

NO. _____

TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

HOKE COUNTY BOARD OF
EDUCATION, *et al.*,

Plaintiffs,

and

ASHEVILLE CITY BOARD OF
EDUCATION, *et al.*,

Plaintiff-Intervenors,

V.

STATE OF NORTH CAROLINA,
et al.,

Defendants.

From Wake County
No. COA11-1545

PETITION FOR DISCRETIONARY REVIEW UNDER N.C.G.S. § 7A-31
PRIOR TO DETERMINATION BY THE COURT OF APPEALS

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TENTH DISTRICT

Defendants.

From Wake County
No. COA11-1545

Defendant, the State of North Carolina, pursuant to N.C.G.S. § 7A-31 and Rule 15 of the North Carolina Rules of Appellate Procedure, respectfully petitions the Supreme Court of North Carolina to certify for discretionary review, prior to determination by the Court of Appeals, the “Memorandum Of Decision And Order

Re: Pre-Kindergarten Services For At-Risk Four Year Olds” entered by the Honorable Howard E. Manning, Jr., on 18 July 2011 on the basis that: (1) the subject matter of the appeal has significant public interest, (2) the cause involves legal principles of major significance to the jurisprudence of the State, and (3) certification prior to determination by the Court of Appeals would promote judicial efficiency and the expeditious administration of justice. A copy of Judge Manning’s Memorandum of Decision and Order (MDO) is attached hereto as Appendix A.

FACTS

This action was commenced in 1994 seeking declaratory and other relief for alleged violations of the educational provisions of the North Carolina Constitution and the North Carolina General Statutes. The matter has been before this Court on two prior occasions: *See, Leandro v. State*, 346 N.C. 336, 488 S.E.2d 249 (1997) (*Leandro I*); *Hoke County Bd. of Educ. v. State*, 358 N.C. 605, 599 S.E.2d 365 (2004) (*Hoke County* or *Leandro II*).

This appeal arises from the rulings by the Superior Court following a June 2011 hearing on the “issue of the provision of pre-kindergarten services to ‘at-risk’ prospective enrollees (at-risk four year olds).” MDO at 1; App. 1. Judge Manning described the “major issue before the Court” as “whether or not the General Assembly’s 2011 Budget Bill, Section 10.7 (a) through (j)” was in conformity with

this Court's decision in *Hoke County* regarding the State's obligations regarding "at-risk" prospective enrollees. MDO at 2; App. 2. A copy of Section 10.7 of the 2011 Budget Bill, Session Law 2011-145, is attached hereto as Appendix B.

In pertinent part, Judge Manning's order provides that the State "shall not deny any eligible at-risk four year old admission to the North Carolina Pre-Kindergarten Program;" that it "shall provide" the services of the Pre-Kindergarten Program "to any eligible at-risk four year old that applies;" that the State "shall not implement or enforce that portion of the 2011 Budget Bill, section 10.7(f), that limits, restricts, bars or otherwise interferes, in any manner, with the admission of all eligible at-risk four year olds that apply to the prekindergarten program;" and that the State "shall not implement, apply or enforce any other artificial rule, barrier, or regulation to deny any eligible at-risk four year old admission to the prekindergarten program." MDO at 24; App. 24.

The State gave timely notice of appeal on 17 August 2011. The Record on Appeal was docketed with the Court of Appeals on 21 December 2011 as case number COA11-1545.

REASONS WHY CERTIFICATION SHOULD ISSUE

The present appeal requires the North Carolina appellate courts to determine whether the State may enforce specific legislative provisions related to the State's pre-

kindergarten program that were properly enacted by the General Assembly. As such, it squarely concerns matters of significant public interest and involves legal principles of major significance to the jurisprudence of the State. Moreover, any delay in resolving this dispute would perpetuate the uncertainty caused by the Superior Court's Order. Accordingly, this matter should be heard by this Court now without awaiting a determination by the Court of Appeals.

I. The subject matter of this appeal has significant public interest.

Substantial public interest as well as legislative attention has been devoted to this case since this action was filed over 18 years ago. The Superior Court's Memorandum of Decision and Order declaring unenforceable certain provisions of the 2011 Budget Bill enacted by the General Assembly and mandating that the State provide its pre-kindergarten program to "any eligible at-risk four year old that applies" necessarily triggers an analysis of the appropriate separation of powers between the judicial, legislative and executive branches of government. Issues concerning public education in general, the effectiveness of pre-kindergarten programs in particular, and the State's funding obligations regarding such programs are matters of fundamental importance to most if not all citizens of the State, which thereby establishes the significant public interest in the subject matter of this appeal.

II. The present appeal involves principles of major significance to the jurisprudence of the State.

Among the issues presented by this appeal is whether the State has the legal duty to provide a pre-kindergarten program to any eligible at-risk four year old that applies, and whether, in the context of the lawsuit before it, a Superior Court Judge can declare unenforceable provisions of the General Assembly's properly-enacted budget bill to the extent it "limits, restricts, bars or otherwise interferes, in any manner" with the admission of all eligible applicants.

This Court has described its prior ruling in this case as a "landmark decision" regarding the State's duties under the North Carolina Constitution to provide its children the opportunity for a sound basic education. *Hoke County*, 358 N.C. at 609, 599 S.E.2d at 373. Additionally, in express recognition of the separation of powers doctrine, this Court has declared that "there is a marked difference between the State's recognizing a need to assist 'at-risk' students prior to enrollment in the public schools and a court order compelling the legislative and executive branches to address that need in a singular fashion." *Id.* at 642, 599 S.E.2d at 393.

The issues presented in this appeal arise from a "trial court order that may be construed to the effect of requiring the State to provide pre-kindergarten services," circumstances which led this Court to reverse a prior ruling in this case. *Id.* at 645, 599 S.E.2d at 395. A determination of whether the latest Memorandum of Decision

and Order is correct and enforceable necessarily depends upon whether, on the evidentiary record before it, the court-imposed remedy is within the proper scope of the judiciary's "limitations in providing specific remedies for violations committed by other government branches in service to a subject matter, such as public school education, that is within their primary domain." *Id.*

III. Certification prior to determination by the Court of Appeals would promote judicial efficiency and the expeditious administration of justice.

Judicial economy and efficiency would be served by removing this case from the Court of Appeal's docket. A decision by the Court of Appeals would not be likely to narrow the scope of the issues that should ultimately be resolved by this Court. Requiring the Court of Appeals to devote substantial time to oral argument and the drafting of an opinion would make little sense if this case must eventually be heard by this Court. Accepting the present petition would streamline the appeals process, thereby conserving scarce judicial resources.

The public interest would be served by a prompt and definitive resolution of this appeal. Given the importance of the legal issues raised in this case, and the extensive public attention concerning the enactment of the legislative provisions at issue in relation to the on-going, high-profile litigation, the present appeal is one of those rare cases that merits bypassing the Court of Appeals. The citizens of the State, as well as the executive and legislative branches, need a prompt and definitive answer as to

whether the Superior Court's Memorandum of Decision and Order may be enforced. Granting the petition would serve the public interest and would promote judicial economy.

ISSUES TO BE BRIEFED

In the event the Court allows this petition for discretionary review, the State intends to present the following issues in its brief for review:

1. Did the trial court err when it ordered the State to provide the North Carolina Pre-Kindergarten Program to any eligible at-risk four year old that applies and to not deny admission to any eligible at-risk four year old?

2. Did the trial court err when it ordered the State not to implement or enforce Section 10.7(f) of the 2011 Budget Bill to the extent it limits, restricts, or interferes in any manner with the admission of all eligible at-risk four year olds that apply to the North Carolina Pre-Kindergarten Program?

3. Was there insufficient evidence to support the trial court's Memorandum of Decision and Order on a state-wide basis?

4. Was there insufficient evidence to support the trial court's Memorandum of Decision and Order as to Hoke County?

5. Did the trial court err by not making appropriate findings of fact or conclusion of law to support its Memorandum of Decision and Order?

WHEREFORE, the State of North Carolina respectfully requests that this Court accept these issues for review pursuant to North Carolina General Statutes Section 7A-31 and Rule 15 of the North Carolina Rules of Appellate Procedure.

