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**

RELATOR'S MEMORANDUM RESPONSE TO RESPONDENT'S MOTION TO DISMISS

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The State of Ohio, through Relator Marrisa Siebold, responds to the Columbus City Schools Board of Education's ("School Board") motion to dismiss her writ of mandamus seeking to obligate the School Board to comply immediately with its mandatory obligation to provide interim transportation. This case has not been rendered moot by the purported voluntary cessation of unlawful conduct. As an injured party, Relator has standing to pursue the relief she seeks. This Court should reject the School Board's argument that after-the-fact penalties imposed by the Department of Education and Workforce ("DEW") are sufficient to redress the injuries that Relator and others who are similarly situated are currently experiencing. Finally, there is no need for DEW to be joined as a party here; the obligation to provide interim transportation is a mandatory requirement for the School Board, regardless of the actions of any other party.

I. LEGAL ARGUMENT

A. Relator's Claim Has Not been Made Moot by the Respondent's Purported Cessation of Its Conduct.

After arguing that the duty in R.C. 3327.02(E)(2) would be absurd and poses an "irreparable and undue expensive hardship" on the School Board, Resp. Motion to Dismiss at 12, the Respondent then argues that this dispute is moot because it claims it is in fact providing the transportation it described as "absurd" a few pages before. Resp. Mot. to Dismiss at 14. This purported cessation of unlawful conduct a day before the filing of the Motion to Dismiss is insufficient to moot this case.

"[A] party's voluntary cessation of a challenged practice ordinarily does not render the case moot unless the party 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 at ¶ 25 (quoting *Friends of the Earth, Inc. v. Laidlaw Environmental Servs.*, 528 U.S. 167, 190 (2000)). Assuming arguendo that the School Board has in fact stopped its unlawful conduct, it has made no attempt to argue that it is "absolutely clear" that its conduct will not

recur. In fact, there is substantial evidence to the contrary; the School Board's own briefing makes clear that it views the provision of interim transportation as a significant and "potential overwhelming" burden. Resp. Mot. to Dismiss 6.

The very individual, Rodney Stufflebean, whose affidavit is being used to argue for mootness is also on the record expressly indicating the School Board's willingness to accept the penalty rather than provide transportation: "Obviously, we've reduced our numbers because of certain reasons, we don't have the ability to start that. It would increase our routes by about five routes. So we would be subject to the penalty." Compl. Ex. A. ¶ 20. This is express affirmative evidence that the Respondent is likely to again stop providing interim transportation and instead pay the penalty, and there is no evidence to the contrary. The School Board does not dispute the fact that Mr. Stufflebean explicitly indicated that the School District would take the penalties imposed by law rather than provide transportation.

But the burden of proof is on the Respondent to prove not just that it may have stopped its unlawful conduct but that it will not resume its conduct. The affidavit that the School Board has submitted does not contain any claim that the School Board intends to continue providing interim transportation for the full period of its statutory obligation, until the adjudication of transportation is fully concluded. On its own, "[v]oluntary cessation of allegedly illegal conduct does not make the case moot." *United States v. W.T. Grant Co.*, 345 U.S. 629, 632 (1953). An action becomes moot due to voluntary cessation only if the defendant demonstrates that "there is no reasonable expectation that the wrong will be repeated." *Id.* at 633. This showing constitutes a heavy burden on the Respondent. *Id.*

The United States Supreme Court has held that "a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982). Under this doctrine

"voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case" unless "it can be said with assurance that 'there is no reasonable expectation . . .' that the alleged violation will recur" and "interim relief or events have completely and irrevocably eradicated the effects of the alleged violation." *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979) (alteration in original) (quoting *W.T. Grant Co.*, 345 U.S. at 632-33). A party asserting mootness has "the 'heavy burden of persua[ding]' the court that the challenged conduct cannot reasonably be expected to start up again." *Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 222, (2000) (alteration in original) (quoting *Friends of the Earth, Inc.*, 528 U.S. at 189). In *Mesquite*, the Supree Court held that a challenge to a city ordinance was not moot even though the city had repealed the "objectionable language" in the ordinance because the city could "reenact[] precisely the same provision" and had "announced just such an intention." 455 U.S. at 289 & n.11. The test for mootness is "stringent" to ensure courts are not "compelled to leave the defendant free to return to his old ways." *Friends of the Earth, Inc.*, 528 U.S. at 189 (cleaned up).

