

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE EX REL. STACEY L. CARNA, :

Relator-Appellant, :

vs. :

**TEAYS VALLEY LOCAL SCHOOL
DISTRICT BOARD OF EDUCATION, :**

Respondent-Appellee. :

CASE NO. 2011-0716

On Appeal from the Pickaway
County Court of Appeals,
Fourth Appellate District
Case No. 2010 CA 0018

MERIT BRIEF OF APPELLEE
TEAYS VALLEY LOCAL SCHOOL DISTRICT BOARD OF EDUCATION

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STATEMENT OF FACTS

With the exception of the claim – which strikes at the heart of the dispute in this case – that Appellant Stacey Carna’s July 11, 2007 request for a meeting with the Teays Valley Local School District Board of Education to discuss the proposed nonrenewal of her contract “was never honored,” Ms. Carna’s Statement of Facts is accurate, as far as it goes. (Appellant’s Merit Brief, p. 6). Ms. Carna’s Statement of Facts omits the following, equally relevant, salient, undisputed and operative facts:

- 1) On November 20, 2007, The Ohio Department of Education (ODE) notified Ms. Carna that it would determine whether to suspend her educator certificates, in response to which Ms. Carna exercised her right to an administrative ODE hearing that remained unresolved until November 11, 2008. (First Request for Admissions, #11, 12, 13, and 14, and Exhibits B and D thereto; and Complaint, paragraph 10);
- 2) On January 10, 2008, Ms. Carna participated in a preliminary Administrative Evaluation with then-Assistant Superintendent Robert Thompson. (First Request for Admissions, #30-34 and Exhibit F thereto);
- 3) On February 29, 2008, Ms. Carna participated in a final Administrative Evaluation with Mr. Thompson. (First Request for Admissions, #36-39 and Exhibit G thereto);
- 4) At its regular, monthly, public meeting on March 17, 2008, the Teays Valley Local School District Board of Education discussed and voted not to renew Ms. Carna’s contract. (Appellant’s Memorandum in Support of Jurisdiction, Appendix A, p. 2-3); and
- 5) There is no evidence that Ms. Carna appeared at the March 17, 2008 meeting.

ARGUMENT

Response to Appellant's Proposition of Law

When restrictions and obligations imposed by statute do not permit a Board of Education to act on a school administrator's request for an R.C. 3319.02(D)(4) meeting at the time that request is made, but the Board convenes said meeting as and when the statutes allow, and the administrator fails to appear, her failure does not give rise to an R.C. 3319.02(D)(5) right in mandamus to an additional year of employment.

Given the effort by Appellant and her Amici Curiae to extend the reach and import of the underlying decision, it is important to start by defining what this case is and is not. This *is not* a case implicating an "absolute, unlimited right" of every Ohio school administrator under R.C. 3319.02(D); nor does this case present a "stark choice" between enforcing and distorting applicable statutory language. (Appellant's Merit Brief, p. 2 and 5). Ms. Carna does not seek an advisory ruling, for the benefit of every Ohio school administrator, on the meaning and operation of R.C. 3319.02(D). (Appellant's Merit Brief, p. 2 and 8).

Instead, Ms. Carna seeks a Writ of Mandamus compelling the Teays Valley Local School District Board of Education to reemploy her now, more than four (4) years after she last served the District as a principal. (Complaint). This case involves the actions of one school administrator who ran her R.C. 3319.02 rights headlong into the statutory responsibilities imposed on her and her employer, forcing the lower courts, in response to her Petition for Writ of Mandamus, to navigate the careful balance the General Assembly created when drafting R.C. 3319.02(D). (Appellant's Merit Brief, p. 1). The question on appeal is simply whether the lower courts did so in a manner consistent with the language and intention of R.C. 3319.02(D).

To secure the writ Ms. Carna seeks, she must prove: (1) a clear legal right to relief, (2) the Board's duty to provide such relief, and (3) the want of an adequate, ordinary remedy at law for the alleged breach of said duty. **State ex rel. Neff v. Corrigan** (1996), 75 Ohio St.3d 12, 16, 661 N.E.2d 170. She cannot meet this burden.

R.C. 3319.02(D) sets forth the legal right and duty at issue as follows:

(4) Before taking action to renew or nonrenew the contract of an assistant superintendent, principal, assistant principal, or other administrator under this section and prior to the last day of March of the year in which such employee's contract expires, the board shall notify each such employee of the date that the contract expires and that the employee may request a meeting with the board. Upon request by such an employee, the board shall grant the employee a meeting in executive session. In that meeting, the board shall discuss its reasons for considering renewal or nonrenewal of the contract. The employee shall be permitted to have a representative, chosen by the employee, present at the meeting.

