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**

MERITS BRIEF OF RELATOR MARRISA SIEBOLD

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STATEMENT OF FACTS

The material facts are not in dispute in this case. Respondent Columbus City Schools Board of Education ("School Board") is the governing body of the Columbus City School District ("Columbus Schools"), an Ohio public school district. Respondent's Answer ¶ 4. As such, R.C. 3327.01 creates for the School Board a mandatory duty to provide transportation for students in its district to and from school, regardless of whether those students attend the schools that the Board operates or instead exercise their constitutional rights to attend charter or nonpublic schools.

The Relator, Marrisa Siebold, has a child enrolled at Tree of Life Christian Schools Middle School, a private school within the Columbus School District. Ans. ¶ 3; *see* Relator's Exhibit D ¶ 3. Relator's child is eligible for transportation from the Columbus School District and has received that transportation in previous school years. Ans. ¶ 3. An eligible student, like Relator's child, can only be denied transportation by the School Board based upon a determination of impracticality, pursuant to the obligations of R.C. 3327.02. Critically here, R.C. 3327.02(E)(2) requires that a "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[.]"

Ms. Siebold's child, like 2,644 other children that attend non-public schools within the School District, Respondent Affidavit ¶ 4, was deemed impractical by the School Board for transportation the 2024-2025 academic year. Rel. Ex. D ¶ 3; Rel. Ex. C-1. Ms. Siebold received notice of this determination after the school year had already begun for her and her child, and her child had not been transported to school for over a week, without any prior notice that there would be no transportation provided. Rel. Ex. A ¶¶ 4-6.

R.C. 3327.02 requires an individualized, student-by-student evaluation of transportation, providing a process for a school board to "determine that it is impractical to transport *a pupil* who is

eligible for transportation to and from a school[.]" *Id.* 3327.02(A) (emphasis added). The School Board has testified to this Court that it formerly engaged in transportation evaluations "on a per-student basis[,]" Resp. Aff. ¶ 7, but has also, candidly, admitted that it decided to abandon that process and instead shift to "a system for making the determinations." *Id.* ¶ 8.

The School Board's transportation decisions were discussed during its August 27, 2024, Board Meeting. *See* Rel. Ex. A ¶ 20; Columbus City Schools Board of Education, *BOE 2024-08-27*, www.youtube.com/live/s132jenOupsz (accessed December 6, 2024). During that meeting, the Columbus City Schools Executive Director of Transportation Services Rodney Stufflebean, whose affidavit is also the primary evidence Respondent has submitted in this proceeding, made the following statement:

> They are required to, they are allowed to request mediation. Once we receive that request for mediation, the law does state that we are required to transport if we have the means available. It also states that in the subsection of that that if we do not have the means available, we're subject to a certain penalty for that that would be paid directly to the students or the family, or the school to disburse to the family. 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 forty-five routes. So we would be subject to the penalty.

Id. When asked by a School Board member if "we're just taking the penalty?" Mr. Stufflebean confirmed that to be the case. *Id.*

The notice Relator received, denying her transportation, purported to offer money as an alternative to transportation, but did *not* identify any amount. *See* Rel. Ex. A ¶ 7; Rel. Ex. C-1. In other words, it claimed to extend a financial offer without identifying the amount of that offer, and Relator still does not know what that original offer might have been. *See* Rel. Ex. A ¶ 7. The form provided an option to accept or reject the offer; the space to accept the "offer" included a statement agreeing to the substitute for transportation "for the consideration named," despite the fact that no monetary amount had actually been named in the letter. *See* Rel. Ex. A ¶ 8. Respondent has

submitted to this Court an example form that likewise does not identify any settlement amount. *See* Resp. Ex. 3. Like the notice Relator received, this sample includes a space for a signature to accept the offer "for the consideration named," without a named amount. *Id.*

Relator refused the School Board's "offer" of payment and requested mediation, responding by electronic mail on August 22, 2024, and by certified mail on August 26, 2024. Rel. Ex. A ¶ 10. Relator's request occurred pursuant to R.C. 3327.02(C) and initiated the process delineated in R.C. 3327.02(E) for her child. *See* Rel. Ex. D ¶ 3. In the four months since that mediation request, there has still been no mediation conducted for Relator concerning the transportation of her child. Rel. Ex. C ¶ 4. The 2024-25 school year is halfway over, and Relator has still not even had a mediation scheduled. Moreover, Respondent has admitted to this Court that, as of 175 families that have requested mediation regarding the denial of transportation, Resp. Aff. ¶ 26, mediations have been held for only 45 students. Resp. Aff. ¶ 27. Respondent has also admitted that, as of December 6, DEW has already issued 19 penalties to the School Board, pursuant to R.C. 3327.02(F), for the School Board's failure to provide the statutorily mandated interim transportation. Resp. Aff. ¶ 28.

