted]
AMERICAN CENTER FOR LAW AND JUSTICE
[redacted]

CORRINNE VIDALES
[redacted]
OHIO CHRISTIAN EDUCATION NETWORK
[redacted]

Counsel for Relator, State of Ohio, ex rel. Marrisa Siebold

* Admitted Pro Hac Vice
** Not admitted before this Court

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

ARGUMENT

The law imposes a mandatory duty on the Columbus City Schools Board of Education ("School Board") which the School Board ignored. The case is straightforward. R.C. 3327.02(E)(2) ensures that the process for challenging a transportation decision does not prejudice families by denying their transportation rights while the School Board's decision is being reviewed. It is a nondiscretionary duty: "the school district or governing authority *shall provide* transportation for the pupil from the time the parent, guardian, or other person in charge of the pupil requests mediation until the matter is resolved under division (E)(1)(a) or (b) of this section." *Id.* (emphasis added). The Ohio General Assembly established a clear, inescapable duty for the School Board to protect the rights of parents to choose educational services for their children. The only question is whether the School Board may set up obstacles preventing this Court from enforcing this duty. It may not.

The School Board claims that "Relator is requesting this Court to override and issue an order contrary to the specific language of the statute." Respondent Merits Br. 2. But the specific language of the statute contains a mandatory, nondiscretionary duty for interim transportation. It also contains a penalty for the failure to provide that transportation, but the failure to provide that transportation is not somehow justified, excused, or replaced by the penalty. In fact, the penalty imposed by the law is on its face incomplete and not a full remedy; it is only for a set amount of money and no more. Moreover, the Department of Education and Workforce ("DEW") lacks any ability to compel the School Board to comply with its duty. Therefore, this Court must mandate the School Board's compliance with its legal duty.

I. The School Board's Duty to Provide Interim Transportation is Mandatory.

The General Assembly made clear that when an impracticality determination is disputed, uninterrupted transportation of the student to his school of choice during the review of that decision

is mandatory and immediate. The School Board claims that the Ohio General Assembly has given it "the option of paying $2,500.00 instead" of the required interim transportation. Respondent Merits Br. 1. This is categorically wrong. No such "option" exists. R.C. 3327.02(E)(2) unambiguously and without exception imposes a duty to provide interim transportation, stating that a school district "shall provide transportation" for affected children. There simply are no exceptions. The School Board's briefing emphasizes the cost of this duty, but the General Assembly made no such exception; if the School Board wishes to complain about cost or financial burden, the "solution rests with the Ohio legislature." Respondent Merits Br. 2.

Despite this Court's ruling denying the School Board's motion to join DEW as a party, the School Board continues to argue that authority is vested only in DEW to address transportation issues. It likewise points out that it does not "have the authority to cause DEW to expedite any requested mediations," Respondent Merits Br. 16, as if that lack of authority were somehow relevant here. But the courts are not powerless to act when rights are violated. Fundamentally, this case is *not* about the "timeliness of DEW's actions." Respondent Merits Br. 7. It is about the School Board's failure to meet its own obligations.

R.C. 3327.02(E)(2) is not contingent upon the timeliness of DEW's conduct; its obligation is mandatory, regardless of how long DEW's review may take. DEW's actions are not in any legal dispute here, and the legal question is instead whether the *School Board* will be ordered to comply with its mandatory obligation. This Court denied the School Board's motion to join DEW in this case for a reason; the obligations at issue here simply apply to the School Board, not any other party. The Ohio General Assembly did not give DEW "all-encompassing statutory authority," *contra* Respondent Merits Br. 7, it instead gave it enumerated authority to review the specific decisions of impracticality. Those impracticality decisions themselves are not in dispute here. That specific grant of authority does

not deny the Court the authority to, pursuant to the elements of mandamus, compel specific and nondiscretionary relief to which families are entitled.