(5) The establishment of an evaluation procedure shall not create an expectancy of continued employment. Nothing in division (D) of this section shall prevent a board from making the final determination regarding the renewal or nonrenewal of the contract of any assistant superintendent, principal, assistant principal, or other administrator. However, if a board fails to provide evaluations pursuant to division (D)(2)(c)(i) or (ii) of this section, or if the board fails to provide at the request of the employee a meeting as prescribed in division (D)(4) of this section, the employee automatically shall be reemployed at the same salary plus any increments that may be authorized by the board for a period of one year, except that if the employee has been employed by the district or service center as an assistant superintendent, principal, assistant principal, or other administrator for three years or more, the period of reemployment shall be for two years.

R.C. 3319.02(D). (Emphasis added). However, this language does not stand alone nor can it be construed to operate as if it does.

This Court has long held that statutes relating to the same general subject must be read in *pari materia*. **United Tel. Co. of Ohio v. Limbach** (1994), 71 Ohio St.3d 369, 372, 643 N.E.2d 1129, quoting **Johnson's Mkts., Inc. v. New Carlisle Dept. of**

Health (1991), 58 Ohio St.3d 28, 35, 567 N.E.2d 1018. "[T]his court must give such a reasonable construction as to give the proper force and effect to each and all such statutes" in light of legislative intent. **Limbach**, *supra* at 372, quoting **Johnson's Mkts.**, *supra* at 35. The Court must "avoid that construction which renders a provision meaningless or inoperative." **D.A.B.E. Inc. v. Toledo-Lucas Cty. Bd. of Health** (2002), 96 Ohio St. 3d 250, 773 N.E.2d 536, P26, quoting **State ex rel. Myers v. Spencer Twp. Rural School Dist. Bd. of Edn.** (1917), 95 Ohio St. 367, 373, 116 N.E. 516. See R.C. 1.47(B), providing that enactment presumes "[t]he entire statute is intended to be effective."

Nonetheless, Ms. Carna posits that only two facts matter in this mandamus action:

- 1) that she requested an R.C. 3319.02(D)(4) meeting on July 11, 2007; and
- 2) when the Board of Education voted not to renew her contract on March 17, 2008, she had not met with the Board per her request.

On summary judgment, the Board did not dispute either fact. Rather, it asserted that under R.C. 3319.02, read as a whole, these are not the only relevant facts.

[I]t is the duty of courts to accord meaning to each word of a legislative enactment if it is reasonably possible so to do. It is to be presumed that each word in a statute was placed there for a purpose.

State ex rel. Bohan v. Indus. Comm. (1946) 147 Ohio St. 249, 251, 70 N.E.2d 888.

See also, **Church of God in Northern Ohio, Inc. v. Levin** (2009), 124 Ohio St. 3d 36, 2009 Ohio 5939, P30, 918 N.E.2d 981, citing R.C. 1.47, *supra*.

R.C. 3319.02(D) *twice* references action to renew or nonrenew a school administrator's contract: once in subparagraph (D)(4), which establishes the Board of

Education's duty to meet "[u]pon request" by the administrator; and again in subparagraph (D)(2), which places that duty in context. R.C. 3319.02(D)(2)(c) mandates evaluation of school administrators as follows:

In any school year that the employee's contract of employment is due to expire, at least a preliminary evaluation and at least a final evaluation shall be completed in that year. A written copy of the preliminary evaluation shall be provided to the employee at least sixty days prior to any action by the board on the employee's contract of employment. The final evaluation shall indicate the superintendent's intended recommendation to the board regarding a contract of employment for the employee. A written copy of the evaluation shall be provided to the employee at least five days prior to the board's acting to renew or not renew the contract.

R.C. 3319.02(D)(2)(c)(ii). (Emphasis added).

R.C. 3319.02(D)(2)(c)(ii)'s distinction between "any action . . . on a contract of employment" and "acting to renew or not renew the contract" is significant to the timing of an R.C. 3319.02(D)(4) meeting. The (D)(4) meeting is expressly for the school board to "discuss its reasons for considering renewal or nonrenewal of the contract." R.C. 3319.02(D)(4). (Emphasis added). The (D)(2) prohibition against "any action" for sixty (60) days after preliminary evaluation – contrasted with the more specific prohibition against "acting to renew or not renew the contract" for five (5) days after final evaluation – conveys that "any action" means more than merely acting to renew or nonrenew. As such, (D)(2) prohibits for sixty (60) days following preliminary evaluation precisely the discussion and consideration mandated in an R.C. 3319.02(D)(4) meeting.

