

SUPREME COURT OF OHIO

STATE EX REL., PAUL PERREA :
: **Relator,** :
: :
v. :
: :
CINCINNATI PUBLIC SCHOOLS :
: **Respondent.** :
: :
: :
: :

MANDAMUS PROCEEDING

CASE NO. 2008-0748

**ANSWER OF RESPONDENT
CINCINNATI PUBLIC SCHOOLS**

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FILED
MAY 13 2008
CLERK OF COURT
SUPREME COURT OF OHIO

For its answer to the complaint of Relator Paul Perrea (“Relator”), Respondent Cincinnati Public Schools (“Respondent”) states as follows:

1. Respondent admits that Relator purports to bring an original mandamus action pursuant to Ohio S. Ct. R. X, Ohio Rev. Code § 2731.01, *et seq.*, and Ohio Rev. Code § 149.43.

Respondent denies that it has violated any laws and that Relator is entitled to any recovery.

Respondent denies any remaining allegations in paragraph 1 of the complaint.

2. Respondent admits the allegations in paragraph 2 of the complaint.

3. Respondent denies that the documents Relator requested are “public records.”

Respondent admits the remaining allegations in paragraph 3 of the complaint.

4. Respondent admits the allegations in paragraph 4 of the complaint.

5. Respondent denies that the documents Relator requested are “public records.”

Respondent admits the remaining allegations in paragraph 5 of the complaint.

6. Respondent denies that the documents Relator requested are “public records.”

Respondent admits the remaining allegations in paragraph 6 of the complaint.

7. Respondent denies that the documents Relator requested are “public records.”

Respondent admits the remaining allegations in paragraph 7 of the complaint.

8. Respondent denies that the documents Relator requested are “public records.”

Respondent admits the remaining allegations in paragraph 8 of the complaint.

9. Respondent admits the allegations in paragraph 9 of the complaint.

10. Respondent admits the allegations in paragraph 10 of the complaint.

11. Respondent admits that Relator made requests for documents he contends are public records. Respondent denies the remaining allegations in paragraph 11 of the complaint.

12. Respondent admits the allegations in paragraph 12 of the complaint.

13. Respondent admits the allegations in paragraph 13 of the complaint.

14. Respondent admits the allegations in paragraph 14 of the complaint.

15. Respondent admits that Dr. Elizabeth Holtzapple stated that the tests contained copyrighted materials but denies that this was the only rationale set forth in Holtzapple's February 12, 2007 letter to Relator. Respondent denies the remaining allegations in paragraph 15 of the complaint.

16. Respondent admits that Relator's February 25, 2007 letter requested that Respondent "release" the semester exams. Respondent denies the remaining allegations in paragraph 16 of the complaint.

17. Respondent admits the allegations in paragraph 17 of the complaint.

18. Respondent admits the allegations in paragraph 18 of the complaint.

19. Respondent admits the allegations in paragraph 19 of the complaint.

20. Respondent admits the allegations in paragraph 20 of the complaint.

21. Respondent admits the allegations in paragraph 21 of the complaint.

22. Respondent admits the allegations in paragraph 22 of the complaint.

23. Respondent admits the allegations in paragraph 23 of the complaint.

24. Respondent denies the allegations in paragraph 24 of the complaint for lack of information and knowledge sufficient to form a belief as to their truth.

25. Respondent admits that the general content of paragraph 25 is found in the attached "Wikipedia" material. Respondent denies the remaining allegations in paragraph 25 of the complaint.

26. Respondent denies the allegations in paragraph 26 of the complaint for lack of information and knowledge sufficient to form a belief as to their truth.

27. Respondent denies the allegations in paragraph 27 of the complaint for lack of information and knowledge sufficient to form a belief as to their truth.

28. Respondent admits that standardized testing can be analyzed for validity and reliability, but otherwise denies the allegations in paragraph 28 of the complaint.

29. Respondent admits the allegations in paragraph 29 of the complaint.

30. Respondent denies that it independently developed the Semester Exams.

Respondent admits the remaining allegations in paragraph 30 of the complaint.

31. Respondent admits the allegations in paragraph 31 of the complaint.

32. Respondent admits the allegations in paragraph 32 of the complaint.

33. Respondent denies the allegations in paragraph 33 of the complaint for lack of information and knowledge sufficient to form a belief as to their truth.

34. Respondent denies the allegations in paragraph 34 of the complaint for lack of information and knowledge sufficient to form a belief as to their truth.

35. Respondent admits the allegations in paragraph 35 of the complaint but denies that the documents requested by Relator are “public records” under the Act.