These cases reflect the principle this Court has also acknowledged in cases like *Highland Tavern, L.L.C.* This doctrine is prime for this Court's consideration in light of the statements made by the Respondent's representatives and by the Respondent's emphasis that it views the provision of this transportation as a difficult burden it should not be made to bear. 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 v. Serv. Emps. Internatl. Union, Local 1000*, 567 U.S. 298, 307 (2012)). This Court made clear that such attempts to moot cases by changing conduct that are "'maneuvers designed to insulate a decision from review by [a court] must be viewed with a critical eye.'" *Id.* The Respondent's alleged conduct here should likewise not insulate it from review.

B. As an Individual Injured by the Respondent's Failure to Comply With Its Legal Obligation, Relator Has Standing to Seek the Relief She Seeks.

Relator seeks an order compelling the provision of interim transportation as required by R.C. 3327.02(E)(2). She would be "directly benefited" by an order compelling that transportation and is directly injured by the failure to provide that transportation. *See State ex rel. Sinay v. Sodders*, 80 Ohio St.3d 224, 1997-Ohio 344, 685 N.E.2d 754. This Court has made clear that an individual has standing to seek relief if he or she has "real interest in the subject matter of the action." *State ex rel. Dallman v. Court of Common Pleas*, 298 N.E.2d 515, 517 (Ohio 1973). In the mandamus context, in order to establish standing a relator must be "beneficially interested" in the case. *State ex rel. Hills & Dales v. Plain Local School Dist. Bd. of Edn.*, 158 Ohio St.3d 303, 2019-Ohio-5160, 141 N.E.3d 189, ¶ 9 (quoting *State ex rel. Spencer v. E. Liverpool Planning Comm.*, 80 Ohio St. 3d 297, 299, 1997-Ohio-77, 685 N.E.2d 1251 (1997)); R.C. 2731.02. Accordingly, this case presents a marked contrast with *Hills & Dales*, 2019-Ohio-5160, where a village relator could not identify any direct benefit that would result to the village from the issuance of a writ of mandamus compelling a school district to transfer land to another school district. It simply would not receive any benefit from the provision of such relief. Here, Relator Siebold has pointed to the clear and direct benefits of transportation for her child that would occur if this Court issues the requested mandamus relief. *See* Pet. ¶ 34.

The School Board concedes that Relator is one of the parents who has requested mediation from the notice denying transportation sent by the School Board. Resp. Mot. to Dismiss Ex. A ¶ 3. As delineated in Relator's petition and supporting affidavit, *see* Pet. ¶ 34. Pet. Ex. ¶ 14, the denial of interim transportation to her child has caused her direct and immediate injury, an injury that can only be redressed by mandamus relief. The School Board seems to also concede that she has standing to bring suit on her own behalf, but contests whether she, despite her tangible and direct injuries, has standing to seek the provision of transportation to all affected parents.

There is no requirement that a relator be the sole beneficiary of the relief given by the Court's issuance of a writ if that relator has standing. Respondent cites *In re Pizzulo*, 2024-Ohio-778, 237 N.E.3d 842 (11th Dist. Ct. App. 2024), at ¶ 28. But *Pizzulo* was a mandamus action about the disqualification of signatures from a referendum petition, an individualized assessment in each circumstance. The relator there, an individual, brought a writ of mandamus arguing that the Board of Elections' decision to invalidate signatures was an abuse of discretion. To establish that the failure to accept signatures was an abuse of discretion, the relator in that case had to demonstrate "respondents' 'failure to exercise sound, reasonable, and legal decision-making.'" *Id.* at ¶ 25 (citation omitted). In that context, where each claim must be assessed differently, the Court of Appeals concluded that the "relator does not have standing to assert similar claims on behalf of those other signatories the Board invalidated." *Id*. at ¶ 28. There are no individualized assessments or similar claims here; Relator seeks the exact same relief as all other similarly situated parents and on the exact same grounds: R.C 3327.02(E)(2) requires interim transportation.

No individualized assessment or abuse-of-discretion standard need be applied; the sole mandatory requirement is interim transportation. There is no discretion here; it is simply mandatory. *Pizzulo* does not bind this Court. But it is also clearly distinguishable. In *Pizzulo*, the Court of Appeals had grounds to distinguish as individual separate actions each signature as a separate legal challenge. But here, there is only one action seeking an order under R.C 3327.02(E)(2). That request cannot and need not be separated into individual cases the way the court did in *Pizzulo*.