Contrary to Ms. Carna's suggestion that the Fourth District Court of Appeals read into R.C. 3319.02(D)(4) otherwise non-existent time limitations based solely on the order in which otherwise unrelated provisions were written, the statute, read as a whole

in pari materia, actually establishes a clear and mandatory timeline of events. (Appellant's Merit Brief, p. 12).

- 1) The administrator and the school board must enter a contract for a defined period of employment. R.C. 3319.02(C);
- 2) In the administrator's first contract year, the school board must evaluate her once. R.C. 3319.02(D)(2)(c)(i);
- 3) In the administrator's last contract year, the school board must evaluate her twice. R.C. 3319.02(D)(2)(c);
- 4) The first of said evaluations must occur at least sixty (60) days before any action on the employment contract. R.C. 3319.02(D)(2)(c)(ii);
- 5) The second of said evaluations must occur at least five (5) days before the vote on the employment contract. R.C. 3319.02(D)(2)(c)(ii);
- 6) The school board may, as early as January 1 of the last contract year, vote to reemploy the administrator under R.C. 3319.02(C); however, said vote cannot occur until both the preliminary and final evaluations have been performed under R.C. 3319.02(D)(2)(c)(ii) and the administrator has been notified of her R.C. 3319.02(D)(4) right to request a meeting with the school board; and
- 7) The school board must, by March 31 of the last contract year, notify the administrator of its decision concerning renewal or nonrenewal of her employment contract; however, such notice must be preceded by the properly timed evaluations, R.C. 3319.02(D)(4) notice to the administrator of her contract expiration date and right to request a meeting with the school board, and the vote.

Thus, while R.C. 3319.02(D)(4) required the Board of Education to notify Ms. Carna of her right to request a meeting “[b]efore taking action to renew or nonrenew [her] contract,” R.C. 3319.02(D)(2)(c)(ii) prohibited the Board from *holding that meeting* – discussing and considering the renewal or nonrenewal of Ms. Carna’s contract – until at least sixty (60) days after her January 10, 2008 preliminary evaluation, or March 10, 2008. See **State ex rel. Stacey L. Carna v. Teays Valley Local School District Bd. of Edn.** (Mar. 17, 2011), Pickaway App. No. 10CA18, 2011 Ohio 1522, P17.

When the Fourth District Court of Appeals wrote, “[w]e do not believe that a request that occurs after an informal verbal notification from an assistant superintendent nearly one year before the contract expires constitutes the type of request for a meeting that the statute contemplates,” it did not rearrange or misinterpret R.C. 3319.02(D)(5). **Carna**, *supra* at P18. Rather, it recognized that the “meeting as prescribed in division (D)(4)” requires discussion of the school board’s reasons for considering renewal or nonrenewal of the contract, an impossibility “upon request” of Ms. Carna because her request came eight (8) months before the Board was statutorily authorized to act on it (March 10, 2008 at the earliest). R.C. 3319.02(D)(4) and (5).

Rejecting the Fourth District Court of Appeals’ construction of R.C. 3319.02(D), Ms. Carna offers this Court a strict-interpretation alternative. She argues that regardless how subparagraph (D)(2) circumscribes the school board’s time for acting under (D)(4), “the statute does not provide any starting point or deadline for an administrator’s request for a meeting.” (Appellant’s Merit Brief, p. 12). (Emphasis added). Thus, Ms. Carna suggests, her July 11, 2007 request was timely and effective for purposes of R.C. 3319.02(D)(4). (Appellant’s Merit Brief, p. 12-15). However, Ms. Carna’s construction of R.C. 3319.02(D)(4) is more fraught with peril for school administrators than the underlying decision she appeals.

By untethering the R.C. 3319.02(D)(4) right to request a meeting from R.C. 3319.02(D)(2)’s temporal restrictions on the school board’s ability to convene said meeting, Ms. Carna necessarily advocates for R.C. 3319.02(D)(4) meetings that do not occur “upon request” of the administrator. R.C. 3319.02(D)(4). Regardless the date of the request, the meeting can occur only when otherwise authorized by statute. R.C.

3319.02(D)(2)(c). Thus, for example, Ms. Carna's July 11, 2007 request to meet could not and was not intended to compel the meeting to occur when the request was made.