Not having transportation posed significant costs for Relator. She has had to take time off from her work to transport her children, which resulted in lost hours and accordingly lost income and more difficult working hours. Rel. Ex. A ¶¶ 14(a) & (b). She incurred significant costs and wear and tear on her vehicle. *Id.* ¶ 14(c). In general, she has had to work significant additional hours as the provider for her family and incurred significant costs because of the failure to transport. *Id.* Other parents and guardians experienced injuries also; for one other guardian the injuries suffered went to the extent of losing a job. Rel. Ex. A-2.

This action was filed on September 10, 2024, and the Respondent was served on September

17, 2024. As S.Ct. Prac. R. 12.04 requires an answer or a motion to dismiss within twenty-one days of service in original actions in this Court, the Respondent's first filing in this matter was due on October 8, 2024.

Less than a week before that deadline, on October 2, 2024, the School Board sent a letter to charter and nonpublic schools, including Relator's child's school, indicating that the School Board would begin transporting certain students who were not currently receiving transportation. Rel. Ex. C-2. Relator was not sent this letter directly. Transportation was set by this letter to begin on October 7, 2024, the day before Respondent's deadline with this Court. *Id.* The letter sent by the School Board notifying private schools of this transportation included this statement:

> This summer, Columbus City Schools identified students who had been transported to charter and nonpublic schools beyond the requirements of the law. Families of approximately 102 students deemed impractical to transport have rejected the district's offer of payment in lieu of transportation and requested mediation through the Ohio Department of Education and Workforce. Under Ohio law, if we fail to transport these students during the mediation process, the Ohio Department of Education may order us to pay compensation to these families.
>
> Beginning Monday, October 7, 2024, the approximately 102 identified students in mediation will be transported. This change will necessitate the addition of 5 new routes and adjustments to 33 current routes, potentially changing pickup or drop-off times for more than 1,100 students. We regret any convenience caused to your schools and students during this time.

Id. This letter did not indicate how long this transportation would be provided for or when it would cease. *Id.* It made no claim that the transportation would be provided during the entire mediation process. *Id.* Relator's child is one of the 102 students included within the transportation letter and was scheduled to start receiving transportation on October 7, 2024. *See* Rel. Ex. D ¶ 3.

Respondent has not indicated that it intends to provide this transportation so long as parents are entitled to interim transportation. On the contrary, it has submitted to the Court, regarding this statutorily required interim transportation, that "[t]he impact this has upon CCS's ability to

transport CNP and its own students has been significant and hampered CCS's already overburdened transportation operations with additional routes that it cannot service effectively and increases the number of issues (i.e., late student pick-ups and drop offs) that occur on other routes." Resp. Aff. ¶ 30. State funding is reduced or withheld if the School Board fails to meet obligations regarding when school buses arrive. Respondent has also candidly admitted to this Court that it "had funds withheld for findings of noncompliance pursuant to R.C. 3327.021 for 11 days at a cost of 25% of CCS's daily state funded payment for student transportation under Chapter 3317, which amounts to $40,250 per day." Resp. Aff. ¶ 30. It has also admitted that "complaints are being made daily." *Id.*

Ms. Siebold's experience is illustrative of Respondent's ongoing failures to comply with the law. She was never informed directly by the School Board of the attempted resumption of transportation; she only received notice through her child's school. Rel. Ex. C ¶ 4. She was informed by her school that her child was supposed to be at the bus stop at 6:55 am. *Id.* ¶ 5. On October 7, 2024, Relator and her child waited for the school bus and it never arrived. *Id.* ¶ 9. She called the morning bus transportation service shortly after 7:00 am to find out where the scheduled school bus was. *Id.* ¶ 10. They told her that there was no one driving that route and that the bus was not available, and she accordingly had to drive her child directly to school. *Id.* ¶ 11. When her child tried to get on the school bus to go home that day, he was denied transportation because they did not have paperwork showing him on the route, despite the School Board's promise that he would be transported. *Id.* ¶ 12.