Respectfully submitted, this the 5th day of January, 2012.

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing
PETITION FOR DISCRETIONARY REVIEW UNDER N.C.G.S. § 7A-31 PRIOR TO
DETERMINATION BY THE COURT OF APPEALS upon all other parties to this
cause by:

- ☐ Hand delivering a copy hereof to each said party or to the attorney thereof;
- ☐ Transmitting a copy hereof to each said party via facsimile transmittal; or
- ☒ Depositing a copy hereof, first class postage pre-paid in the United States mail, properly addressed to:

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This the 5th day of January, 2012.

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“Memorandum Of Decision And Order Re: Pre-Kindergarten Services For At Risk
Four Year Olds” of Judge Howard E. Manning, Jr., filed 18 July 2011

[Appendix A] App. 1 - 29

Session Law 2011-145, Section 10.7

[Appendix B] App. 30-32

App. 1

NORTH CAROLINA: IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
WAKE COUNTY: 95 CVS 1158

HOKE COUNTY BOARD
OF EDUCATION, et al.,
Plaintiffs,

And

ASHEVILLE CITY BOARD OF EDUCATION, et al.,
Plaintiff-Intervenors,

Vs.

STATE OF NORTH CAROLINA;
STATE BOARD OF EDUCATION,
Defendants.

FILED
2011 JUL 19 AM 10:09
WAKE COUNTY C.S.C.

**MEMORANDUM OF DECISION AND ORDER RE: PRE-KINDERGARTEN
SERVICES FOR AT-RISK FOUR YEAR OLDS**

THIS MATTER came before the Court on June 22, 2011, at a hearing which included an examination of the plaintiffs' claims that pre-kindergarten services for "at-risk" prospective enrollees are being curtailed and not adequately met under the proposed budget for the next biennium.

On this issue, *Leandro II, Part V. 358 NC 640-645* is relevant by way of background and because the Supreme Court recognized and confirmed that the State has "educational obligations for "at-risk" prospective enrollees (children not yet of age to go to public kindergarten). "The evidence shows that the State recognizes the extent of the problem ---- its deficiencies in affording "at-risk" prospective enrollees their guaranteed opportunity to obtain a sound basic education---- and its (the State's) obligation to address and correct it." 358 NC 644.

The purpose of this hearing was to provide the parties, the State of North Carolina, including, but not limited to, the State Board of Education and The Department of Public Instruction the opportunity to report to the Court on several issues raised by the plaintiffs in their motion for hearing. For purposes of this Memorandum of Decision and Order, only the issue of the provision of pre-kindergarten services to "at-risk" prospective enrollees (at-risk four year olds) is addressed.

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The Notice of Hearing on the issue of pre-kindergarten services to at-risk four year olds provided that the hearing was to include, without limitation, evidence relating to (1) the number of "at-risk" children being served by pre-kindergarten services, including the More at Four pre-kindergarten program; (2) the number of "at-risk" children estimated to be eligible to receive pre-kindergarten services, including the More at Four pre-kindergarten program in the 2011-2012 school year; (3) the number of children who are "at-risk" and eligible for pre-kindergarten services but are not being provided those services this year and for whom those services are not available in the forthcoming year, if available; (4) the obligation of the State of North Carolina, as set forth in ***Leandro II, Section V***, to afford "at-risk" prospective enrollees their guaranteed opportunity to obtain a sound basic education; 358 NC 644; (5) the proven effectiveness of pre-kindergarten services in addressing the needs of "at-risk" prospective enrollees from 2002 through 2010; (6) the State's plan to ensure that "at-risk" prospective enrollees continue to be provided the pre-kindergarten services that have been selected by the State to meet its obligation to those children under the current financial budget situation.

At the hearing, the State DPI and plaintiffs presented testimony and documentary evidence relating to the State's obligation to meet the needs of at-risk "prospective enrollees. There was much criticism from both the State's witness and the plaintiffs' witnesses about legislation contained in the 2011 Budget Bill which provided for the consolidation of the More At Four Pre-Kindergarten program into the Division of Child Development in the Department of Health and Human Services and complaints from plaintiffs that this legislation resulted in restricting access, among other complaints, to eligible at-risk four year old children to a quality pre-kindergarten experience that had been made available to them under the More At Four Pre-kindergarten program presently housed in the Department of Public Instruction ("DPI").

As a result of the evidence presented at the hearing, the major issue before the Court is whether or not the General Assembly's 2011 Budget Bill, Section 10. 7. (a) through (j) , pages 92-94 entitled CONSOLIDATE MORE AT FOUR INTO DIVISION OF CHILD DEVELOPMENT is in conformity with the Supreme Court's decision in ***Leandro, II***, Section V, directing the State to address and correct its "deficiencies in affording 'at-risk' prospective enrollees (at-risk 4 year olds) their guaranteed opportunity to obtain a sound basic education –and its obligation to address and correct it. ***Leandro, II 358 N.C. 605, 644.***

Because of the harsh differences between the plaintiffs, the Executive Branch witnesses and the Legislative Branch regarding the 2011 Budget Bill, Section 10. 7. (a)-(j), the Court believes it necessary, once again, to refresh the parties concerning the holdings of the Supreme Court in ***Leandro, II***, relating to the pre-kindergarten issue and at-risk 4 year olds. Relevant parts of Section V of the ***Leandro, II, opinion, supra follow:***

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However, when considered in the context of the related issue of pre-kindergarten programs, the crux of this issue is less about whether school must be offered to four-year olds than it is about whether the State must help prepare those students who enter the schools to avail themselves of an opportunity to obtain a sound basic education. 639. While the General Assembly may be empowered to establish the actual age for beginning school, **the question of whether the General Assembly must address the particular needs of children prior to entering school is a distinct and separate inquiry.** 640.

For example, the General Assembly, in its discretion, could establish that mandatory school attendance begins at four years of age, five years of age, or six years of age. However, the State's power to establish such an age does not answer the question of whether or not it (the State) must address the particular needs of those children who are, or are approaching, the established age for school admission. Thus, the issue before us is less about "at-risk" four year olds than it is about "at-risk" children approaching and/or attaining school-age eligibility as established by the General Assembly.

Once the problems of "at-risk" children had been demonstrated at trial, it was not beyond the reach of the trial court to hear evidence concerning whether preemptive action on the part of the State might assist in resolving problems of such "at-risk" children. Thus we conclude that because the evidence presented showed that "at-risk" students in Hoke County were being denied their right to an opportunity to obtain a sound basic education, the trial court properly admitted **additional evidence intended to show that preemptive action on the part of the State should target those children about to enroll, recognizing that preemptive action affecting such children prior to their entering the public schools might well be far more cost effective than waiting until they are actually in the educational system.** P. 640,641.

In addition, the trial court found that the evidence showed that the State was providing inadequate resources for such "at-risk" prospective enrollees, and that the State's failings were contributing to the "at-risk" prospective enrollees' subsequent failure to avail themselves of the opportunity to obtain a sound basic education. 641

The Supreme Court has clearly defined "the State": **"by the State we mean the legislative and executive branches which are constitutionally responsible for public education."** 635

As for such evidence concerning the State's failure to identify such "at-risk" prospective enrollees and its failure to provide remedial services so

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such "at-risk" students could avail themselves of a Leandro-conforming educational opportunity, the trial court found that the State's current remedial programs for "at-risk" prospective enrollees in Hoke County were limited to three pre-kindergarten classes serving eighteen students each. Other testimony at trial indicated that besides the fifty-four students who were attending such remedial classes, there were over 300 more who would benefit from such classes. 642

As a consequence of its findings, the trial court concluded that State efforts towards providing remedial aid to "at-risk" prospective enrollees were inadequate. To that point in the proceedings we agree with the trial court, and hold that the evidence supports its findings of fact and that its findings support its conclusions of law. In our view, judging by its actions, it appears that even the State conceded that "at-risk" prospective enrollees in Hoke County are in need of assistance in order to avail themselves of their right to the opportunity for a sound basic education. Yet there is a marked difference between the State's recognizing a need to assist "at-risk" students prior to enrollment in the public schools and a court order compelling the legislative and executive branches to address that need in a singular fashion.