36. Respondent admits the allegations in paragraph 36 of the complaint.

37. Respondent denies the allegations in paragraph 37 of the complaint.

a. Respondent admits the allegations in paragraph 37(a) of the complaint.

b. Respondent admits the content of *State ex rel. Rea v. Ohio Dep’t of Educ.*, 81 Ohio St. 3d 527, 530, 692 N.E.2d 596, 600 (1998), but denies that *Rea* is applicable to the particular facts and circumstances of this case. Respondent denies the remaining allegations in paragraph 37(b) of the complaint.

c. Respondent denies the allegations in paragraph 37(c) of the complaint.

38. Respondent admits that it is a “public office” but denies the documents requested are “public records.” Respondent denies any remaining allegations in paragraph 38 of the complaint.

a. Respondent admits the allegations in paragraph 38(a) of the complaint.

b. Respondent admits that it is a “public office.” Respondent denies the remaining allegations in paragraph 38(b) of the complaint.

39. Respondent denies the allegations in paragraph 39 of the complaint for lack of information and knowledge sufficient to form a belief as to their truth.

a. Respondent admits the allegations in paragraph 39(a) of the complaint.

b. Respondent admits the allegations in paragraph 39(b) of the complaint.

c. Respondent denies the allegations in paragraph 39(c) of the complaint for lack of information and knowledge sufficient to form a belief as to their truth.

40. Respondent denies the allegations in paragraph 40 of the complaint.

a. Respondent admits that the cited language appears in *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St. 3d 396, 398, 732 N.E.2d 373, 376-77 (2000) (citations omitted). Respondent denies any remaining allegations in paragraph 40(a) of the complaint.

b. Respondent admits that the cited language appears in *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St. 3d 396, 405, 732 N.E.2d 373 (2000). Respondent denies any remaining allegations in paragraph 40(b) of the complaint.

c. Respondent denies any allegations made in paragraph 40(c) of complaint.

i. Respondent admits that the Ohio Supreme Court has held that trade secrets are exempt from disclosure under the Public Records Act. Respondent denies the remaining allegations in paragraph 40(c)(i) of the complaint.

ii. Respondent admits that the cited language appears in Ohio Rev. Code § 1333.61(D)(1) - (2). Respondent denies any remaining allegations in paragraph 40(c)(ii) of the complaint.

iii. Respondent admits that the cited language appears in *State ex rel. Rea v. Ohio Dept. of Educ.*, 81 Ohio St. 3d 527 (1998). Respondent denies that this language is applicable to the facts and circumstances of this case and denies any remaining allegations in paragraph 40(c)(iii) of the complaint.

d. Respondent denies any allegations in paragraph 40(d) of the complaint.

i. Respondent admits that the cited language appears in *State ex rel. Rea v. Ohio Dept. of Educ.*, 81 Ohio St. 3d 527 (1998). Respondent denies that this language is applicable to the facts and circumstances of this case and denies any remaining allegations in paragraph 40(d)(i) of the complaint.

ii. Respondent admits the allegations in paragraph 40(d)(ii) of the complaint.

iii. Respondent admits the allegations in paragraph 40(d)(iii) of the complaint.

iv. Respondent admits the allegations in paragraph 40(d)(iv) of the complaint.

v. Respondent admits the allegations in paragraph 40(d)(v) of the complaint.

vi. Respondent admits the allegations in paragraph 40(d)(vi) of the complaint.

vii. Respondent admits the allegations in paragraph 40(d)(vii) of the complaint.

viii. Respondent denies that it adopted a Building Futures Strategic Plan “2006-2001” on April 24, 2006. Respondent admits the remaining allegations in paragraph 40(d)(viii) of the complaint.

ix. Respondent admits the allegations in paragraph 40(d)(ix) of the complaint.

x. Respondent admits the allegations in paragraph 40(d)(x) of the complaint.

xi. Respondent denies that it independently created the Semester Exams. Respondent admits the remaining allegations in paragraph 40(d)(xi) of the complaint.

xii. Respondent denies that it independently developed the Semester Exams and that the Semester Exams were required by the state. Respondent denies any remaining allegations in paragraph 40(d)(xii) of the complaint.

e. Respondent denies any allegations in paragraph 40(e) of the complaint.

i. Respondent denies the allegations in paragraph 40(e) of the complaint.

ii. Respondent admits that the cited language appears in the cases mentioned but denies that the documents requested in this case lost their trade secret status or that the cited cases are applicable to the facts and circumstances of this case. Respondent denies any remaining allegations in paragraph 40(e)(ii) of the complaint.

iii. Respondent admits that it has approximately 34,790 students enrolled in grades K-12 and that there would be approximately 2676 ninth grade students if

students were distributed evenly throughout the grades. Respondent denies the remaining allegations in paragraph 40(e)(iii) of the complaint.

iv. Respondent admits that is has approximately 2550 classroom teachers and that there would be approximately 196 ninth grade teachers if teachers were divided equally by grade. Respondent denies any remaining allegations in paragraph 40(e)(iv) of the complaint.