As such, Ms. Carna's strict-statutory-interpretation approach belies her claim that the Board ignored or failed to honor her July 11, 2007 request for an R.C. 3319.02(D)(4) meeting. (Appellant's Merit Brief, p. 1, 2, 5, 6, and 15). Under R.C. 3319.02(D)(2), the Board could not grant Ms. Carna's request until March 2008. Even then, the meeting was statutorily permissible only between March 10, 2008 and March 31, 2008. R.C. 3319.02(D)(2) and (4). The Board could have "ignored" Ms. Carna's request for an R.C. 3319.02(D)(4) meeting only if it failed to provide same between March 10 and March 30, 2008. R.C. 3319.02(D)(2) and (4). It did not.

In fact and in law, the Board honored Ms. Carna's July 11, 2007 request for an R.C. 3319.02(D)(4) meeting on March 17, 2008, during the brief period that R.C. 3319.02(D)(2) permitted. Thus, if Ms. Carna's July 11, 2007 request met the letter of R.C. 3319.02(D)(4) as she claims, the Board's March 17, 2008 meeting also met its obligations under R.C. 3319.02(D)(2) and (4), as those statutes are strictly construed. (Appellant's Merit Brief, p. 15).

By convening the R.C. 3319.02(D)(4) meeting on March 17, 2008, the Teays Valley Local School District Board of Education complied with:

- 1) R.C. 3313.15, requiring that it convene at fixed times for regular meetings;
- 2) R.C. 3313.18 and 3313.26 and the mandatory precedent of **Mathews v. Eastern Local School Dist.** (Jan. 4, 2001), Pike App. No. 00CA647, 2001 Ohio 2372, at *5, citing **Katterhenrich v. Fed. Hocking Local School Dist. Bd. of Education** (1997), 121 Ohio App.3d 579, 585, 700 N.E.2d 626 and R.C. 121.22(H), all requiring that school boards act by resolution;

- 3) R.C. 121.22(C), requiring that school board meetings be open and public at all times; and
- 4) R.C. 121.22(F), requiring school boards to establish “a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings.”

Just as Ms. Carna was not required to request an R.C. 3319.02(D)(4) meeting in writing, by a specific deadline, or using “magic words,” the Board of Education was not required to convene separately or specially, violate other applicable statutory mandates, specifically invite her to the R.C. 3319.02(D)(4) meeting it provided, guarantee her presence at same, or forestall its vote on her contract until she appeared. (Appellant’s Merit Brief, p. 3 and 11). R.C. 3319.02. To the extent that Ms. Carna’s real complaint is that R.C. 3319.02(D) does not impose a greater burden on local school boards when administrators request R.C. 3319.02(D)(4) meetings, her remedy lies with the General Assembly, not in a Writ of Mandamus compelling relief to which she has no clear legal right. **Neff**, 75 Ohio St.3d at 16.

Moreover, a Writ of Mandamus is not an appropriate remedy for Ms. Carna’s complaint about the March 17, 2008 meeting “that she was never told when that vote would be” (Appellant’s Merit Brief, p. 15). (Emphasis added). Under her strict-statutory-interpretation approach, R.C. 3319.02 neither confers a right to receive, nor imposes an obligation to give, notice of the date of the R.C. 3319.02(D)(4) meeting.

Thus, divorcing the R.C. 3319.02(D)(4) right to request a meeting from the R.C. 3319.02(D)(2) timeframe in which the Board is authorized to meet, as Ms. Carna advocates, places a duty on the administrator to inform herself when the R.C. 3319.02(D)(4) meeting will be held. It is patently clear that for the R.C. 3319.02(D)(4)

meeting to serve its intended purpose, the administrator must attend same when it is convened. If the administrator does not inform herself of its date, or if she knows the date of the meeting but does not attend, the failure is hers, not the school board's. However, R.C. 3319.02(D)(5) confers no right to automatic reemployment when the administrator fails to participate in the Board-provided R.C. 3319.02(D)(4) meeting.

In this case, there is no evidence that Ms. Carna attended or attempted to attend the Board of Education's March 17, 2008 meeting despite knowing that Board meetings occurred on school district grounds, at published times, and were open to the public. (Second Request for Admissions, #15, 16, and 19). There is no evidence that she was barred from attending. (Second Request for Admissions #10-13). There is no evidence that the meeting was held secretly, specially, or at a time, date or place different from the regularly scheduled monthly meetings. There is no evidence that Ms. Carna was denied the information available to every other member of the public regarding the time, date and place of the Board's regular schedule of meetings.