In our view, while the trial court's findings and conclusions concerning the problem of "at-risk" prospective enrollees are well supported by the evidence, a similar foundational support cannot be ascertained for the trial court's order requiring the State to provide pre-kindergarten classes for either all of the State's "at-risk" prospective enrollees or all of Hoke County's "at-risk" prospective enrollees.

Certainly, when the State fails to live up to its constitutional duties, a court is empowered to order the deficiency remedied, and if the offending branch of government or its agents either fail to do so or have consistently shown an inability to do so, a court is empowered to provide relief by imposing a specific remedy and instructing the recalcitrant state actors to implement it. See, e.g. Reynolds v. Sims, 377 U.S. 533 (1964) other citations omitted. 642

However, such specific court-imposed remedies are rare, and strike this Court as inappropriate at this juncture of the instant case for two-related reasons: (1) The subject matter of the instant case... public school education – is clearly designated in our state Constitution as the shared province of the legislative and executive branches; and (2) **The evidence and conclusions of the trial court, while supporting a conclusion that "at-risk" children require additional assistance and that the State is obligated to provide such assistance,** do not support the imposition of a

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narrow remedy that would effectively undermine the authority and autonomy of the government's other branches. 643

While this Court assuredly recognizes the gravity of the situation for “at-risk” prospective enrollees in Hoke County and elsewhere, and acknowledges the imperative need for a solution that will prevent existing circumstances from remaining static or spiraling further, we are equally convinced that the evidence indicates that the State shares our concerns and, more importantly, that the State has already begun to assume its responsibilities for implementing corrective measures.

At the time of trial, Smart Start, a public-private partnership that provides funds for early childhood welfare programs, was already in place. While Smart Start is not principally a pre-kindergarten education program, monies from the program often help LEAs establish and maintain pre-kindergarten classes. Hoke County and Charlotte Mecklenburg schools were among a group of LEAs that operated such programs when this case was being heard. Although evidence at trial indicated that the State and Charlotte-Mecklenburg schools were at odds over the effectiveness of the latter's Bright Beginnings program, other testimony and evidence showed that State officials: (1) recognized the need for, and effectiveness of, early intervention programs like pre-kindergarten; 644 and (2) had authorized the establishment of such programs by LEAs that desired them.

But even if this Court were to concur fully with plaintiffs' view, we note that the question before us does not concern the extent of the State's compliance with the trial court's order regarding pre-kindergarten for “at-risk” prospective enrollees in Hoke County schools, but whether the State must comply with that portion of the order. In our view, there is inadequate foundational support for an order that compels the State to provide pre-kindergarten services for all “at-risk” prospective enrollees in Hoke County. **At this juncture, the suggestion that pre-kindergarten is the sole vehicle or, for that matter, a proven effective vehicle by which the State can address the myriad problems associated with such “at-risk” prospective enrollees is, at best, premature.** 644

The evidence shows that the State recognizes the extent of the problem --- its deficiencies in affording “at-risk” prospective enrollees their guaranteed opportunity to obtain a sound basic education --- and its obligation to address and correct it. However, a single or definitive means for achieving constitutional compliance for such students has yet to surface from the depths of the evidentiary sea.

The obligation of the State to afford “at-risk” prospective enrollees their guaranteed opportunity to obtain a sound basic education did not establish

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a **separate** constitutional right to pre-kindergarten for "at-risk" prospective enrollees within the parameters of *Leandro*. ***Leandro II, FN 17.***

Certainly, both sides have conceded that pre-kindergarten is, and can be, an effective method for preparing "at-risk" prospective enrollees for the rigors of their forthcoming education.

The state's (645) legislative and executive branches have been endowed by their creators, the people of North Carolina, with the authority to establish and maintain a public school system that ensures all the state's children will be given their chance, that is, a *Leandro*-conforming, education. As a consequence of such empowerment, those two branches have developed a shared history and expertise in the field that dwarfs this or any other Court. While we remain the ultimate arbiters of our state's Constitution, and vigorously attend to our duty of protecting the citizenry from abridgments and infringements of its provisions, we simultaneously recognize our limitations in providing specific remedies for violations committed by other government branches in service to a subject matter, such as a public school education, that is within their primary domain.

Thus, we conclude that the trial court erred when **It Imposed at this juncture of the litigation** and on this record the requirement that the State must provide pre-kindergarten classes for all "at-risk" prospective enrollees in Hoke County. In our view, based on the evidence presented at trial, such a remedy is premature, and its strict enforcement **could undermine the State's ability to meet its educational obligations for "at-risk" prospective enrollees by alternative means.** As a consequence, we reverse those portions of the trial court order that may be construed to the effect of requiring the State to provide pre-kindergarten services as the **remedy for constitutional violations referenced in Part V of this opinion. 644,645.**

That was July 30, 2004, almost seven (7) years ago. In the intervening years, the legislative and executive branches of government have determined, using their shared history and expertise in education, that the State's ability to meet its educational obligations for "at-risk" prospective enrollees was best served through the Smart Start and More at Four programs. More at Four (academic based pre-kindergarten for "at-risk" four year olds – the remedy initially ordered by this Court in October, 2000) is an academic based pre-kindergarten program for at-risk four year olds which was created in 2001.

In fact, the State committed to this Court in 2004 that its choice of program to remedy the State's obligations to "at-risk" prospective enrollees was to ensure that "every at-risk four year old has access to a quality pre-kindergarten program." Additionally, the State represented to this Court that the State would "expand the More at Four Prekindergarten Program and provide access to the

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program to the estimated 40,000 at-risk four year olds across the State.” ***State Defendants’ 2004 Action Plan to Court, pp. 1, 7.***

Notwithstanding the State’s educational obligations for “at-risk” prospective enrollees prescribed by ***Leandro II***, the State had previously found that all children would benefit from high quality early childhood education and development services in 1993 when Smart Start and The North Carolina Partnership for Children, Inc. legislation was enacted by the General Assembly.

N.C.G.S. 143B-168.10 provided:

The General Assembly finds, upon consultation with the Governor, that every child can benefit from, and should have access to, high-quality early childhood education and development services. The economic future and well-being of the State depend upon it.

The More at Four Program for at-risk four year olds – An overview and history 2001-2011.

The purpose of the More at Four Pre-Kindergarten Program (“MAF”) is to provide high quality educational experiences in order to enhance kindergarten readiness for at-risk four year olds. This Program is community-based and voluntary. ***MAF Program Guidelines and Requirements, Section 1, June 2008.***

Information and data relating to the growth and expansion of MAF from 2001 through the end of the 2010-11 school year was presented to the Court at the hearing on June 22, 2011. A synopsis of the history of MAF follows:

2001 – Pre-K for at-risk 4 year olds established in legislation. Education standards were adopted, including teacher licensure, curriculum and class size. The State office for pre-k was established in the Office of the Governor.

2002- Pre-K was implemented in an initial 34 counties. UNC-CH began an annual evaluation of the program, including development of program and child data system. Some 1200 at-risk four year olds were initially served. On going funding begins for scholarships for pre-k teachers with the goal of moving all teachers to the bachelor’s degree and Birth-Kindergarten (B-K) teacher licensure.

2003 –Pre-K continues to expand and approximately 7,500 at-risk four year olds are served.

2004 – Pre-K continues to expand and becomes available in all 100 N.C. counties. The State Board of Education (“SBE”) adopts Early Learning Standards that become pre-k requirements. Statewide professional development on Early Learning Standards begins.

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2005 – Approximately 15,000 at-risk four year olds are served by the end of the 2004-05 school year. The Office of School Readiness ("OSR") is created by joining and leveraging state-funded pre-k with all federally funded pre-k programs in the Department of Public Instruction ("DPI"). The Head Start State collaboration Office is moved to the Office of School Readiness.

2006 – Approximately 20,000 at-risk four year olds are served by the end of 2005-06 school year. OSR develops Pre-K demonstration sites to enhance professional development for pre-k teachers.

2007 – Approximately 25,000 at-risk four year olds are served by the end of the 2006-07 school year. The OSR creates Teacher Licensure Section to provide mentoring and evaluation services to pre-k teachers in the private sector to support B-K licensure and increased the number of licensed pre-k teachers in the private sector.