Crucially, the School Board claims that the Ohio General Assembly has given it discretion to choose between R.C. 3327.02(E)(2) and R.C. 3327.02(F)(1). Respondent Merits Br. 8 ("R.C. 3327.02(F)(1) provides discretion to Respondent, when it is unable to fulfill the requirements to transport impractical students, without undue hardship, during mediation as required by R.C. 3327.02(E)(2), to accept the order of DEW to pay a determined compensatory amount.") But R.C. 3327.02(F)(1)'s language is not in any way an optional choice for the school board. It provides the penalty (specifically delineated by the General Assembly as a penalty, as *State ex rel. Luchette v. Pasquerilla,* 182 Ohio App. 3d 418, 2009-Ohio-2084, 913 N.E.2d 461, ¶ 37 explained) of a monetary amount if the School Board "has failed or is failing to provide transportation as required by division (E)(2) of this section." The law's terms, on its face, provide a penalty for the *failure* to do what is *required* by R.C. 3327.02(E)(2). This is not the language of discretionary choice. It is, as the General Assembly made clear, a penalty for "failing" to do what is "required" by a mandatory duty. The School Board does not have discretion to choose to fail. R.C. 3327.02(F)(1) is not an alternative choice; it is a penalty the Legislature created out of a recognition that school districts may have "failed" to comply with their duties. A penalty for the violation of duty is not an excuse to avoid that duty any more than a person could say he chooses jail in exchange for robbery, or he chooses to pay fines in exchange for not registering his car. This is not how the law works.

The School Board's position boils down to arguing that it has discretion to choose to "fail[]" to comply with what is "required by division (E)(2) of this section." This is counter to the basic meaning of terms like "failure" and "required." They cannot be redefined to suggest that two equal choices are being provided: the penalty is exactly that, a penalty for noncompliance with what is

required by law. Penalties do not render duties optional. If an individual speeds, they will receive a fine. That does not mean that they have legal discretion to choose whether to speed; the legal obligation remains mandatory. Here, the Ohio General Assembly has specifically clarified that transportation is "required by division (E)(2)." R.C. 3327.02(F)(1). If an obligation is required, it is not discretionary. The argument otherwise may perhaps remind of Lewis Carroll's Humpty Dumpty, who preferred to use words hyper-literally and idiosyncratically and "used a word to mean 'just what [he chose] it to mean—neither more nor less.'" *Lopez v. Gonzales*, 549 U.S. 47, 54 (2006) (quoting Lewis Carroll, *Alice in Wonderland and Through the Looking Glass* 198 (Messner 1982)). No, words have meanings and their meanings matter. It is "of paramount importance" that a legislature "be able to legislate against a background of clear interpretive rules, so that it may know the effect of the language it adopts." *Finley v. United States*, 490 U.S. 545, 556 (1989). When the Ohio General Assembly required conduct of the School Board and created a penalty if it failed to carry out that required conduct, the statute's language makes it clear that the legislature did not intend to create a choice. R.C. 3327.02(F)(1) is not a substantive path to comply with the law. *It is the prescribed penalty for defying the law*. Rather than providing that the payment may be made upon a school district's "election," "option," or something similar, the General Assembly chose to impose a monetary fine when a district "has failed or is failing" to provide the transportation that is "required." "[W]here the words of a statute are plain, explicit and unequivocal and express clearly and distinctly the sense of the lawmaking body, there is no occasion to resort to other means of interpretation." *Elmwood Place v. Schanzle*, 110 N.E. 922, 923 (Oh 1915); *see also Caminetti v. United States*, 242 U.S. 470, 485 (1917).

In other words, it is not Relator who comes before this Court and "expects this Court to override and abrogate the authority of DEW, and the legislative scheme." Respondent Merits Br. 11. It is, quite clearly, the School Board that is attempting to thwart the legislature's clear and express intent. The

School Board has made the groundbreaking and unsupported assertion that it has discretion to, in the exact language of the "legislative scheme," "fail[]" to meet the obligations that are "required" of it. No law or case vests in it such an extraordinary invitation, which "makes absolutely no sense." Respondent Merits Br. 10.[1] No such discretion to violate and void legal obligations has ever been adopted into law. Instead, the School Board is mandated to provide interim transportation.

