

**FILED**  
**COURT OF APPEALS**  
**APR 24 2024**  
FAITH ANDREWS  
CLERK OF COURT  
LAKE COUNTY, OHIO

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
LAKE COUNTY, OHIO**

State of Ohio ex rel.  
BRIAN M. AMES  
2632 Ranfield Rd, Mogadore, OH 44260

**CASE NO.: 2024-L-017**

Relator,

**ORIGINAL ACTION IN MANDAMUS**

v.

AUBURN VOCATIONAL SCHOOL DISTRICT  
BOARD OF EDUCATION  
8140 Auburn Road Concord Twp., OH 44077

Respondent

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**RESPONSE TO RESPONDENT'S "MOTION" FOR DEFINITE STATEMENT**

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Now comes Relator Brian M. Ames ("Mr. Ames") and for his response to Respondent's "Motion" for Definite Statement states as follows:

**a. Legal Authority**

For its first claimed vagueness or ambiguity, Respondent states as follows:

1. The complaint does not identify the legal authority upon which the instant legal action is brought in the name of the State of Ohio and, therefore, the Board desires such details.

This statement is patently false as may be readily seen by merely reading page 6 of the Petition<sup>1</sup>, a true and accurate copy of which, with added highlighting, is attached hereto as Exhibit 6. As abundantly evident, Mr. Ames quoted "the legal authority upon which the instant legal action is brought in the name of the State of Ohio", to wit: R.C. 2731.01 et seq. If there is vagueness or ambiguity regarding "the legal authority", it exists only in the mind of Respondent

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1 Since actions in mandamus are required to be brought by petition, Mr. Ames has filed no complaint but rather a petition.

as a result of failing to read the Petition thoroughly.

**b. Paragraph 8 and Exhibit 1**

For its second claimed vagueness or ambiguity, Respondent states as follows:

2. Paragraph 8 and Exhibit 1 to the complaint is not the request underlying the response upon which the complaint<sup>1</sup> is based including, but not limited to, Paragraph 9 and Exhibit 2 of the complaint and, therefore, the Board desires the details of the actual request upon which the instant complaint is based upon.  
(Footnote added.)

Respondent seems to be able to articulate that “Paragraph 8 and Exhibit 1 to the complaint is not the request underlying the response upon which the complaint<sup>1</sup> is based”. While this gives some faint glimmer that there may need to be a denial or clarification stated in an answer, it gives no reason why “the Board cannot reasonably be required to frame a responsive pleading”.

In any event, Respondent’s second claim is premature as this court has yet to issue an alternative writ ordering Respondent to answer.

**c. Civ.R. 12(E) does not apply.**

The General Assembly has, by enacting R.C. 2731.01 et seq., created a special statutory procedure to which the Rules of Civil Procedure do not apply. Civ.R. 1(C)(8). Therefore, Respondent’s “Motion” is a nullity.

**d. Respondent’s “Motion” is not a motion.**

Respondent’s “Motion” does not set forth the relief or order sought of this Court. Therefore, it cannot properly be considered to be a motion.

**e. Conclusion**

There is no good reason to delay the proceedings in this matter. Respondent’s “Motion” must be denied to the extent that it sought any relief or order of this Court.

Respectfully Submitted,



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Brian M. Ames  
2632 Ranfield Road  
Mogadore, OH 44260

### CERTIFICATE OF SERVICE

I hereby certify that on the 19<sup>th</sup> day of April, 2024, a true copy of the foregoing was, in accordance with Civ.R. 5(B)(2)(f), sent by electronic mail to:

Matthew John Markling (0068095)  
McGown & Markling Co., L.P.A.  
1894 North Cleveland-Massillon Road  
Akron, Ohio 44333  
Telephone: 1.330.670.0005  
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Email: mmarkling@mcgownmarkling.com  
*Attorney for Auburn Vocational School District  
Board of Education*



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Brian M. Ames  
Plaintiff *pro se*

action to recover statutory damages, up to a maximum of one thousand dollars.” R.C. 149.43(C)

(2).

R.C. 149.43(C)(3)(a)(i) provides for an award of court costs if a court orders the production of requested public records. ¶32.

**b. Mr. Ames has submitted a valid request for public records.**

It is indisputable that the records Mr. Ames requested are public records. It is indisputable that the Request is valid. It is indisputable that the Board has refused to provide the requested meeting minutes.

**c. Mandamus**

Mandamus is a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station. R.C. 2731.01. The writ of mandamus may be allowed by the supreme court, the court of appeals, or the court of common pleas and shall be issued by the clerk of the court in which the application is made. R.C. 2731.02. Such writ may issue on the information of the party beneficially interested. R.C. 2731.02. The writ of mandamus may require an inferior tribunal to exercise its judgment, or proceed to the discharge of any of its functions, but it cannot control judicial discretion. R.C. 2731.03. Application for the writ of mandamus must be by petition, in the name of the state on the relation of the person applying, and verified by affidavit. R.C. 2731.04. The court may require notice of it to be given to the defendant, or grant an order to show cause why it should not be allowed, or allow the writ without notice. R.C. 2731.04. The writ of mandamus must not be issued when there is plain and adequate remedy in the ordinary course of the law. R.C. 2731.05.

The Supreme Court of Ohio has recently held:

“Mandamus is [an] appropriate remedy to compel compliance with R.C. 149.43, Ohio’s Public Records Act.” *State ex rel. Physicians Comm. for Responsible*