On the morning of Tuesday, October 8th, Relator called the morning bus transportation service to see if the bus route was going to be coming that day. *Id.* ¶ 14. The transportation service told her again that no there was no bus driver for that route that day. *Id.* ¶ 15. It was not

until several days after transportation was scheduled to begin, Wednesday, October 9th, that Relator's child actually began receiving transportation from the School Board. *Id.* ¶ 17.

That transportation has been lengthy and often been delayed, such that Relator's child has been tardy for school on multiple instances. In particular, the transportation would not arrive at its scheduled time; it was scheduled to arrive at 6:55 am but would not actually arrive until 7:30 am. *Id.* ¶ 18. With cold weather approaching, the bus driver told Relator's son to arrive at the bus stop at 7:15 am. *Id.*

On December 4, 2024, the route was changed, such that the transportation would arrive at 6:30 am. *Id.* ¶ 23. Relator received no notification whatsoever from the School District, or any other party, of that change in transportation. *Id.* Relator's child, expecting the bus to arrive at 7:30 am, stood waiting for the bus on December 4 since 7:15 am. *Id.* ¶ 24. He stood there for approximately 45 minutes, in below-freezing temperatures, waiting for transportation to arrive. *Id.* At 7:37 am, Relator called the bus transportation service, asking where the bus for her son was. *Id.* ¶ 25. It was not until that call that they informed her that the bus had already arrived at 6:31 am. *Id.* After additional delays, Relator's child was not actually transported to school until after 8:00 am that day, having waited for almost an hour. *Id.* ¶ 28. Respondent's refusals to follow the law has consequences.

ARGUMENT

Proposition of Law: R.C. 3327.02(E)(2) contains an immediate, mandatory, and non-discretionary duty for a school board to provide interim transportation when a parent requests mediation; penalties for noncompliance are not adequate remedies at law to redress the ongoing injuries that result from the failure to provide that transportation.

The law imposes a mandatory duty on the School Board that it has no discretion to deny. Reflecting a strong public policy 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), Ohio law contains a mandate for school districts to provide transportation to students within their jurisdictions. R.C. 3327.01. An eligible student can only be deemed impractical to transport if the School Board follows the enumerated process in R.C. 3327.02, which enables administrative and judicial review of that transportation decision. In addition to providing a right to challenge and review the decision itself, R.C. 3327.02 also contains provisions designed to hold School Boards accountable and protect parental rights to transportation. In particular, the provision in that process at issue here is R.C. 3327.02(E)(2), which ensures that the process of challenging a transportation decision does not prejudice the parents by the absence of transportation while a case is being resolved. 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.* By including this language, the legislature imposed a mandatory, nondiscretionary duty to provide interim transportation.

The State of Ohio, through Relator Marrisa Siebold, seeks an order in mandamus, compelling the School Board to comply immediately with its mandatory obligation to provide interim transportation. Mandamus has three well-established elements a relator must prove. 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 board to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law." *State ex rel. Bobovnyik v. Mahoning Cty. Bd. of Elections*, 161 Ohio St. 3d 349, 2020-Ohio-4003, 163 N.E.3d 511, ¶ 10 (citing *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452, ¶ 6). All elements of mandamus have been satisfied here; Relator is entitled to receive the relief she seeks, the School Board has a mandatory obligation, and any after-the-fact penalties imposed by the Department of Education and Workforce ("DEW") are insufficient to redress

the injuries that Relator and others who are similarly situated are currently experiencing for the failure to provide the mandatory interim transportation. Moreover, this case has not been rendered moot by the purported voluntary cessation of unlawful conduct; on the contrary, the School Board's attempt to evade review further evidences its wrongdoing.

I. Relator Has a Legal Right to the Relief She Requests.

Respondent has conceded that Relator's child is entitled to receive transportation to his nonpublic school, that he was deemed impractical to transport under R.C. 3327.02, that Respondent made a purported offer of transportation pursuant to R.C. 3327.02(C), and that Relator requested mediation of that transportation decision pursuant to R.C. 3327.02(E). Rel. Ex. D. Rodney Stufflebean, Executive Director of the School Board's transportation department, has acknowledged in an affidavit to this Court that Relator's child is currently in mediation through DEW. *Id.* The mediation procedures delineated in R.C. 3327.02(E)(1)(a) have not yet occurred for Relator's child. Rel. Ex. C ¶ 4.