Moreover, by virtue of her participation in the January 20, 2008 and February 29, 2008 evaluations, Ms. Carna must have known when the Board could first consider and discuss the renewal/nonrenewal of her employment contract. She could have attended the March 17, 2008 Board meeting – the only one at which her request for an R.C. 3319.02(D)(4) could be honored under all applicable statutes – but chose not to.

Under the strict construction of R.C. 3319.02(D) that Ms. Carna advocates:

- 1) she had no right to the R.C. 3319.02(D)(4) meeting when she requested it on July 11, 2007, nor could the Board provide it at that time under R.C. 3319.02(D)(2);

- 2) she had no right to notice of the March 17, 2008 R.C. 3319.02(D)(4) meeting when it was convened, nor was the Board obligated to so notify her; and
- 3) her own failure to attend said March 17, 2008 meeting does not give rise to a right under R.C. 3319.02(D)(5) for writ of mandamus compelling her reemployment; therefore,
- 4) the trial court properly granted summary judgment in the Board's favor and the Fourth District Court of Appeals properly upheld same.

Consequently, Ms. Carna's strict statutory interpretation generates the same result as the decision from which she appeals.

While conferring no benefit on Ms. Carna, the method she advocates burdens other school administrators who seek to exercise their R.C. 3319.02(D) rights. Under Ms. Carna's approach, those administrators may request an R.C. 3319.02(D)(4) meeting at any time, without restriction; however, if the meeting is not possible until long after the request is made, then it need only occur at the regularly scheduled, posted time, date, and place, in the open and public forum mandated by law, without notice to the administrator. R.C. 3313.15; 3313.18 and 3313.26; and 121.22. Thus, administrators who follow Ms. Carna's lead must inform themselves when the R.C. 3319.02(D)(4) meeting is provided or risk that it will occur in their absence.

In this respect, Ms. Carna's case is a textbook example of how the statutory construction she advocates inures to the detriment of school administrators. It also demonstrates why the Fourth District Court of Appeals' decision on appeal, in which all of the R.C. 3319.02(D) rights and obligations are held in their statutory context, sets

forth the far better judicial approach. If, as the Fourth District held, the administrator's request for an R.C. 3319.02(D)(4) meeting is temporally linked to the dates during which the school board is able to provide it, then the absence of a statutory right to notice of the meeting date works no harm. Rather, the meeting will necessarily occur at the first regularly scheduled monthly meeting – at the posted time, date, and place – after the administrator makes her request. R.C. 3313.15; 3313.18 and 3313.26; 3319.02; and 121.22.

Ms. Carna may decry the Fourth District Court of Appeals' decision to construe R.C. 3319.02(D) as a whole rather than parsing its paragraphs and provisions in the strict and constrained reading she advocates. However, her own Merit Brief and the Brief of her Amici Curiae depend on a similarly inclusive interpretation of the statutory language. Both Ms. Carna and the Amici characterize the R.C. 3319.02(D)(4) meeting as one that occurs before the school board votes to renew or nonrenew the administrator's contract. (Appellant's Merit Brief, p. 15; Amici Brief, p. 6). (Emphasis added). In fact, though, nothing in R.C. 3319.02 mandates an R.C. 3319.02(D)(4) meeting before the school board's vote. R.C. 3319.02 requires only that, before it acts to renew or nonrenew, the school board notify the administrator of her right to request a meeting. R.C. 3319.02(D)(4). (Emphasis added).

Just as the Fourth District Court of Appeals applied R.C. 3319.02(D)(2) time constraints to an administrator's R.C. 3319.02(D)(4) request, Ms. Carna and her Amici apply the deadline for notice of the right to make that request to the meeting itself. R.C. 3319.02(D)(4). The Board of Education agrees that this interpretation is consistent with statutory intent. However, it is possible only by engaging in precisely the construction of

R.C. 3319.02(D) as a whole to which Ms. Carna assigns error in the Fourth District Court of Appeals underlying decision.

In her Brief, Ms. Carna claims a right to liberal construction of R.C. 3319.02(D) in her favor. (Appellant's Merit Brief, p. 2 and 8). The Board of Education acknowledges that R.C. 3319.02 is a remedial statute, as Ms. Carna asserts. However, "[r]emedial laws and all proceedings under them shall be liberally construed in order to promote their object and assist the parties in obtaining justice." R.C. 1.11. (Emphasis added). Moreover, liberal construction will not reach so far as to overstep the presumption that "[t]he entire statute is intended to be effective." R.C. 1.47.