2008 – Approximately 32,000 at-risk four year olds are served. This is the closest number yet in terms of reaching the at-risk four year old population statewide. SBE approves revised list of required curriculum options. Pre-k is included in CEDARS, NC's Pre-k through 13 longitudinal data system.

In 2008, the General Assembly reaffirmed its commitment to provide quality prekindergarten services to at-risk children in enacting additional More at Four legislation:

The goal of the program (MAF) is to provide quality prekindergarten services to a greater number of at-risk children in order to enhance kindergarten readiness for these children. 2008 N.C. Sess. Laws 110, Sec. 7.24(a).

2009 – Funding reductions begin leveling out the number of at-risk four year olds served at less than 35,000. The funding level for MAF in 2008-09 was \$165.6 million. The funding sources for 2009-2010 were \$53 million from the General Fund; \$84.6 million from the Lottery and \$28 million from Federal TANF funds, a reduction of \$5.0 million from the previous year. OSR implements CSEFEL demonstration sites for supporting social and emotional development for at-risk children.

2010 - Office of Early Learning ("OEL") created in the DPI to focus on Pre-k through grade 3 learning continuum and the alignment of standards, curriculum and assessment across the early learning continuum. OEL works within DPI to develop Pre-K through Grade 3 reform strategies, including supporting low-performing elementary schools and works on other Pre-K through grade 3 reforms. The Annual evaluation by UNC-CH finds a significant impact of pre-kindergarten on student achievement at the 3rd grade and a narrowing of the achievement gap. Slightly under 35,000 at-risk four year olds are served during

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the 2010-11 school year. The total MAF funding level for 2010 -2011 is reduced to \$160.6 million, a drop in \$10 million since 2008-2009. The General Fund 's contribution is \$50.2 million less than 2008-2009. Federal TANF funds consisting of \$45.2 million replaced the bulk of the General Fund MAF dollars. **(State's Exhibits #1 and #2, 6/22/2011)**

In February 2011, a study conducted by the Frank Porter Graham Child Development Institute, which has conducted evaluations of MAF since it began, determined that poor children in MAF classrooms had higher third-grade math and reading EOG scores than poor children who did not attend MAF classrooms.

The study is entitled ***Effects of North Carolina More at Four Pre-kindergarten on Children's School Readiness Skills***. Pertinent portions follow:

The North Carolina More at Four Pre-kindergarten Program is a state-funded initiative for at-risk 4 year olds, designed to help them be more successful when they enter elementary school. The purpose of More at Four is to provide a high quality, classroom based educational program during year prior to kindergarten entry. Over the years, 90% of the children served in More at Four have qualified for free and reduced-priced lunch; eligibility for the program is also determined by other risk factors, including low English proficiency, identified disability, chronic health condition, and educational or developmental need. More at Four has provided a full year pre-k program to over 167,000 children since it has been in operation (2002-2010).

The purpose of the present study was to examine the effects of the More at Four Program on children's school readiness skills at entry into kindergarten.

The primary research questions were: * Does participation in the More at Four Pre-k Program improve children's language/literacy and math school readiness skills? * Are the effects of More at Four on school readiness skills similar for different groups of children on the basis of poverty status, English language proficiency, or cumulative risk?

Major Results

- Children who participated in More at Four had better language/literacy skills and math skills than children who had not participated.
- The benefits of More at Four participation on children's language/literacy and math skills, were similar for different groups of children.

Conclusions.

These findings indicate that the More at Four Program has beneficial effects on children's language/literacy and math skills at entry into kindergarten. These effects were found across a number of different measures of language,

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literacy and math, and were similar for different groups of children based on poverty status, English language proficiency and cumulative risk. The study included over 1,000 children and used a rigorous regression discontinuity design. In sum, these results demonstrate that the More at Four Program is achieving its primary goal of improving school readiness for at – risk children. *Ellen Reisner –Feinburg, Ph.D. & Jennifer Schaaf, Ph. D., Frank Porter Graham Child Development Institute, February 2011. (State's Exhibit 4, 6/22/11)*

Location of More at Four sites.

More at Four Pre-K classrooms are not confined solely to the public schoolroom. In fact, at-risk 4 year olds are served at various locations throughout the State of North Carolina: (a) in private pre-kindergarten settings; (b) in Head Start settings; (c) in Public School Head Start settings; and (d) in pre-k classrooms within Public Schools. In 2009-2010, there were over 16,000 at-risk 4 year olds served in the public school pre-k setting; over 10,000 at-risk 4 year olds served in private pre-k settings; almost 5,000 at-risk 4 year olds served in Head Start settings and approximately 1,500 served in public school Head Start settings. (State's Exhibit #1, 6/22/11)

Reduced to essentials, More at Four pre-kindergarten for at-risk four year olds has become a nationally recognized leader in providing quality pre-kindergarten educational opportunities for at-risk four year olds. But More at Four does not operate in a vacuum and its operations are intertwined throughout the State of North Carolina with the Smart Start program.

The Smart Start Program

The Smart Start Program was created by the General Assembly in 1993. Smart Start's purpose was to create public/private local partnerships to provide "high-quality early childhood education and development services for children and families." N.C.Laws 1993, c. 321, Section 254(a). Smart Start's official title is The North Carolina Partnership for Children, Inc.

While this Court assuredly recognizes the gravity of the situation for "at-risk" prospective enrollees in Hoke County and elsewhere, and acknowledges the imperative need for a solution that will prevent existing circumstances from remaining static or spiraling further, we are equally convinced from that the evidence indicates that the State shares our concerns and, more importantly, that the State has already begun to assume its responsibilities for implementing corrective measures. **At the time of trial, Smart Start, a public-private partnership that provides funds for early childhood welfare programs, was already in place. While Smart Start is not principally a pre-kindergarten education program, monies from the program often help LEAs establish and**

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maintain pre-kindergarten classes. Hoke County and Charlotte Mecklenburg schools were among a group of LEAs that operated such programs when this case was being heard. ***Leandro II, 643***

Smart Start and More at Four are intertwined in their functions. Smart Start funds have been used throughout the counties of North Carolina to improve early childhood development, promote early childhood health and growth and early childhood education as well as to provide access to health services. Smart Start is considered a model for comprehensive early childhood education initiatives, and in 2001, a National Technical Assistance Center was established to assist other states with the development of their own early education initiatives. See Office of the Governor, Beverly Perdue, ***North Carolina Race to the Top Proposal 169-170 (2010).***

The North Carolina Partnership for Children, Inc. ("NCPC") was incorporated in 1993 as a non-profit corporation whose purpose was to ensure that all children had access to high quality early childhood education and development services. NCGS 143B-168.10. The focus of this initiative was on children, birth through age 5.

The NCPC was to partner with local partnerships, also, separate non-profit entities in order to provide analysis of local needs and ensure that those needs are met in order to prepare children to begin school healthy and ready to succeed.

The NCPC and comparable local partnerships shall have as their missions the development of a comprehensive long range strategic plan for early childhood education for children and families. 143B-168.11

The funding for NCPC and the local partnerships was to come from state funds appropriated by the General Assembly and distributed through the Department of Health and Human Services.

In order for the NCPC and local partnerships to receive state funding through the Department of Health and Human Services ("DHHS"), multiple conditions were established. G.S. 143B-168.12

The local Smart Start partnerships, in order to receiving state funding, were required to raise private dollars to support the local partnership's mission in the local community. The private dollars raised can come from any source, including, but not limited to grants, foundations, individual and corporate contributions.

Over the years, the General Assembly has changed the requirements for private matching dollars that must be raised by the local partnership. The private matching dollars for each local partnership amount to approximately 10% of the state funds that are allocated to that county for the Smart Start program. For

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2011, House Bill 200 (the Appropriations Act for 2011) adjusted the match for each local partnership to 10% of the state funds allocated. 10.5(e).

When More at Four was established in 2001 and 2002, each county/region that was to receive MAF funding had to form a local MAF Committee. The State required that the local MAF Committee be co-chaired by the Superintendent of the local LEA and the Chair of the local Smart Start partnership.