The right provided to Respondent in such a circumstance is not in doubt. R.C. 3327.02(E)(2) provides a direct and explicit legal right to "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.* As Relator has requested mediation, the right she has been granted is indisputable. Relator and her child have been granted an express right, under this statute, to 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.

II. The School Board Has a Clear Legal Duty to Provide Interim Transportation.

Respondent claimed in its Answer that "Relator's Complaint is barred by a lack of clear legal duty." Resp. Ans. ¶ 64. But the law could not more clearly impose a mandatory duty. If the School

Board determines that it is impractical to transport a student under R.C. 3327.02 and the parent or guardian of that student requests mediation of that decision, as occurred here, the School Board 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." (emphasis added).

By using the term "shall," the Ohio General Assembly expressly created a mandatory duty. The use of the word "shall" creates a mandatory and nondiscretionary obligation absent clear evidence to the contrary, not existent or proffered here. "A basic rule of statutory construction is that 'shall' is 'construed as mandatory unless there appears a clear and unequivocal legislative intent' otherwise." *Bergman v. Monarch Constr. Co.*, 124 Ohio St. 3d 534, 2010-Ohio-622, 925 N.E.2d 116, ¶ 16 (citation omitted); *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 362 (2018) ("The word 'shall' generally imposes a nondiscretionary duty."); *see Murphy v. Smith,* 583 U.S. 220, 223 (2018) ("[T]he word 'shall' usually creates a mandate, not a liberty."); *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U. S. 26, 35 (1998) (The Supreme Court emphasized that shall is mandatory and "normally creates an obligation impervious to judicial discretion."). The language of the statute is expressly mandatory: the School Board "shall provide transportation," and it shall provide that mandatory transportation "until the matter is resolved under division (E)(1)(a) or (b) of this section." R.C. 3327.02(E)(2).

This plain statutory language is not optional or in any way subject to the discretion of the School Board. Respondent claimed in its Answer that "Relator's Complaint is barred by Defendants' statutory discretionary authority." Resp. Ans. ¶ 64. It has no such discretion. R.C. 3327.02(E)(2) is

not discretionary or optional; it is clearly and expressly mandatory. The School Board has emphasized to this Court in its evidence the cost of this transportation, but this statute contains no exception for if the interim transportation is costly or difficult. 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. *If interim transportation is costly or difficult, the simple solution is to conduct a mediation promptly, rather than delaying for the better part of a school year*.

This obligation is also not an obligation for any other party. It is certainly not an obligation for DEW, as was made implicitly clear by this Court's denial of Respondent's motion to join parties. Relator's petition seeks a writ of mandamus pursuant to R.C. 3327.02(E)(2), which requires interim transportation from the School Board alone. 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 given a mandatory obligation to provide that interim transportation.

III. There is Not an Adequate Remedy in the Ordinary Course of Law.

There is no adequate remedy at law that can substitute for the failure to provide transportation. While the General Assembly has established penalties for noncompliance with the obligations in R.C. 3327.02(E)(2), those penalties cannot, in their nature, constitute an adequate remedy for the injuries Relator and others similarly situated have faced because of Respondent's noncompliance with the law. As Relator delineated in her affidavit, many of these injuries she is experiencing because of the School Board's disregard of the law are quite significant. Pet. Ex. A ¶ 14. She has lost hours at work, lost income as a result of 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. *Id.* These injuries are all significant and not reducible to merely financial costs. And most importantly, she was denied a right to transportation expressly granted her by state law. The ongoing harm being inflicted upon her will become irreparable without prompt action and the loss of that right is incalculable.

R.C. 3327.02(F) creates a financial penalty that DEW is given the authority to impose on the School Board for its failure to comply with its R.C. 3327.02(E)(2) obligations to provide interim transportation. According to the School Board, DEW has already issued 19 such penalties related to its current and ongoing failure to provide interim transportation. Resp. Aff. ¶ 28. The provision reads:

> 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. The school district board or governing authority shall make payments on a schedule ordered by the department.