In its Proposition of Law 5, the School Board argues for its "Statutory Discretionary Authority." Respondent Merits Br. 19. It accuses Relator, a single mother who works long hours to provide for her child, and who has incurred substantial harm resulting from the School Board's intentional conduct, Rel. Ex. A ¶ 14, of engaging "in a transparent attempt to advance, and turn this case into, a 'school choice' agenda." *Id.* But R.C. 3327.02(E)(2) does not contain any discretionary authority, it simply mandates interim transportation. If the School Board believes that this obligation reflects support for school choice, that requirement did not originate with Relator; it originated with the Ohio General Assembly who passed the law requiring transportation. The statute's plain meaning is no "proverbial wool." It is a mandatory and ministerial duty, with no discretion available. The School Board's attacks on the Relator are both wrong, in poor taste, and irrelevant to the question before this Court.

II. There is no Adequate and Complete Remedy at Law to Substitute for the Mandatory Interim Transportation.

The key issue as to mandamus here is undoubtedly adequate remedy at law. In its merits brief, Respondent concedes that the available payment, the penalty imposed by R.C. 3327.02(F)(1), is not more than $2,500.00 to the affected family. This penalty is accordingly, by its very definition,

[1] It bears noting that the vituperative language of the School Board's brief towards Relator is highly inappropriate, especially in light of the fact that the Court of Appeals in *State ex rel. Luchette v. Pasquerilla,* 182 Ohio App. 3d 418, 2009-Ohio-2084, 913 N.E.2d 461, ¶ 33 reached the very conclusion for which Relator advocates, and Relator finds no reported court opinion deciding in favor of the School Board's position.

necessarily less than and insufficient to actually remedy the injuries that families suffer. No matter how quickly DEW imposes the penalty for the School Board's failure to transport students of mediating families, and no matter how quickly the School Board pays that penalty, the payment of half the value of the interim transportation itself is not a complete remedy for the injury suffered. The required amount can easily be substantially less than the actual injuries that result from the School Board's noncompliance.

The law is clear; mandamus is warranted as a remedy when "no other remedy has or can be suggested that will be plain, complete and adequate." *State ex rel. Merydith Const. Co. v. Dean*, 116 N.E. 37, 41 (Oh. 1916); *see also Bustard v. Dabney,* 4 Ohio 68, 70 (1829). An adequate alternative remedy is a remedy that is "complete in its nature, beneficial and speedy." *State ex rel. Merydith Const. Co.*, 116 N.E. at 41. For a remedy to be a truly adequate substitute for mandamus, it must be both complete and total. Respondent cites cases holding that other administrative appeals constituted adequate remedies. It is certainly true that some administrative appeals can be adequate, and delay, alone, does not justify mandamus relief. But Relator does *not* rely on "delay" or "inconvenience" to justify mandamus here; she relies on the patent inadequacy and facial incompleteness of the available remedy in the administrative process. The length of the DEW process is beside the point. Regardless of that length, that administrative process, by definition, cannot award to Relator full damages for the harm that she experienced, but is limited to a set penalty.

DEW also lacks the authority to issue an order specifically compelling the necessary transportation. It cannot provide Relator with a full remedy, because it is by definition not an "all-encompassing administrative remedy," *contra* Respondent Merits Br. 7. DEW entirely lacks the ability to issue an order compelling compliance. *Luchette* highlighted this point. In *Haig v. Ohio State Bd. of Edn*., 584 N.E.2d 704 (Oh. 1992), this Court held that DEW has no authority to enforce a school

district's duty to provide transportation. Far from being a comprehensive scheme, DEW cannot even require compliance with its own orders.