The authorizing legislation for the More at Four Pre-Kindergarten Program requires: "a system built upon existing local school boards and systems, private child care providers, and other entities that demonstrate the ability to establish or expand pre-kindergarten capacity."

To comply with this legislative mandate, the MAF Program required every county/region that chose to participate to establish a MAF Committee whose purpose was, in pertinent part, to (a) select a contractor agency; (b) develop operational policies and procedures; (c) ensure collaboration and shared responsibility for developing, approving and implementing the local plan for delivering MAF pre-k services at the community level; (d) ensure that services are built upon existing early childhood service delivery system, and that service providers in the community that have the ability to provide MAF pre-k services have the opportunity to express interest and be considered; and (e) provide oversight for the local program (both program and fiscal).

More at Four Pre-Kindergarten Program, Guidelines and Requirements, Section 2, A.&B., June 2008.

For each county/region that received MAF funding, the local MAF Committee determined the organization that would house and oversee the MAF program in that county/region. Rather than establish a separate local agency to administer the MAF program in a particular county/region, the MAF Committee would select either the local Smart Start partnership, an entity already in place and operating, or the local LEA to administer the MAF program in that county.

Depending on the capacity of the local resources, whether it be public school rooms, Head Start or private child care, the MAF Committee made the decisions as to where the slots would be provided and purchased as well as the rates to be paid to each provider for slot. The SBE established an annual rate for MAF slots each year. This rate was sufficient in some counties and was not sufficient in other counties where the cost of providing teachers and staff was high.

Thus, in counties where the annual rate was insufficient to cover the complete cost of providing an MAF slot, additional funds had to be located from other sources such Title I funds or Smart Start funds. Some counties elected to use Title 1 funds but these were only for public school pre-k classes as Title 1 funds

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were restricted to the public schools. Smart Start funds were not restricted and could be used to supplement the MAF slot allotments in public schools, private pre-kindergarten and Head Start.

Over the years, as MAF grew, Smart Start ended up administering approximately half of the MAF programs in the State. The remaining MAF programs were administered by the local LEAs.

The bottom line is that Smart Start and the MAF program—now NCPK (pre-kindergarten) under the present law, are intertwined in terms of administration, funding support and the continuity of early childhood services which Smart Start provides to the little children beginning at birth through age 5. Put another way, each at-risk child under age 4 that is receiving services from Smart Start will be better prepared, physically and developmentally, to benefit from NCPK's educationally based prekindergarten programs when they arrive at age 4.

On March 16, 2011, Duke University researchers, Kenneth Dodge, Helen Ladd, and Clara Muschkin, released a study entitled ***From Birth to School: Examining the Effects of Early Childhood Programs on Educational Outcomes in NC, Update with Preliminary Results.*** The Major Findings to Date (3-16-11) are:

- I. Exposure to Smart Start at current funding levels leads to:
 - 1 – higher grade 3 standardized reading test score (equivalent to about 2 months of instruction)
 - 2- higher grade 3 standardized math test score (equivalent to about 2 months of instruction)
 - 3- lower probability of special education placement by grade 3 (about 10 percent).
- II. Exposure to More At Four at current funding levels leads to:
 - 1 – higher grade 3 standardized reading test score (equivalent to about 2 months of instruction)
 - 2- higher grade 3 standardized math test score (equivalent to about 2 months of instruction)
 - 3- lower probability of special education placement by grade 3 (about 10 percent).
- III. The favorable effects for each program are independent of each other and increment each other, **so that the best outcomes hold for children exposed to more of each program. (emphasis added)**
- IV. The favorable effects hold for families with low maternal education AND for families with high maternal education. The effects for both initiatives are larger for families with low maternal education than for families with high maternal education.

Conclusions

- I. **Investments in Smart Start: The benefits in the form of higher 3rd grade test scores and lower special education costs appear to be worth at least the state investment (about \$1250 total per child over the 5 years of early childhood). Other benefits not measured**

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In the study would increase the rate of return to the state's investment.

- II. Investments in More at Four: The benefits in the form of higher 3rd grade test scores and lower special education costs appear to be worth at least the state investment of about \$1250 per 4 year old. Other benefits not measured in this study would increase the rate of return to the state's investment.**

The bottom line, seven years after *Leandro II*, is that the State, using the combination of Smart Start and the More at Four Pre-Kindergarten Programs, have indeed selected **pre-kindergarten** combined with the early childhood benefits of Smart Start and its infrastructure with respect to pre-kindergarten programs, as the means to "achieve constitutional compliance" for at-risk prospective enrollees. *Leandro II*, 640,641,644.

Having reviewed the rulings by the Supreme Court in *Leandro II* relating to the State's obligation to provide an educational based program such as pre-kindergarten for "at-risk" prospective enrollees in North Carolina and the selection by the State of pre-kindergarten (MAF) as the vehicle for the State to achieve constitutional compliance so as to meet the needs of at-risk 4 year olds and its operational functions and history, the Court now turns to the issues raised by plaintiffs' allegations concerning the consolidation of the MAF program into the Division of Child Development at the Department of Health and Human Services ("DHHS") and its transfer from the Department of Public Instruction.

The plaintiffs contend that despite MAF's proven effectiveness and success in providing quality educational pre-kindergarten services to almost 40,000 at-risk 4 year olds throughout North Carolina, the 2011 Budget, Session Law 2011-145, ("2011 Budget") effectively eliminates MAF as an educational program, transfers MAF to the Department of Health and Human Services ("DHHS"), curtails access to quality pre-kindergarten services to children who are most in need and at-risk, and cuts its funding by \$32,000,000.00. (*Pls.' Post Hearing Submission and Request for Relief, July 11, 2011, p. 11*)

In view of these serious allegations with regards to the at-risk four year old pre-kindergarten services heretofore committed to and provided by the State to meet its responsibilities to "at-risk" prospective enrollees as determined and declared by the Supreme Court in *Leandro II*, supra., the Court has undertaken to carefully examine that provision of the 2011 Budget entitled **CONSOLIDATE MORE AT FOUR PROGRAM INTO DIVISION OF CHILD DEVELOPMENT**, Section 10.7. (a) – 10.7 (j), pages 92-94. This review follows. The Court will set out the pertinent sections of Section 10.7 and comment on those sections if it feels necessary. The use of (formerly MAF) is inserted where necessary to identify those prekindergarten programs in the Budget that were formerly MAF programs/classrooms as the Budget essentially renames MAF and identifies the program as "prekindergarten".

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10.7. (a) The Department of Public Instruction, Office of Early Learning, and the Department of Health and Human Services are directed to consolidate the More At Four program into the Division of Child Development. The Division of Child Development is renamed the Division of Child Development and Early Education (DCDEE). **The DCDEE is directed to maintain the More At Four program's high programmatic standards.** The Department of Health and Human Services shall assume the functions of the regulation of the monitoring system and payment and reimbursement system for the More At Four program.

[Court comment on the directive that DCDEE is directed (required) to maintain MAF's high programmatic standards.

The MAF high programmatic standards are contained in Pls.' Exhibit 26 (6/22/11). The MAF program has set high educational standards across the board concerning pre-k teacher qualifications, class size, developmental assessments for children, ongoing formative assessments, early learning standards and curricula for pre-k. The plain language of 10.7 (a) clearly requires that DCDEE maintain those MAF standards which are set out in Pls. Exhibit 26 and incorporated herein by reference which include, but are not limited to: Teacher education requirements; class size; comprehensive curriculum from resources approved by the SBE; developmental screening of all children unless the child has an IEP; programs must be knowledgeable about *Foundations: Early Learning Standards for North Carolina Preschoolers and Strategies for Guiding their Success* and **use these standards to guide their planning**; Professional development requirements and direct contact by teachers/instructional staff with children at least 20 hours a week.]

10.7. (a) continued:

All regulation and monitoring functions shall begin on July 1, 2011. **The More at Four program shall be designated as "prekindergarten" on the five-star rating scale. All references to "prekindergarten" in this section shall refer to the program previously titled the "More At Four" program.** All references to "non-prekindergarten shall refer to all four and five-star rated facilities.