This Court has acknowledged that "[s]tate courts need not become enmeshed in the federal complexities and technicalities involving standing and are free to reject procedural frustrations in favor of just and expeditious determination on the ultimate merits." *State ex rel. Ohio Acad. of Trial Lawyers v. Sheward*, 715 N.E.2d 1062, 1081-82 (quoting 59 American Jurisprudence 2d (1987) 415, Parties,

Section 30). Requiring each individual parent to file the same lawsuit on the same grounds for the same relief, where the arguments of the School Board and the involved parents would be identical, would be an enormously unnecessary waste of judicial resources.

Once a party has standing, the relief he or she receives may well benefit others. For example, in *State v. Brown*, 38 Ohio St. 344 (1882), this Court held that an elector could properly bring a mandamus action to compel the sheriff to give notice of a judicial election. The mandated relief was not the provision of notice of that election just to the individual voter litigant, but to all qualified voters. It would have been ridiculous to only require the sheriff to give notice to the specific voter who filed a mandamus action. Another case that is instructive is *State ex rel. Sinay v. Sodders*, 80 Ohio St.3d 224, 1997-Ohio 344, 685 N.E.2d 754, which held that a township had standing to bring a mandamus petition compelling the certification of an initiative petition for an election. This Court, emphasizing that "the applicable test is whether relators would be directly benefited or injured by a judgment in the case," *Id.* at 226, held that the township had standing to bring a mandamus petition. The "failure to perform the requested acts would have directly injured Randolph Township and its board of trustees by nullifying their agreement." *Id.* This Court did not therefore limit the scope of the township's relief to solely what would benefit the township's own interests. Instead, because the township had standing, it was able to pursue its petition and compel the relief sought. None of this Court's reasoning suggested that standing would limit the availability of relief.

In short, if someone has standing to seek relief, then the scope of that relief is not limited only to that individual. Every time this Court rules a law unconstitutional and enjoins its enforcement, it grants relief for more parties than the particular individual before it. Every time an injunction is granted against false advertising under § 43(a) of the Lanham Act, 15 U.S.C. 1125, it prohibits false advertising toward anyone, not merely the individual who brought the lawsuit. There is simply no legal

requirement that everyone who benefits from legal relief be included as a plaintiff in an action, and in fact such a requirement would turn standing on its head. Relator has been injured directly by the School Board's conduct and would benefit directly from the relief she seeks. She accordingly has standing. This Court's precedent simply does not limit her relief to transportation solely for her own child.

C. No Adequate Remedy Exists at Law to Prevent the Ongoing Injury Relator is Experiencing From the Failure to Provide Transportation to her Child.

To be entitled to a writ of mandamus, a relator must prove "(1) a clear legal right to the requested relief, (2) a clear legal duty on the part of [the respondent] to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law." *State ex rel. Randlett v. Lynch*, 168 Ohio St.3d 568, 2022-Ohio-3260, 200 N.E.3d 236, ¶ 11 (citing *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452, ¶ 6, 13); *see also State ex rel. Bassman v. Earhart*, 480 N.E.2d 761 (Ohio 1985).

Respondent does not even purport to attempt to dispute the first two elements to this Court. It makes no argument against the existence of a legal right or a legal duty. And rightly so, as it has no grounds to do so. If a School Board determines that it is impractical to transport a student under R.C 3327.02 and the family of that student requests mediation of that decision, it has a direct, mandatory, and nondiscretionary obligation to provide transportation until the matter is resolved. R.C 3327.02(E)(2) contains 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."

This plain statutory language is not optional or in any way subject to the discretion of the School Board. It contains no exception for if the interim transportation is costly or difficult. It instead reflects a basic policy judgment of the Ohio General Assembly; rather than force students to re-obtain

their rights to transportation after a potentially lengthy process of mediation and administrative review, suffering all kinds of harms along the way, the General Assembly made clear that if a student challenges a school board's impracticality determination, the student is immediately entitled to transportation for as long as the dispute resolution lasts.

Relator has delineated some of the specific harms she is experiencing as a result of the School District's disregard of the law. Pet. Ex. A, Para. 14. She has lost hours at work, lost income from those lost hours, incurred significant wear and tear on her vehicle, incurred almost two hours of daily lost travel time, and had to work significant additional hours early in the morning and late in the evening to try to provide for her family. The ongoing harm being inflicted upon her will become irreparable without prompt action.