R.C. 3327.02(F)(1). If DEW issues an order pursuant to this section, it also has authority under R.C. 3327.02(F)(2) to deduct the awarded amount from pupil transportation payments the School Board receives, and to "use the moneys so deducted to make payments to the nonpublic or community school attended by the pupil." As Rodney Stufflebean said in a School Board meeting, this financial obligation is a "penalty" for the failure to transport. Rel. Ex. A. ¶ 20. Stufflebean's statement was confirmed by the legislature: the legislative history expressly describes this provision "as 'sanctions for failure to transport.'" *State ex rel. Luchette v. Pasquerilla*, 182 Ohio App. 3d 418, 2009-Ohio-2084, 913 N.E.2d 461, ¶ 11.

This Court has explained that 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 (1916); *see also Bustard v. Dabney,* 4 Ohio 68, 70 (1829). This Court has defined an adequate alternative remedy as a remedy that is "complete in its nature, beneficial and speedy." *State ex rel. Merydith Const. Co.*, 116 N.E. at 41. All these terms are important; for a remedy to be a truly adequate substitute for mandamus, it must be both complete and total.

This Court has regularly emphasized the weight of this standard, ordering compliance from state officials that fail to comply with their legal obligations. *State ex rel. Brown v. Canton*, 414 N.E.2d 412, 414 (Ohio 1980) (quoting *State ex rel. Paul Stutler, Inc. v. Yacobucci*, 160 N.E.2d 300, 303 (9th Dist. Ohio Ct. App. 1958)). *Brown* is particularly on point here. A statute that provided for civil penalties was not an adequate remedy at law. This Court there emphasized that the imposition of a civil penalty alone "will not afford the appellant either a complete or a speedy remedy." *Id.* There, as here, the provision of a penalty for noncompliance was insufficient to substitute for the obligation to provide a mandatory right. Specifically, "an analogous forfeiture provision was for three years unable to secure compliance with the director's order." *Id.* When a civil penalty cannot actually result in the enforced compliance with the law, in this case the law requiring interim transportation, that penalty is not an adequate alternative for mandamus. An adequate remedy must be *both* complete in its nature *and* speedy. *Id.*; *see also State ex rel. Pressley v. Indus. Comm'n*, 228 N.E.2d 631 (1967).

Simply on its face, R.C. 3327.02(F) does not provide a fully and adequate remedy. It expressly provides, as a penalty assessed against the School Board, only "fifty per cent" of the transportation cost, or at most, "two thousand five hundred dollars." R.C. 3327.02(F)(1). That penalty, even if awarded at its maximum, is inherently insufficient to redress the ongoing injuries being experienced by Relator and others who are similarly situated. *Luchette*, 2009-Ohio-2084, ¶ 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. 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 and as a simple matter of common sense, cannot and does not constitute a full and adequate remedy to replace that cost and the lost transportation.

Moreover, the statutory cap of the fine that the DEW may impose is at an absolute maximum $2,500 a student, which would not come close to redressing the failure to provide interim transportation for Relator and could well be less than 50% of the actual damages she has experienced. 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. 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. It does not and simply cannot make the harmed party whole. If that penalty were the only remedy available, the legislature would have facially denied students a full remedy for the injuries they experienced, giving them as an absolute maximum only 50% of their actual loss. Such a scenario, where no one can ever recover for the injuries that have been inflicted on them by a School Board's wrongdoing, is on its face "inadequate."

A partial penalty to the offender is not complete relief to the victim. This Court has regularly emphasized that the availability of some form of relief does not necessarily make that relief a full and adequate remedy at law. *See State ex rel. Pressley v. Indus. Comm'n*, 228 N.E.2d at 648 ("The extraordinary remedies of statutory mandamus and statutory mandatory injunction are not plain and adequate remedies in the *ordinary* course of the law[.]") For example, 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, ¶ 14. In many contexts, this Court has emphasized that a partial remedy, like a declaratory action, is not necessarily a "complete" substitute for the right being denied, here the right to transportation.

The imposition of a partial penalty does not redress the harm imposed upon Relator. 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. The failure to provide interim transportation for weeks or months into the school year until a student's challenge is resolved means – by definition – that the right is lost forever. By ensuring this interim transportation happens automatically for all students who challenge an impracticality determination, the legislature filled a critical gap for students and families who still need transportation to school while their challenges proceed. When the challenge ends, the express right and need for interim transportation expires. If a school board defies this clear legal duty until after resolution of the dispute, the clear legal right is lost forever. No post hoc fine could ever amount to adequate relief for the denial of this right to interim transportation, and the DEW cannot redress this irreparable injury.