The Office of State Budget and Management shall transfer positions to the Department of Health and Human Services to assume the regulation, monitoring and accounting functions within the Division of Child Development's Regulatory Services Section. This transfer shall have all the elements of a Type I transfer as defined in G.S. 143A-6. All funds transferred pursuant to this section shall be used for funding of prekindergarten slots (formerly MAF slots) for four-year-olds and for the management of the program. The Department of Health and Human Services shall incorporate eight consultant positions into the regulation

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and accounting sections of DCDEE, eliminate the remaining positions and use position elimination savings for the purpose of funding prekindergarten students. DCDEE may use funds from the transfer of the More At Four program for continuing the teacher mentoring program and contracting for environmental scale assessments.

10.7. (b) The Childcare Commission shall adopt rules for programmatic standards for regulation of prekindergarten classrooms (formerly MAF classrooms). The Commission shall review and approve comprehensive, evidence-based early childhood curricula with a reading component. These curricula shall be added to the currently approved "More At Four" curricula.

[Court comment on 10.7 (b): The foregoing requires the Commission to adopt the high programmatic standards used by MAF as rules to regulate the pre-k (formerly MAF) classrooms as well as add a comprehensive evidence based early childhood curricula with a reading component to be added to the MAF curricula. These requirements, coupled with the directive in 10. 7. (a), seem to strengthen the curricula and high programmatic standards already in place in MAF that are required to remain in the prekindergarten classrooms.]

10. 7. (c) This section rewrites G.S. 143B-168.4(a) dealing with the membership of the Childcare Commission of the Department of Health and Human Services and the requirements for membership on the Childcare Commission.

The Court has no comment on 10.7. (c).

10. 7. (d) The additional curricula approved (the reading component) and taught in prekindergarten classrooms (formerly MAF classrooms) shall also be taught in four- and five-star rated facilities in the non-prekindergarten four year old classrooms. The Child Care Commission shall increase standards in the four- and five-star rated facilities for the purpose of placing an emphasis on early reading. The Commission shall require the four- and five-star rated facilities (not the former MAF classrooms/facilities that are required to use the reading component in addition to the MAF programmatic standards) to teach from the Commission's approved curricula. The Division of Child Development may use funds from the Child Care Development Fund Block Grant to assist with the purchase of curricula or to adjust rates of reimbursement to cover increased costs.

[Court comment on 10. 7. (d). This section appears intended to improve the curricula in non-prekindergarten classrooms by requiring the 4- and 5- star non-prekindergarten classrooms to use the reading component as part of their curricula for four year old classrooms and provides a potential funding sources to assist with the implementation of the reading component for non-prekindergarten 4 year old classrooms. This is a positive step for non at-risk four year olds.]

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10. 7. (e) The Division of Child Development and Early Education shall adopt a policy to encourage all prekindergarten classrooms (formerly MAF classrooms) to blend private pay families with prekindergarten (MAF at-risk four year olds) subsidized children in the same manner that regular subsidy children are blended with private pay children. The Division may implement a waiver or transition period for the public classrooms.

10. 7. (f) The prekindergarten program (formerly MAF) may continue to serve at-risk children identified through the existing "child find" methods in which at-risk children are currently served within the Division of Child Development. The Division of Child Development shall serve at-risk children regardless of income. **However, the total number of at-risk children served shall constitute no more than 20% of the four year olds served within the prekindergarten program. (formerly MAF classrooms)** Any age-eligible child who is a child of either of the following shall be eligible for the program: (i) an active duty member of the Armed Forces of the United States, including the North Carolina National Guard, State military forces, or a reserve component of the Armed Forces, who was ordered to active duty by the proper authority within the last 18 months or is expected to be ordered within the next 18 months or (ii) a member of the Armed Forces of the United States, including the North Carolina National Guard, State military forces, or a reserve component of the Armed Forces, who was injured or killed while serving on active duty. **Eligibility determinations for prekindergarten participants may continue through local education agencies and local North Carolina Partnership for Children, Inc., partnerships.**

10. 7. (g) The Division of Child Development and Early Education (DCDEE) shall adopt policies that improve the quality of childcare for subsidized children. The DCDEE shall phase in a new policy in which child care subsidies will be paid, to the extent possible, for child care in the higher quality centers and homes only. The DCDEE shall define higher quality, and subsidy funds shall not be paid for one- or two-star rated facilities. For those counties with an inadequate number of three-four- or five-star-rated facilities, the DCDEE shall establish a transition period that allows the facilities to receive subsidy funds while the facilities work on the increased star ratings. The DCDEE may allow exemptions in counties where there is an inadequate number of three-four- and five-star-rated facilities for nonstar-rated programs, such as religious programs.

[The Court has no comment on 10. 7. (g) as it does not relate to prekindergarten programs/classrooms (formerly MAF) except to say that improving the standards of quality for childcare for subsidized children by demanding higher quality is a good thing.]

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10. 7. (h) The Division of Child Development and Early Education shall implement a parent co-payment requirement for prekindergarten classrooms (formerly MAF classrooms) that same as what is required of parents subject to regular child care subsidy payments. All at-risk children and age-eligible children of military personnel as described in subsection (g) (should be (f)) of this section are exempt from the co-payment requirements of this subsection.

Fees for families who are required to share in the cost of care shall be established based on a percent of gross family income and adjusted for family size. Fees shall be determined as follows:

FAMILY SIZE	PERCENT OF GROSS FAMILY INCOME
1-3	10%
4-5	9%
6 or more	8%

[The Court has comments on 10. 7. (e); 10. 7. (f) and 10. 7. (h) and those comments are combined as follows:

At the outset, the Court makes its comments with the foregoing in mind:

In 2004, the North Carolina Supreme Court determined that the State is required and obligated to provide at-risk prospective enrollees (4 year olds) with remedial pre-kindergarten services and left the means of providing those services, initially, to the State. "The State recognizes the extent of its problem – its deficiencies in affording 'at-risk' prospective enrollees their guaranteed opportunity to obtain a sound basic education – and its obligation to address and correct it. *Leandro II, 642-645.*

The State chose to implement a quality pre-kindergarten program known as MAF in 2001 to meet its obligations to "at-risk" prospective enrollees.

The goal of the program (MAF) was to provide quality prekindergarten services to **a greater number of at-risk children** in order to enhance kindergarten readiness. *2008 N.C. Sess. Laws 110 7.24. (a)*

The purpose of the More at Four Pre-Kindergarten Program is to provide high quality educational experiences in order to enhance kindergarten readiness for at-risk four year olds. *More at Four Pre-Kindergarten Programs, Guidelines and Requirements. Section 1, June 2008.*

The More At Four program is a proven, high quality pre-kindergarten program which is nationally ranked and which, as of 2010-2011, was serving approximately 35,000 or more at-risk four year olds throughout North Carolina in public schools, private prekindergarten, Head Start and Public school Head Start

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settings. Despite its proven success, especially in combination with Smart Start, MAF was transferred from DPI to DHHS by the General Assembly through the 2011 Budget, Section 10. 7. (a) through (j).

While the General Assembly has the constitutional power and authority to transfer the MAF prekindergarten program for at-risk 4 year olds to DHHS and to rename MAF as simply "prekindergarten" the underlying high quality prekindergarten program may not be dismantled, nor may the prekindergarten services provided to at-risk 4 years olds throughout North Carolina be reduced, diminished in quality or eligibility for the prekindergarten program be restricted by the erection of artificial or actual barriers enacted into law. The General Assembly also has the constitutional power and authority to enlarge the prekindergarten program to make those high quality educational services available to those 4 year old children of eligible members of the Armed Forces. This is a good step and the right thing to do for those children whose parent(s) are on active duty or injured or killed on active duty in the service of the United States.

Yet, despite the positive provisions in Sections 10.7. (a) and 10. 7. (b), the provisions of Sections 10.7, (e); (f) and (g), combined, excluding the appropriate addition of the eligibility of children of military personnel as defined in Section 10. 7. (f) appear intentionally designed to effectively eliminate and/or severely reduce the required at-risk prekindergarten services that had been provided by MAF and to erect artificial and actual barriers to prevent eligible at-risk four year olds from obtaining the quality prekindergarten services they are eligible to receive.