In relevant part, the stated object of R.C. 3319.02(D)(5) is to require the reemployment of an administrator when a school board "fails to provide" a requested R.C. 3319.02(D)(4) meeting, but otherwise to defer to the board's vote renewing or nonrenewing her contract. R.C. 3319.02(D)(5). Said object is not served by, nor are the parties' interests in obtaining justice supported by, a statutory construction that ignores temporal restrictions on the local school board except where they enhance the administrator's rights beyond those conferred by statute. Indeed, to engage in such an interpretation of R.C. 3319.02(D), as Ms. Carna does, necessarily defeats R.C. 1.47's mandate that statutes be construed to give effect to all of the language used therein.

By contrast, the Fourth District Court of Appeals' interpretation of R.C. 3319.02(D) reads all of the statutory provisions together, in *pari materia*, giving effect to the entirety of the statute. R.C. 1.47. **Carna**, *supra*. The Fourth District's decision promotes the object of R.C. 3319.02(D)(5) by recognizing that in the particular circumstances of this case, in which the administrator requested an R.C. 3319.02(D)(4)

meeting eight (8) months before the Board could provide it and now seeks a writ of mandamus compelling her reemployment, it is not possible to conclude that the school board “fail[ed] to provide” the requested R.C. 3319.02(D)(4) meeting at the only opportunity permitted by law. R.C. 3313.15; 3313.18 and 3313.26; and 121.22. Ms. Carna’s undisputed absence from the March 17, 2008 meeting prohibits her from proving that she had a clear legal right to relief that the Board denied her. Neff, 75 Ohio St.3d at 16.

CONCLUSION

In determining whether Ms. Carna is entitled to a writ of mandamus under R.C. 3319.02(D)(5), the central question is not, as she appears to argue, whether an R.C. 3319.02(D)(4) meeting was requested and held. Rather, the issue is whether “the board fail[ed] to provide” the R.C. 3319.02(D)(4) meeting. R.C. 3319.02(D)(5). (Emphasis added). Neff, 75 Ohio St.3d at 16. It did not.

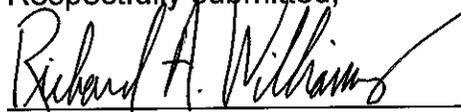
The school board “provide[s]” an R.C. 3319.02(D)(4) meeting by convening to “discuss its reasons for considering renewal or nonrenewal of the contract.” R.C. 3319.02(D)(4). As Ms. Carna’s Amici Curiae acknowledge, “[t]he plain meaning and intent of the statute is to give an administrator an opportunity to meet with his/her employer (board of education)” (Amici Brief, p. 6). (Emphasis added). On March 17, 2008, the Board provided precisely the “opportunity” that R.C. 3319.02(D)(4) requires, precisely when R.C. 3319.02(D)(2) allowed. (Amici Brief, p. 6). Ms. Carna’s absence from the R.C. 3319.02(D)(4) meeting, as a result of her own failure to inform

herself of the only regularly scheduled Board meeting at which the same could occur, does not constitute and should not be interpreted as the Board's violation of the statute.

Thus, the Fourth District Court of Appeals did not rewrite R.C. 3319.02 in determining that Ms. Carna's July 11, 2007 meeting request would not support R.C. 3319.02(D)(5) reemployment. Instead, it recognized that in the particular circumstances of this case, it is impossible to conclude that the Board of Education "fail[ed] to provide" the requested R.C. 3319.02(D)(4) meeting. R.C. 3319.02(D)(5). Carna, *supra* at P18. Here, the failure to meet is attributable only to the administrator who no-showed for the only meeting at which her request under R.C. 3319.02(D)(4) could be granted. For the administrator's failing, there is no statutory right of reemployment.

Because R.C. 3319.02(D)(5) does not allow Ms. Carna to turn her failure to participate on March 17, 2008 into a denial of rights remediable by writ of mandamus, the Fourth District Court of Appeals reached the proper conclusion in this case. Therefore, Appellee Teays Valley Local School District Board of Education respectfully requests that the underlying decision be AFFIRMED, Appellant Stacey L. Carna's appeal be DISMISSED, and her request for Writ of Mandamus be DENIED at this time.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of September 2011, a copy of the foregoing Merit Brief of Appellee Teays Valley Local School District Board of Education was served by regular U.S. Mail, postage paid, on:

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