In response, the School Board argues that the financial penalty it is required to pay by R.C. 3327.02(F) is sufficient to remedy any injury. R.C. 3327.02(F) certainly does provide for a penalty on the School Board for its failure to transport private and charter students during the pending of mediation. But, as the Court of Appeals has held, that penalty is not sufficient to redress the ongoing injuries being experienced by Relator and others who are similarly situated. *State ex rel. Luchette v. Pasquerilla*, 182 Ohio App. 3d 418, 2009-Ohio-2084, 913 N.E.2d 461, ¶ 37 ("[A]ppellant did not have adequate remedy at law by way of seeking payment under R.C. 3327.02(F) as this would not provide her with her right to have the school district provide transportation."). R.C. 3327.02(F) is on its face a partial penalty for the failure to follow the law. It is not a full and complete remedy. That statute provides:

> If the department determines that a school district board or governing authority has failed or is failing to provide transportation as required by division (E)(2) of this section or as ordered by the department under division (E)(1)(b) of this section, the department shall order the school district board or governing authority to pay to the pupil's parent, guardian, or other person in charge of the pupil, an amount equal to fifty per cent of the cost of providing transportation as determined by the board or governing authority

> under division (A)(3) of this section, and not more than two thousand five hundred dollars.

R.C. 3327.02(F)(1). A penalty for noncompliance is set forth within the statute. That penalty does not mean that the Board has carte blanche authority to disregard its obligations under Ohio law — particularly when the remedy would not be adequate. The inadequacy of the penalty as compensation is made clear on the face of the statute by the amount it imposes. The penalty payment contemplated by the statute is limited to 50% of the cost of interim transportation, which is also capped at $2,500. It is impossible for the Relator to now know the amount of that penalty sum, but at an absolute maximum this penalty will only provide 50% of the financial equivalent of the school board's transportation obligation. 50% of a cost, on its face, does not constitute a full and adequate remedy to replace the lost transportation itself.

Accordingly, as courts have already recognized, this penalty is not in itself an adequate remedy as an alternative to the failure to provide transportation. *Luchette*, 2009-Ohio-2084, ¶ 37. *Luchette* explained at length that the penalties authorized by R.C. 3327.02(F) are imposed after the fact when the injury is completed and, thus, cannot suffice to fully remedy the harms that parents are still experiencing. These penalties do not adequately redress the actual current injury of Relator and other families and these penalties cannot mitigate the ongoing harms from a violation of the law.

Respondent disputes whether the financial payment imposed by R.C. 3327.02(F)(1) is properly labelled a "penalty." This argument completely ignores *Luchette*, which found this obligation to be a "penalty" or sanction, and accordingly determined that it is not a substitute for the duty to provide transportation. "[T]he labeling of this as a sanction supports appellant's position in that it is a penalty until compliance occurs and that the money is not a legitimate or endorsed substitution for the duty to provide transportation." *Luchette*, 2009-Ohio-2084, ¶ 37. As that court pointed out, the legislative history expressly "labeled R.C. 3327.02(F) and (G) as 'sanctions for failure to transport.'" *Id.* at ¶ 11.

Respondent points to no evidence to the contrary or even attempts to address this careful analysis by the *Luchette* court. As that court explained, "[t]he 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." *Id.* at ¶ 50. Respondent claims that this statute does not impose a sanction but makes no attempt to point to proof for that claim or to identify any language in the statute suggesting that the mandatory penalty is not, in fact, a penalty. And regardless of its label, the penalty is an incomplete remedy on its face.

Respondent's argument that the administrative hearing provides an adequate remedy at law misses the fundamental fact that the compensation available as a result of that hearing is inherently insufficient to make Relator whole. The statutory cap of the fine that the DEW may impose is $2,500 a student, which would not come close to redressing the failure to provide interim transportation for Relator. As the court explained in *Luchette*, if the School Board cannot be mandated to provide the legally obligated transportation, the entirety of R.C. 3327.02 would be rendered a nullity. *Luchette*, 2009-Ohio-2084, ¶ 31. That court explained that

> if the school district's interpretation is correct, then the entire statute is without meaning (with the exception of the confirmation by the county's educational service center). This is because if the school district pays the maximum amount from the beginning, the parent's rejection of the offer and decision to proceed through the board hearing would be pointless.

Id. Likewise here, the School Board's arguments would render the obligation to provide interim transportation non-existent; a school could choose to make the financial decision to pay the penalty instead of its mandatory obligation without any consequence. The penalty authorized in R.C. 3327.02(F) is a penalty imposed by the DEW until compliance occurs. It is no substitution for the mandatory duty to provide transportation and provides no meaningful remedy whatsoever to the Relator now, while such expenses and hardships are being incurred.