Simply put, the Court concludes that the 2011 Budget, sections 10.7 (e); (f); and (g) combine to effectively limit access to prekindergarten services for many of those at-risk 4 year olds who need the program so they can start kindergarten ready to take advantage of their constitutional right to the opportunity to obtain a sound basic education.

Here's how its been done.

First, section 10. 7. (e) encourages all prekindergarten (formerly MAF classrooms serving only at-risk children) classrooms to be "blended" with private pay families with prekindergarten subsidized children in those prekindergarten classrooms that are in the private sector. In addition, the public sector prekindergarten (formerly MAF classrooms) are to transition to have non at-risk four year olds blended with the at-risk 4 year olds entitled to the prekindergarten services that they have been receiving through MAF since 2002.

The Court understands the term "blending" carries with it a positive connotation in certain educational contexts, such as main streaming educationally challenged

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children in public school classrooms and thus appears a positive effort in the case of prekindergarten classrooms to create a blended, economically and socially diverse classroom.

While this form of economic and social "blending" may appear benign on the surface, its intended effect, reading sections 10. 7 (e) and (f) and (h) in combination, **is to open the at-risk 4 year old prekindergarten program to 4 year olds who are not at risk and who previously would not have been eligible for the MAF prekindergarten program.**

The damage this will do to the eligible at-risk 4 year old population becomes crystal clear when section, 10. 7. (f) is read in pertinent part:

The Division of Child Development shall serve at-risk children regardless of income. **However, the total number of at-risk children served shall constitute no more than 20% of the four year olds served within the prekindergarten program. (formerly MAF classrooms)**

This specific provision in the law limits the number of at-risk children eligible for the former MAF prekindergarten program to 20% of the slots in the "new" prekindergarten program while reserving 80% of the slots for 4 year olds that are not at-risk .

There is no problem with the inclusion of children of military personnel as defined in Section 10. 7. (f). Notwithstanding this, the limitation of 20% is a deliberate and material change in the prekindergarten program which has been designed and expanded to serve almost 40,000 at-risk 4 year olds statewide. The result is that the prekindergarten program for at-risk 4 year olds is being opened to 80% of children who are not at-risk and therefore excluding 80% of those children who are at-risk 4 year olds.

While it is not clear to the Court from the language of the Budget Bill whether the 20% limitation applies to every prekindergarten classroom, or to a particular county/region's total prekindergarten program, or simply all prekindergarten programs (formerly MAF) statewide, the 20% limit set out in section 10.7. (f), if it results in barring eligible at-risk 4 year olds from prekindergarten slots by displacing those slots in favor of non at-risk 4 year olds under the guise of "blending" or other reasons, cannot stand and may not be enforced.

Again, it is not clear to the Court from reading the plain language of the Budget Bill, nor was it made clear from the testimony at the hearing on June 22 and June 23, precisely how the 80% - 20% limitations will actually be implemented in the prekindergarten classrooms. Because of this, the Court can only look at the potential impact on eligible at-risk 4 year olds using the statewide numbers of slots filled by eligible at-risk 4 year olds to discern the potential impact of the 20% at-risk 4 year old limitation if it were permitted to stand.

Appendix A

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Potential Statewide Impact. There were approximately 32,000 at risk 4 year olds served by MAF in 2010-2011. There are estimated to be between 65,000 and 67,000 eligible at-risk 4 year olds in North Carolina. Taking 35,000 at risk 4 year olds as the number who are eligible to apply and obtain the prekindergarten services provided in the prekindergarten classrooms (former MAF classrooms), and provided that there are still some 32,000 available prekindergarten slots in the program statewide, section 10. 7. (f) would limit the at-risk 4 year olds who would have been eligible for those seats prior to the enactment of section 10. 7. (f) to only **6,400 prekindergarten slots with 25, 600 slots in the prekindergarten program open to non-at risk 4 year olds.** This result is unacceptable and may not occur as the at-risk 4 year olds are to be provided a high quality prekindergarten experience in order that they may be able to enter the public schools with sufficient skills and development to be able to have the equal opportunity to obtain a sound basic education as is there right under the North Carolina Constitution.

While the actual numbers of prekindergarten slots and eligible at-risk 4 year olds and eligible military children are not known to the Court, the effects of the 20% limitation are.

The Co-Pay requirement of Section 10. 7. (h) is separately criticized by the plaintiffs for the reason that " the State will no longer be able to combine MAF funding with that of Head Start, Title I and IDEA/Special Education programs to expand its reach to serve more at-risk children. Pruette, T. pp. 26, 59-60. Looking at the impact of Head Start alone, the new co-payment will displace approximately 6,500 at-risk students currently receiving pre-kindergarten services through a combination of More at Four and Head Start Funding. The evidence in the record is undisputed that the co-pay requirement will cause a severe and significant impact on the ability of at-risk children to access the program and have the remediation that they need to be prepared for kindergarten. Pruette T. p. 26. "(Pls. Post Hearing Submission pp 12, 13.

While the foregoing sums up the plaintiffs' position relative to the co-pay requirements, the Division of Child Development and Early Education (DCDEE) which is now in charge of the transition of MAF to DCDEE and the NC Pre-Kindergarten Program (formerly MAF) (NCPK), has prepared a public document entitled: ***The NC Pre-Kindergarten Program (NCPK) Frequently Asked Questions Updated on July 1, 2011, consisting of 5 pages.*** The Court takes judicial notice of this public document and its contents. A copy is attached to this Memorandum of Decision and Order as Exhibit A and is incorporated by reference.

With regard to the issue of co-pay and the alleged damage to Head Start and Title I funded pre-kindergarten program Question 14 and its answer appear to provide some relief from this concern. The answer in pertinent part follows:

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14. How can Head Start or Title I partner with NCPK?

Given that Head Start and Title I guidelines prohibit the program from collecting a parent fee, the following policy has been developed and approved so that NCPK children and families served in Head Start and Title I settings can be deemed exempt from the co-pay requirement. The funding stream that contributes the highest percentage of funding to the slot shall dictate the fee assessment and collection guidelines to be followed. For example, if Head Start or Title I funding contributes 51% or more of the funds for a child placement, then that family is exempt from the co-pay requirement.

The co-pay requirement appears to be an unsettled issue at this time and the NCPK, according to Exhibit A, is presently a work in progress. Nevertheless, the imposition of a co-pay requirement may not be used to block an at-risk 4 year old from taking advantage of the NCPK program when he or she is eligible to be provided the prekindergarten experience.]

10. 7. (i). All prekindergarten classrooms regulated pursuant to this section shall be required to participate in the Subsidized Early Education for Kids (SEEK) accounting system to streamline the payment function for these classrooms with a goal of eliminating duplicative systems and streamlining the accounting and payment processes among the subsidy reimbursement systems. Prekindergarten funds transferred may be used to add these programs to SEEK.

[The Court has no comment on 10. 7. (i).]

10. 7. (j) Based on market analysis and within funds available, the Division of Child Development and Early Education shall establish reimbursement rates based on newly increased requirements of four- and five- star rated facilities and the higher teacher standards within the prekindergarten classrooms, specifically More at Four teacher standards, when establishing the rates of reimbursements. Additionally, the prekindergarten curriculum day shall cover six and one half to 10 hours daily and no less than 10 months per year. The public classrooms will have a one-year transition period to become licensed through the Division of Child Development and may continue to operate prekindergarten, formerly "More At Four" classrooms during the 2011-2012 fiscal year.

[The Court has no comment about 10. 7. (j).]

DISCUSSION AND DECISION

Appendix A

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Based on the record now before the Court, it appears that the State, by enacting the foregoing 2011 Budget sections, 10.7 (a) through (j), has taken the prekindergarten program (formerly MAF) established for at-risk 4 year olds and reduced the number of slots available to at-risk 4 year olds upwards of 80% without providing any alternative high quality prekindergarten option for at-risk 4 year olds at all.

The State, at the hearing on this issue, presented no evidence that the State, in the 2011 Budget sections 10. 7. (a) through (j) or elsewhere in the 2011 Budget , had provided for an increase in the number of prekindergarten slots to be available to provide slots for (a) the eligible at-risk 4 year olds as defined in the past and as stated in the 2010/2011 More at Four Program Requirements and (b) those 4 year olds that are not at-risk under the MAF requirements who are to be permitted to occupy 80% of the NCPK program slots.