Money, alone, is no substitute for the legally protected right to transportation. The General Assembly made this clear by not giving the School Board the right to categorically substitute money

for that transportation. If the School Board wishes to avoid providing transportation to an eligible student and a parent does not want money as a substitute for legal rights, it must follow the full process in R.C. 3327.02, and as a result DEW can instruct the School Board that money was insufficient, and transportation must be provided instead. A provision for specific relief against a government actor is undoubtedly unusual, but here, the General Assembly has expressly chosen to provide exactly that to ensure that parents have the opportunity to achieve an enforceable right to actually achieve transportation. In other words, the law is premised on a presumption in favor of transportation, *see Hartley v. Berlin-Milan Local School Dist.*, 433 N.E.2d 171, 173 (Oh. 1982) ("[T]ransportation is the rule and payment is the exception."), and an operating principle, codified into law, that the provision of money alone may not be an adequate substitution for the right to transportation.

Accordingly, the structure of the statute demonstrates that the penalty awarded by the DEW is inherently insufficient to make Relator whole. That structure would be threatened by treating money as a fungible substitute for mandatory transportation. 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. If the School Board cannot actually be ordered by a Court to provide the transportation required by law, that it will have no incentive to do so in the future and could treat money as simply fungible for transportation, an option the legislature has prohibited. Ultimately, the School Board's arguments would render the obligation to provide interim transportation non-existent; a school board 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 partial 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. Relator has referenced the *Luchette* decision through this case. Although a Court of Appeals decision, it usefully addresses this exact issue and 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 by the failure to provide transportation. The court in *Luchette* awarded mandamus in similar circumstances, the failure to provide transportation, and recognized the R.C. 3327.02(F) penalties to be inadequate, explaining thoroughly why the penalties in that provision cannot suffice to make a party whole. Crucially, the court explained that these mandatory payments are penalties designed to ensure compliance, not substitutes for the right to transportation itself: "[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." *Luchette*, 2009-Ohio-2084, ¶ 50. 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. The "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." *Id.* at ¶ 37. As a sanction and penalty for the failure to comply with the law, R.C. 3327.02(F) is no substitution for the obligation to actually honor the right of transportation.

In *State ex rel. Huntington Ins. Agency v. Duryee*, 73 Ohio St. 3d 530, 530 (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 already about the matter where the insurance agent might have a right of appeal, but "[u]ntil there is a determination by the superintendent on Huntington's license application, there is no right of appeal." *Id.* at 536. 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.* at 537.

Duryee also demonstrates that the partial, inadequate 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. *Id.* at 538. Moreover, *Duryee* was a mandamus action seeking to compel an administrative official to comply with a duty to review an application; this Court rejected the idea that the administrative process had to proceed first and exercised instead its authority to issue a mandamus order. The ongoing availability of a remedy does not constitute an adequate remedy if that remedy is not sufficient to actually redress an injury, 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 (Ohio 1981).

Finally, other state supreme courts have likewise granted writs of mandamus to order compliance with mandatory student transportation obligations in their states. *Kennedy v. Board of Educ.*, 337 S.E.2d 905, 905 (W. Va. 1985); *Morrissette v. De Zonia*, 217 N.W.2d 377, 379 (Wis. 1974) ("A writ of mandamus lies to compel public officers to perform their prescribed statutory duties."); *Quinn v. School Committee of Plymouth*, 125 N.E.2d 410, 412 (Mass. 1955); *Manjares v. Newton*, 64 Cal. 2d 365, 376 (1966) ("In light of the public interest in conserving the resource of young minds, we must unsympathetically examine any action of a public body which has the effect of depriving children of the opportunity to obtain an education."). These cases do not construe the statute at issue here

directly, but they do illustrate the basic principle that mandamus is an appropriate remedy to compel schools with their mandatory, nondiscretionary obligation to provide transportation.

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 rather than provide interim transportation. "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) and enforce the School Board's mandatory obligation.