v. Respondent denies that all ninth grade teachers have “access” to the Semester Exams. Respondent admits the remaining allegations in paragraph 40(e)(v) of the complaint.

vi. Respondent denies that teachers score all parts of the Semester Exams. Respondent admits the remaining allegations in paragraph 40(e)(vi) of the complaint.

vii. Respondent admits the allegations in paragraph 40(e)(vii) and further asserts that it took other security measures to ensure the security and privacy of test questions.

viii. Respondent admits that teachers did not sign confidentiality forms. Respondent denies the remaining allegations in paragraph 40(e)(viii) of the complaint.

ix. Respondent denies the allegations in paragraph 40(e)(ix) of the complaint.

f. Respondent denies any allegations in paragraph 40(f) of the complaint.

i. Respondent denies the allegations in paragraph 40(f)(i) of the complaint.

ii. Respondent admits that the cited language appears in *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St. 3d 396, 732 N.E.2d 373 (2000) but denies that Relator’s

pinpoint citations are accurate. Respondent denies any remaining allegations in paragraph 40(f)(ii) of the complaint.

iii. Respondent admits the allegations in paragraph 40(f)(iii) of the complaint but denies that the cited case is “similar” to this case. Respondent further denies that the cited case is applicable to the facts and circumstances in this case. Respondent denies any remaining allegations in paragraph 40(f)(v) of the complaint.

iv. Respondent admits that the cited material appears in the indicated case but denies that Relator’s pinpoint citations are accurate. Respondent further denies that the cited case is applicable to the facts and circumstances in this case and denies the remaining allegations in paragraph 40(f)(iv) of the complaint.

v. Respondent admits that the cited language appears in the indicated case but denies that the case is applicable to the facts and circumstances presented in this dispute. Respondent denies any remaining allegations in paragraph 40(f)(v) of the complaint.

vi. Respondent admits that the cited language appears in the indicated case but denies that the case is applicable to the facts and circumstances presented in this dispute. Respondent denies any remaining allegations in paragraph 40(f)(vi) of the complaint.

vii. Respondent denies the allegations in paragraph 40(f)(vii) of the complaint.

viii. Respondent denies the allegations in paragraph 40(f)(viii) of the complaint.

g. Respondent denies any allegations in paragraph 40(g) of the complaint.

i. Respondent admits that one rationale (among several) for not disclosing the requested material is that the Semester Exams contain copyrighted material. Respondent denies any remaining allegations in paragraph 40(g)(i) of the complaint.

ii. Respondent denies the allegations in paragraph 40(g)(ii) of the complaint.

iii. Respondent admits the content cited in *State ex rel. Rea v. Ohio Dept. of Educ.*, 81 Ohio St. 3d 527, 692 N.E.2d 596 (1998) but denies that the case is applicable to the facts and circumstances presented in this case. Respondent denies any remaining allegations in paragraph 40(g)(iii) of the complaint.

iv. Respondent admits that the cited language appears in *State ex rel. Rea v. Ohio Dept. of Educ.*, 81 Ohio St. 3d 527, 692 N.E.2d 596 (1998) but denies that the case is applicable to the facts and circumstances presented in this case. Respondent denies any remaining allegations in paragraph 40(g)(iv) of the complaint.

v. Respondent admits the allegations in paragraph 40(g)(v) of the complaint.

vi. Respondent denies the allegations in paragraph 40(g)(vi) of the complaint.

h. Respondent denies any allegations in paragraph 40(h) of the complaint.

i. Respondent asserts that the requested materials are not required to be disclosed because they are secure testing documents. Respondent denies the remaining allegations in paragraph 40(h)(i) of the amended complaint.

ii. Respondent asserts that the requested material are not required to be disclosed under the intellectual property records exemption. Respondent further asserts that

the intellectual property exemption covers records that are “produced or collected by or for faculty or staff of a state institution of higher learning in the conduct or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone or in conjunction with a governmental body or private concern, and that [have] not been publicly released, published, or patented.” Respondent denies any remaining allegations in paragraph 40(h)(ii) of the complaint.

iii. Respondent admits that the cited language appears in *Rea* but denies that the language is applicable to the facts and circumstances in this case. Respondent denies any remaining allegations in paragraph 40(h)(iii) of the complaint.

iv. Respondent admits that the cited language appears in *State ex rel. Physicians Committee for Responsible Medicine v. Ohio State Univ.*, 108 Ohio St. 3d 288, 843 N.E.2d 174 (2006), but denies that the language is applicable to the facts and circumstances in this case. Respondent denies any remaining allegations in paragraph 40(h)(iv) of the complaint.

v. Respondent denies the allegations in paragraph 40(h)(v) of the complaint.