Respondent attempts to distinguish *Luchette* by discussing the stage of the administrative proceeding in that case. Namely, in *Luchette* a school board refused to provide transportation after a mandatory order which has not yet occurred here. That purported distinction misses the fundamental import of *Luchette*. The court's holding was that R.C. 3327.02(F) is inadequate as a remedy for the loss of transportation. That holding does apply here; the arguments the School Board makes here are identical to the argument made by the Respondent in *Luchette*. The Court here should reject the argument, just as the court in *Luchette* did. The statutory penalty "does not give the pupil the ordered remedy. Rather, it is a way to compensate the parent for lost transportation rights until the school district complies, either voluntarily or through court order in a mandamus action. It does not eliminate the right to transportation ordered by the state board." *Luchette*, 2009-Ohio-2084, ¶ 28.

Respondent relies on *State ex rel. Williams v. City of Canton*, 364 N.E.2d 1161, 1162 (1977), where this Court rejected a mandamus action. But ultimately, this Court revisited the conclusion in that case and issued a writ of mandamus requiring compliance from a state official. *State ex rel. Brown v. Canton*, 414 N.E.2d 412, 414 (Ohio 1980). This Court explained that for a remedy to be adequate it must be "'complete in its nature, beneficial and speedy.'" *Id.* at 414 (quoting *State ex rel. Paul Stutler, Inc. v. Yacobucci*, 160 N.E.2d 300, 303 (9th Dist. Ohio Ct. App. 1958)). In *Brown*, this Court found that a different statutory penalty was insufficient to constitute an adequate remedy for a state official's failure to comply with the law. "R. C. 6109.33, which provides for civil penalties for violations of any order of the director," was not an adequate remedy to justify not providing mandamus relief. *Id.* There, the Court focused on the lengthy delay that had occurred as evidence that relief was not "speedy." But a remedy must be *both* "complete in its nature" and "speedy" for it to be adequate. *Id.* Regardless of how "speedy" the penalty of R.C. 3327.02(F) is imposed, in no circumstance is it complete. It is less than half of the actual cost of transportation for Relator. On its face, it does not and simply cannot make

the harmed party whole. As this Court has explained, mandamus is warranted when "no other remedy has or can be suggested that will be plain, complete and adequate. In truth, the facts in the instant case constitute the ideal conditions warranting resort to this extraordinary remedy." *State ex rel. Merydith Const. Co. v. Dean*, 116 N.E. 37, 41 (1916).

A partial penalty is not complete relief. This Court has explained that "where declaratory judgment would not be a complete remedy unless coupled with ancillary extraordinary relief in the nature of a mandatory injunction, the availability of declaratory judgment does not preclude a writ of mandamus." *State ex rel. Arnett v. Winemiller*, 685 N.E.2d 1219, 1222 (Ohio 1997) (citing *State ex rel. Huntington Ins. Agency, Inc. v. Duryee,* 653 N.E.2d 349, 355 (Ohio 1995)). "For an alternate remedy to constitute an adequate remedy so as to preclude the requested extraordinary relief in mandamus, it must be complete, beneficial, and speedy." *State ex rel. Gilmour Realty, Inc. v. City of Mayfield Heights*, 119 Ohio St. 3d 11, 2008-Ohio-3181, 891 N.E.2d 320 at ¶ 14. The imposition of a partial penalty does not redress the harm Relator is experiencing. Just as a pending civil action cannot provide complete relief because it cannot compel a city to commence appropriation proceedings, *Id.*, the pending administrative action here cannot provide complete relief because it cannot, by definition, result in the compulsion of the mandated interim transportation.

Finally, the School Board argues that, "most importantly," requiring it by mandamus to provide the interim transportation mandated by R.C. 3327.02(E)(2) before a R.C. Chap. 119 hearing occurs leads to an "absurd result." Resp. Motion To Dismiss At 11. 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 aside from the vehicle of mandamus, that interim transportation is a mandatory obligation under statute that the School Board is trying to avoid. Respondent claims, "[t]he interim transportation of the student, despite

the irreparable and undue expensive hardship it places on the school district, and possibly other students and families, would so wholly undermine the school districts determination of impracticality as to effectively neuter its case" that transportation is impractical. Resp. Mot. to Dismiss at 12. This argument reveals the real problem with the Respondent's position. R.C. 3327.02(E)(2) is not a suggestion. It does not contain any exceptions for undue expense or financial hardship for the school district or provide the school district with an alternative of financial compensation. The School District suggests the requirement to provide transportation to be "absurd." But it is what the statute simply requires on its face. The School Board can take up the purported absurdity of its obligation to transport students with the legislature. But what it cannot do is claim to this Court that the law gives it an alternative to interim transportation, financial penalties and fines, that is simply not provided to it.