> This does not mean that there is no actual right granted or that the penalty eliminates the need to ever comply with the order to provide transportation. Rather, because the board has no actual judicial power to enforce its own order, this allows for some relief to the parents while they seek court assistance in enforcing the board's order. ***This is the entire point of a mandamus action.***

State ex rel. Luchette v. Pasquerilla, 182 Ohio App. 3d 418, 2009-Ohio-2084, 913 N.E.2d 461, ¶ 33 (emphasis added). In short, the administrative appeal process is not an adequate remedy because, under this Court's clear and undisputed precedent, it cannot result in a mandate of the right to which Relator is entitled by law. In other words, no matter the outcome, it cannot provide complete relief. That, not delay, is what makes the administrative process inadequate to avoid a mandamus order of transportation. The School Board's statement that the administrative process is "less convenient," Respondent Merits Br. 13, completely misses this crucial point. DEW cannot, under any circumstance, actually order enforcement of Relator's rights. At absolute most, it can provide her a partial monetary payment but cannot enforce her right to transportation. Regardless of how long its actions take, DEW cannot provide her a full and complete remedy.

Relator's merits brief relies on a case involving an administrative process where this Court ordered mandamus relief. In *State ex rel. Huntington Ins. Agency v. Duryee*, 653 N.E.2d 349 (1995), this Court held that an insurance agent had no adequate remedy at law in a mandamus action against an insurance superintendent to determine its application for licensure. There was a pending declaratory judgment action, but "[u]ntil there is a determination by the superintendent on Huntington's license application, there is no right of appeal." *Id.* at 355. In other words, the administrative and declaratory process available was inadequate because it could not actually compel full relief. This Court held that "where declaratory judgment would not be a complete remedy unless coupled with ancillary relief in

the nature of a mandatory injunction, the availability of declaratory judgment is not an appropriate basis to deny a writ to which the relator is otherwise entitled." *Id*. Here, under *Haig*, there is no injunction available as a result of the administrative process. That process accordingly cannot be adequate as a complete remedy. The School Board's response to *Duryee*, a key and closely analogous case relied on by Relator in her merits brief, is to ignore it and never cite or address it.

The School Board purports to distinguish *Luchette v. Pasquerilla,* 2009-Ohio-2084 (11th Dist.) by the stage in the process that it concerned, a final transportation decision rather than interim transportation. But that misses the point. *Luchette*'s carefully reasoned holding is that penalties in R.C. 3327.02(F) are not an adequate substitute for the mandatory duty to transport.

> The use of division (F) payments after a state board order is the imposition of a sanction, which only lasts until the school district finally complies with the transportation order. Thus, accepting payments after the state board's order to provide transportation (but where no transportation is provided) is not an act that invalidates the right.

State ex rel. Luchette v. Pasquerilla, 2009-Ohio-2084, ¶ 50. The identical reasoning applies here; a penalty as enumerated in division (F) does not properly substitute for the actual right to be transported. That right is not contingent on the violation of a DEW order, it simply is created by R.C. 3327.02(E)(2).

The School Board argues that requiring it by mandamus to provide the interim transportation mandated by R.C. 3327.02 (E)(2) leads to an "absurd result." Resp. Merits Br. 14. The absurd result it delineates is that a family who has been denied transportation, in addition to the penalty imposed for the failure to provide transportation, would also be provided interim transportation via mandamus. But that obligation, the "interim transportation of the student," is what the statute simply requires. The School Board can take up the purported absurdity of its obligation to transport students with the Ohio General Assembly. It is not given a "statutory solution" to avoid this obligation. It is required to do so and penalized if it fails to do so. If the School Board considers that obligation unreasonable, it should

lobby the legislature rather than urging this Court to shield it from its own obligations.