i. Respondent denies any allegation in paragraph 40(i) of the complaint.

i. Respondent admits the content of the cited statute but asserts that the cited statute applies only the state achievement tests and have no applicability to the Semester Exams in question. Respondent denies any remaining allegation in paragraph 40(i)(i) of the complaint.

ii. Respondent admits the content of the cited statute but asserts that the statute applies only to state achievement tests and has no applicability to the Semester Exams in question. Respondent denies any remaining allegation in paragraph 40(i)(ii) of the complaint.

iii. Respondent admits the content of the cited statute but asserts that the statute applies only to state achievement tests and has no applicability to the Semester Exams in question. Respondent denies any remaining allegation in paragraph 40(i)(iii) of the complaint.

iv. Respondent admits that the cited language appears in *Rea* but denies that the language is applicable to the facts and circumstances of this case. Respondent denies any remaining allegations in paragraph 40(i)(iv) of the complaint.

v. Respondent denies the allegations in paragraph 40(i)(v) of the complaint.

41. Respondent denies the allegations in paragraph 41 of the complaint.

a. Respondent admits the allegations in paragraph 41(a) of the complaint.

b. Respondent admits the allegations in paragraph 41(b) of the complaint.

c. Respondent denies the allegations in paragraph 41(c) of the complaint.

d. Respondent denies the allegations in paragraph 41(d) of the complaint.

42. Respondent admits that it is a proper respondent in this action but denies that Relator is entitled to any recovery. Respondent denies any remaining allegations in paragraph 42 of the complaint.

a. Respondent admits the allegations in paragraph 42(a) of the complaint.

b. Respondent admits the allegations in paragraph 42(b) of the complaint.

c. Respondent denies that the cited case is “closely related” to this case.

Respondent admits the remaining allegations in paragraph 42(c) of the complaint.

- d. Respondent admits the allegations in paragraph 42(d) of the complaint.
- e. Respondent denies that the individually named person have been named as

respondents in this case. Cincinnati Public Schools is the sole named respondent in this action.

Respondent denies any remaining allegations in paragraph 42(e) of the complaint.

43. Respondent denies the allegations in paragraph 43 of the complaint.

44. Respondent denies the allegations in paragraph 44 of the complaint.

45. Respondent incorporates paragraphs 1-45 by reference.

46. Respondent denies the allegations in paragraph 46 of the complaint.

47. Respondent incorporates paragraphs 1-47 by reference.

48. Respondent denies the allegations in paragraph 48 of the complaint.

49. Respondent incorporates paragraphs 1-49 by reference.

50. Respondent denies the allegations in paragraph 50 of the complaint.

51. Respondent denies that Relator is entitled to any judgment against it or to any of the damages he seeks. Respondent denies the remaining allegations in the “Wherefore” paragraph of the complaint.

52. Respondent denies each and every allegation not specifically admitted herein.

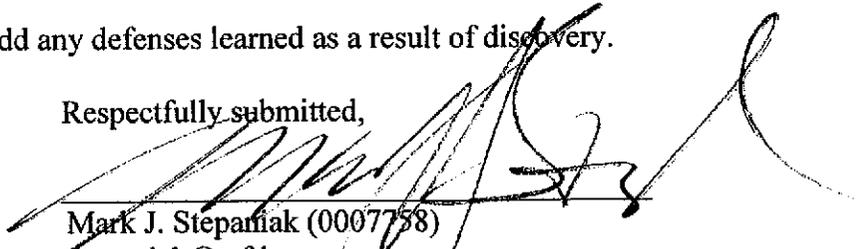
FIRST DEFENSE

The content and length of Relator’s complaint are inappropriate and unnecessary and do not conform to Ohio Civ. R. 8(a). If Relator succeeds in this mandamus action (which he should not), this complaint should not be calculated as part of Realtor’s reasonable attorneys fees.

SECOND DEFENSE

Respondent reserves the right to add any defenses learned as a result of discovery.

Respectfully submitted,



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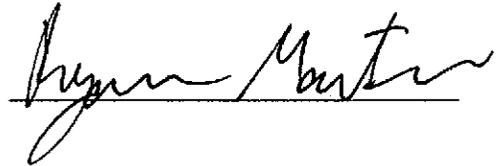
Facsimile: (513) 381-0205

Attorneys for Respondent

Cincinnati Public Schools

CERTIFICATE OF SERVICE

I hereby certify that a copy of Answer of Respondent Cincinnati Public Schools has been served upon Ted L. Wills, 414 Walnut Street, Suite 707, Cincinnati, Ohio 45202 by regular U.S. mail, postage prepaid, this 13th day of May 2008.

A handwritten signature in cursive script, appearing to read "Bryan Martin", is written over a horizontal line.