The penalty in R.C. 3327.02(F) is not a "statutory solution to instead pay the statutory compensation." Resp. Motion To Dismiss at 12. It is a penalty to ensure that the School District complies with its mandatory, non-discretionary obligation to provide interim transportation. The School District has no right to refuse to comply with that duty. Instead, this Court has emphasized that "transportation is the rule and payment is the exception." *Hartley v. Berlin-Milan Local School Dist.*, 433 N.E.2d 171, 173 (Oh. 1982). "The statutory addition of procedures for ensuring funding for a pupil during the school district's noncompliance with an order to provide transportation does not override the principle that transportation is the rule and payment the exception." *Luchette*, 2009-Ohio-2084, ¶ 36. This Court should apply that rule as contained in R.C. 3327.02(E)(2).

D. This Court Should Issue a Peremptory Mandamus.

Respondent acknowledges that pursuant to R.C. 2731.06, "[w]hen the right to require the performance of an act is clear and it is apparent that no valid excuse can be given for not doing it, a court, in the first instance, may allow a peremptory mandamus." R.C. 3327.02(E)(2) is mandatory and

obligatory. It contains no provisions for valid reasons or excuse to not comply with its obligations. Nothing about R.C. 3327.02(E)(2) authorizes the School Board to consider the penalties to be an adequate "justification" for not providing interim transportation. That obligation is a permanent one, without any discretion or valid reason to refuse to provide it. It is precisely in such a circumstance where a preemptory mandamus is proper.

E. The Department of Education and Workforce Is Not a Necessary Party.

Respondent's final argument is unusual. It argues that the DEW is a necessary party in this matter, claiming that "[t]o the extent Relator alleges that CCS's determinations of impracticability were not made in compliance with various statutory requirements, failure to join DEW would put CCS at substantial risk" of inconsistent obligations. Resp. Motion to Dismiss at 15 (citing Complaint, ¶ 27). This argument is unclear; paragraph 27 of Relator Siebold's complaint is her factual allegation about her own conduct in requesting mediation, not any allegation about the School Board or whether the School Board's conduct was legally deficient.[1]

Relator's petition seeks a writ of mandamus pursuant to R.C. 3327.02(E)(2), which requires interim transportation from the Respondent. Nothing about R.C. 3327.02(E)(2) suggests that any other party is a necessary provider of that transportation; it is solely the Respondent who is obligated to provide that transportation. R.C. 3327.02(E)(2) does not even mention the DEW and its obligations. The DEW is accordingly in no way a necessary party.

Respondent points that the timing of the mediation process is subject to the DEW's determinations. This is true but irrelevant. R.C. 3327.02(E)(2) does not set a maximum timeframe

[1] It seems that perhaps the School Board's Motion may contain references to page numbers, paragraphs, and arguments from the Attorney General's Mandamus petition in *State of Ohio, ex rel. Dave Yost, Attorney General v. Columbus City Schools Board of Education*, 2024-1250. While there is undoubtedly overlap, Relator's arguments here are not carbon copies of the Attorney General's, and a Motion in this case need not respond to arguments not made in this matter.

during which transportation must be provided, it simply requires the provision of that transportation for the entire period that a transportation decision is being adjudicated. That obligation is clear and unambiguous. There is simply no risk that any inconsistent obligation may be imposed. In other words, it is up to the DEW to decide how long mediation will take. But that decision does not change this proceeding in the least; R.C. 3327.02(E)(2) mandates interim transportation regardless. The School Board simply identifies no actual obligation towards the DEW that is in at risk because of this litigation.

II. CONCLUSION.

The Court should deny the motion to dismiss and proceed with granting the requested relief. The DEW is in no way a necessary party to this matter and mandamus is the proper vehicle to require the Respondent to fulfil its mandatory obligation to provide interim transportation. The Court should issue a preemptory writ and then proceed with providing the Relator with full relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Response to the Respondent's Motion to Dismiss was served by Federal Express mail and by email on this 18th day of October, 2024 upon the following:

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