III. Administrative Exhaustion is Inapplicable in This Matter.

The School Board argues that Relator was required to exhaust administrative remedies before proceeding to this Court, and that exclusive jurisdiction lies with the DEW. No statute or court decision contains any such "administrative exhaustion" requirement. The administrative process, which has still not occurred despite being requested at the very beginning of the school year which is now over half-completed, concerns the decision to determine Relator's child impractical to transport, and results, whenever DEW does conduct that process, in a review of that impracticality decision. The issue in this case, interim transportation under R.C. 3327.02(E)(2), is entirely separate. No administrative exhaustion requirement applies when the administrative process does not even provide the relief that is sought; the administrative process can only lead to a payment, not the provision of the requested relief in this case.

This Court has already made clear that DEW *lacks* exclusive jurisdiction. In *Haig*, this Court explained that DEW "is unable to directly provide the parents with the relief they seek. The state board has no independent statutory duty to provide transportation. Moreover, the state board has no authority to enforce the local board's duty to provide transportation." *Haig*, 584 N.E.2d at 707. DEW's jurisdiction is limited and specific, not broad and free ranging. And courts in cases like *Luchette* have regularly reviewed and addressed transportation decisions through remedies like mandamus, without any suggestion of administrative exhaustion.

Duryee also demonstrates that a partial, inadequate administrative remedy need not be exhausted before a mandamus action was brought. "[T]he pending declaratory judgment action does not constitute an adequate remedy at law[,]" and accordingly, there was no requirement for that court process to be exhausted. *Duryee,* 653 N.E.2d at 356. In *Duryee*, this Court rejected the idea that the

administrative or declaratory process had to proceed first and exercised instead its authority to issue a mandamus order compelling the provision of relief, because the administrative process would be inadequate and incomplete. The ongoing availability of a remedy does not constitute an adequate remedy if that remedy does not completely redress the harm, and the "mere existence of another remedy does not bar the issuance of a writ of mandamus." *State ex rel. Butler v. Demis*, 420 N.E.2d 116, 117 (Oh. 1981). Rather than respond to this crucial case, the School Board completely ignores it, never even citing *Duryee* once in it is briefing. Relator relied on this case (and the School Board ignores it) for a reason; it makes clear there is no "administrative exhaustion" requirement before proceeding to mandamus relief.

Administrative exhaustion would be an appropriate issue to discuss if Relator attempted to challenge the impracticality decision itself in this proceeding. In such a context, before challenging DEW's final decision, it would of course be necessary for that final decision to occur. But as the School Board concedes, Relator is not attempting to dispute that impracticality decision in this Court. That decision will continue to proceed through DEW. Instead, Relator is challenging only the School Board's failure to provide *the interim transportation* required by law. The administrative process, regardless of outcome, cannot provide that transportation. She is not required to exhaust a process that cannot give her the relief she seeks.

IV. The School Board's Post-Filing Behavior Change Does Not Moot this Case.

The School Board argues that this case is moot due to its purported provision of relief. But as Relator explained at length in her merits brief, voluntary cessation of challenged conduct, after a lawsuit is filed, is not sufficient to evade legal obligations. The facts are undisputed: the School Board's first filing was due on October 8, 2024. Less than a week before that deadline, on October 2, 2024, it sent a letter to charter and nonpublic schools, including Relator's child's school,

indicating that the School Board would begin transporting certain students on October 7. The School Board's purported cessation of unlawful conduct a day before the filing of the Motion to Dismiss is insufficient to moot this case. It instead falls under the voluntary cessation doctrine.

This is a well-established principle, recognized repeatedly by the courts. "The voluntary cessation of challenged conduct does not ordinarily render a case moot because a dismissal for mootness would permit a resumption of the challenged conduct as soon as the case is dismissed." *Knox v. Serv. Emps. Internatl. Union, Local 1000*, 567 U.S. 298, 307 (2012). A claim for mootness based on post-filing conduct, because it is viewed skeptically, places a heavy burden on the School Board to demonstrate through evidence that a case is truly moot. "The test for mootness in cases such as this is a stringent one." *United States v. Concentrated Phosphate Export Ass'n*, 393 U.S. 199, 203 (1968).