IV. Relator's Claim is Not Rendered Moot by the Respondent's Purported Cessation of Its Conduct.

Respondent claims in its Answer that this case is moot. Resp. Ans. ¶ 66. Respondent's purported cessation of unlawful conduct a day before the filing of the Motion to Dismiss is insufficient to moot this case. As noted above, the Respondent'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 who were not currently receiving transportation. Rel. Ex. C-2.

Relator was not sent this letter directly. Transportation was set by this letter to begin on October 7, 2024, the day before Respondent's deadline with this Court. *Id.* This letter did not indicate how long this transportation would be provided for or when it would cease. *Id.* It made no claim that the transportation would be provided during the entire mediation process. *Id.* It gave no indication that the School Board viewed this transportation as obligatory, that it would provide the transportation on a permanent basis moving forward, or that the School Board recognized an ongoing obligation to provide interim transportation.

"[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, ¶ 25 (quoting *Friends of the Earth, Inc. v. Laidlaw Environmental Servs.*, 528 U.S. 167, 190 (2000)). "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). Importantly, a claim for mootness based on post-filing conduct, because it is viewed skeptically, places a heavy burden on the Respondent to demonstrate 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 Supreme Court has explained that "[m]ere voluntary cessation of allegedly illegal conduct does not moot a case; if it did, the courts would be compelled to leave 'the defendant . . . free to return to his old ways.'" *Id.* (quoting *United States v. W. T. Grant Co.*, 345 U.S. 629, 632 (1953)).

Because it only ceased its unlawful activity after this case was filed, the School Board bears the burden of demonstrating that it is "absolutely clear" that its conduct will not recur. That burden is particularly strong here, where there is substantial evidence to the contrary. The very individual whose affidavit is the centerpiece of Respondent's evidence, Rodney Stufflebean, is also on the record expressly conceding the School Board's willful choice to take 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." Rel. 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 in its evidence the fact that Mr. Stufflebean explicitly indicated that the School District would take the penalties imposed by law rather than provide transportation.

In fact, 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. It has not made any attempt to make that difficult showing that it 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." *W.T. Grant Co.*, 345 U.S. 632. 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. The Supreme 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." *Knox*, 567 U.S. at 307.

This doctrine applies "when there is a reasonable expectation that the alleged violation will occur again." *Highland Tavern, L.L.C. v. DeWine*, 2023-Ohio-2577, ¶ 29. Here, the expectation that the Respondent will resume its unlawful conduct is an eminently reasonable one in light of its repeated statements that it wishes to continue with that conduct. The Supreme Court relied on this doctrine in a case where it had "only appellees' own statement that it would be uneconomical for them to engage in any further joint operations. Such a statement, standing alone, cannot suffice to satisfy the heavy burden of persuasion which we have held rests upon those in appellees' shoes." *Concentrated Phosphate Export Ass'n*, 393 U.S. at 203-204. Likewise, none of the evidence put forward by the Respondent meets this high standard. In fact, rather than even making a bare claim that it would be uneconomical to stop complying with the law, the School Board has told this Court that it has found legal *compliance* uneconomical. It has submitted to the Court, regarding the statutorily required

interim transportation, that "[t]he impact this has upon CCS's ability to transport CNP and its own students has been significant and hampered CCS's already overburdened transportation operations with additional routes that it cannot service effectively and increases the number of issues (i.e., late student pick-ups and drop offs) that occur on other routes." Resp. Aff. ¶ 30. The School Board has made clear to this Court its desire and plan to continue flouting its obligations. This case could not be further from moot.[1]

[1] This case is also not moot because damages are available to Relator, pursuant to R.C. 2731.11, and because attorney fees are available "in a mandamus case when the party against whom the fees would be taxed acted in bad faith." *State ex rel. Summit Cnty. Republican Party Exec. Comm. v. LaRose*, 171 Ohio St. 3d 107, 2023-Ohio-1165, 215 N.E.3d 547, ¶ 2. This Court has also awarded attorney fees or damages in mandamus cases determined to be moot. *State ex rel. Calvary v. City of Upper Arlington*, 89 Ohio St. 3d 229, 229 (2000); *State ex rel. Kesterson v. Kent State Univ.*, 156 Ohio St. 3d 13, 2018-Ohio-5108, 123 N.E.3d 887.

CONCLUSION

The Court should grant mandamus relief and require the Respondent to fulfil its mandatory obligation to provide interim transportation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Merits Brief of the Relator was served by email on this 26th Day of December, 2024 upon the following:

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