The School Board's response to this argument consists of a single paragraph that provides no evidence whatsoever. The argument reads in full: "However, herein the legislature in its statutory scheme has already addressed that issue. R.C. 3327.02(E)(1)(b) specifically provides '[t]he decision of the department is binding in subsequent years and on future parties in interest provided the facts of the determination remain comparable.' As such, Relator's argument that her claim is not moot fails as a matter of law." Respondent Merits Br. 18-19. The fact that a decision of DEW has *res judicata* effect has absolutely nothing to do with the test for mootness, which is whether the Respondent can show "that it is 'absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur.'" *Highland Tavern, L.L.C. v. DeWine*, 173 Ohio St. 3d 59, 2023-Ohio-2577, 227 N.E.3d 1148, ¶ 25 (quoting *Friends of the Earth, Inc. v. Laidlaw Environmental Servs.*, 528 U.S. 167, 190 (2000)). The School Board has not even purported to put forward evidence that it does not intend to resume its unlawful conduct. To the contrary, the School Board's arguments indicate its belief that it can continue its challenged conduct. The *res judicata* effect of DEW's decisions would perhaps be relevant if DEW

had mandated the interim transportation, but it has not done so and lacks any authority to do so.

This Court emphasized in *Ohioans for Concealed Carry, Inc v. City of Columbus*, 164 Ohio St. 3d 291, 2020-Ohio-6724, 172 N.E.3d 935, at ¶ 56, that "'a dismissal for mootness would permit a resumption of the challenged conduct as soon as the case is dismissed.'" *Id.* (quoting *Knox*, 567 U.S. at 307). The School Board's conduct here should likewise not insulate it from review.

V. Damages Are Available to Relator in this Matter.

Finally, Relator noted briefly in her merits brief that damages are available to her in this action, pursuant to R.C. 2731.11. This statute provides for a limited recovery to successful relators in mandamus actions of damages and costs. In contrast, R.C. 3327.02(F) enumerates certain penalties for the failure to comply with transportation obligations. Those penalties do not on their face contain any language that would foreclose Relator, or anyone else for that matter, from recovering damages to which she is entitled under other statutes like R.C. 2731.11. The payment in lieu of transportation is set specifically by statute. But nothing in the statute denies other remedies for injuries suffered to parents or caps those damages, available through other avenues, at any specific amount.

CONCLUSION

The Court should grant mandamus relief and require the Respondent to fulfil its mandatory obligation to provide interim transportation and provide to the Relator any other relief available in law or equity.

Respectfully submitted,

/s/ *Donn Parsons*
DONN PARSONS
[redacted]
JORDAN SEKULOW**
[redacted]
BENJAMIN P. SISNEY*
[redacted]
NATHAN J. MOELKER*
[redacted]
LIAM R. HARRELL**
[redacted]
AMERICAN CENTER FOR LAW
AND JUSTICE
[redacted]

* Admitted Pro Hac Vice
** Not admitted before this Court

CORRINNE VIDALES
(Ohio Bar No. 100298)
OHIO CHRISTIAN EDUCATION
NETWORK
[redacted]

Counsel for Relator State of Ohio ex rel. Marrisa Siebold

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Reply Brief of the Relator was served by email on this 11th day of February, 2025, upon the following:

John C. Albert (0024164)
Amundsen Davis, LLC
[redacted]

James A. Barnes, Esq. (0030655)
General Counsel
Adam C. Sims, Esq. (0093474)
Staff Counsel
Columbus City Schools
[redacted]

Attorneys for Respondent, Columbus City Schools Board of Education

/s/ Donn Parsons
DONN PARSONS
[redacted]
Counsel for Relator Marrisa Siebold