Thus, there is no evidence that there is the capacity (number of available slots) in NCPK to provide for all the at-risk 4 year olds to be served under the present scheme, especially with the 20% limitation now in place, as well as the non-at-risk 4 year olds that have been given the opportunity to participate in NCPK.

In fact, the undisputed record shows that the capacity for all NCPK slots has been reduced from the 2010/2011 school year and that if the present plan is implemented as set out in the Budget Bill, a several thousand at-risk 4 year olds who are eligible to attend NCPK will not be provided with slots because of the limitations on their participation to 20%.

It is not necessary for the Court to have precise numbers of slots that will no longer be available to at-risk 4 year olds who are eligible to attend NCPK (formerly MAF) this up coming year because this artificial barrier, or any other barrier, to access to prekindergarten for at-risk 4 year olds may not be enforced.

This case is not about numbers and slots. This case has always been about the rights of children. This case is about the individual right of every child to have the equal opportunity to obtain a sound basic education. The constitutional right belongs to the child, not to the adults. Each at-risk four year old that appears at the doors of the NCPK program this fall is a defenseless, fragile child whose background of poverty or disability places the child at-risk of subsequent academic failure.

The fact that these small children are at-risk is not their fault and they may not be denied their constitutional right to the opportunity to obtain a sound basic education by adults. Likewise, it is not the adults' right to deny them their opportunity. In fact, adults have no right, morally or legally to do so.

Simply put, it is the duty of the State of North Carolina to protect each and every one of these at-risk and defenseless children, and to provide them their lawful

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opportunity, through a quality prekindergarten program, to take advantage of their equal opportunity to obtain a sound basic education as guaranteed by the North Carolina constitution.

BASED ON THE FOREGOING, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. The State of North Carolina shall not deny any eligible at-risk four year old admission to the North Carolina Pre-Kindergarten Program (NCPK) and shall provide the quality services of the NCPK to any eligible at-risk four year old that applies.
2. The State of North Carolina shall not implement or enforce that portion of the 2011 Budget Bill, section 10. 7. (f). that limits, restricts, bars or otherwise interferes, in any manner, with the admission of all eligible at-risk four year olds that apply to the prekindergarten program, including but not limited to the 20% cap restriction, or for that matter any percentage cap, of the four year olds served within the prekindergarten program, NCPK.
3. Further, the State of North Carolina shall not implement, apply or enforce any other artificial rule, barrier, or regulation to deny any eligible at-risk four year old admission to the prekindergarten program, NCPK.
4. The Court is confident that the State of North Carolina will honor and discharge its constitutional duties in connection with this matter.

This the 18th day of July, 2011.

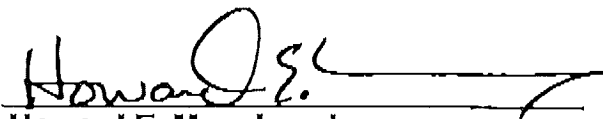
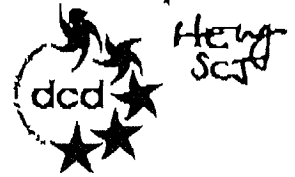

Howard E. Manning, Jr.
Superior Court Judge

EXHIBIT A TO MD+O JULY 18, 2011
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**The NC Pre-Kindergarten Program (NCPK)
Frequently Asked Questions
Updated on July 1, 2011**



1. When will the NCPK policies be available?

As you might imagine, the transition of More at Four to the Division of Child Development & Early Education (DCDEE) is a huge undertaking. Several mechanisms have been put into place to help expedite the roll-out of NCPK policies as much as possible. The Program Requirements from the More at Four program (2010/2011) will stay the same in the 2011/2012 school year for most every area. The Child Care Commission will meet on August 16th, 2011 to put these standards into licensing rule language that will apply to NCPK programs.

2. When is the letter of intent due from current More at Four Contract Administrators?

July 11th, 2011 – please email your letters to Tracey Hipp at tracey.hipp@dhhs.nc.gov or fax them to Tracey at (919) 662-4568

3. Will a parent fee be required for NCPK participation?

We understand that there may be concern about charging a parent fee. Please note that DCDEE will not be involved in the parent fee collection process. The budget bill stated that up to 80% of parents will now be required to pay a fee for prekindergarten services consistent with the current parent fee structure for child care subsidy services. This parent fee will not be required for active duty military families and for up to 20% of children that fall into the “at-risk” categories indicated in the current More at Four Program Standards. The NCPK Contract Administrator is responsible for assessing the parent fee and notifying the pre-k site of the amount to be collected. The NCPK Contract Administrator will also be responsible for deducting the parent fee from the pre-k slot payment if applicable.

The parent fee structure for child care subsidy services can be found here:

<http://info.dhhs.state.nc.us/olm/manuals/dcd/ccs/man/ccsc8a1.pdf>

In addition, the parent fee is based on the collection of only 1 fee per family, so if a family has another child served in the child care subsidy program, an additional co pay is not required for the NCPK child. This is true even if children are in different centers (only one co-pay is required). When a parent is already paying a fee for a child in the family, then the NCPK site will not be expected to charge a co-pay and will receive the full NCPK slot allotment. DCDEE will determine a method for verifying whether or not a parent fee is already being paid for a given family.

4. Will the More at Four Committee structure continue to exist?

Yes – the More at Four Committee will now be titled the “NCPK Committee” and will retain the structure, purpose, intent, and goals as the former More at Four Committee. The NCPK Committee will also be expected to determine rates for the NCPK slots in the county/region. DCDEE expects that the NCPK Committee will consider the following to determine the number of slots expected to be filled with the given county allocation:

- Differentiated rates to be paid in the county/region based on:
 - NCPK settings available & the given resources needed to support a quality program in that setting (ie: child care center, public school classrooms, Head Start centers, etc.)
 - teacher education level

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Administration funding can be used to support *administrative* staff (not teaching staff) working with the NCPK program. This may include: salaries, benefits, staff travel, training, computers, equipment and/or supplies. The remaining portion of the allocation *must* be used for direct services for prekindergarten children (salary/benefits for teaching staff, equipment, supplies, staff training, etc.).

10. Will programs be required to participate in the Subsidized Early Education for Kids (SEEK) system?

Special provisions also indicated that the prekindergarten program would be required to participate in the SEEK attendance reporting and accounting system. DCDEE will work with local contractors to achieve this goal, but this will not be in place by the start of the 2011/2012 school year.

11. Who will monitor NCPK? Will all classrooms be required to maintain licensure through DCDEE?

All classrooms will be required to maintain a four or five star license from DCDEE. Prekindergarten programs will be monitored annually by licensing consultants within the Regulatory Services Section at DCDEE. Prekindergarten classrooms in public schools that are not currently licensed by DCDEE will have until July 1, 2012 to become licensed, but will be monitored during the 2011-2012 school year as well.

DCDEE staff at the state level will monitor NCPK Contract Administrators every three years at a minimum.

12. Can NCPK children be combined in classrooms with private pay children?

Yes! This practice is encouraged and is also supported in the budget bill. We also understand that this practice can take place within the public school setting as well and that schools are permitted to collect fees from parents. NCPK contract administrators may want to check with the local school superintendent, however, to make sure that there is not a county policy that would prohibit this practice.

13. How is the term "at risk" defined?

The definition for "at risk" is defined in the same way as it has been used in the past and is stated in the 2010/2011 More at Four Program Requirements:

"Eligibility for Families above 75% of State Median Income (SMI)

When a family's gross income exceeds 75% of the State Median Income (SMI) the child is deemed eligible if he/she meets at least one of the criteria listed below:

- Limited English Proficiency (LEP) as indicated by the family and/or child speaking limited or no English in the home;
- Identified Disability as indicated by the child having a current Individualized Education Program (IEP);
- Chronic Health Condition as indicated by a health care provider diagnosis (e.g., asthma, childhood obesity, sickle cell anemia, cancer, HIV);
- Developmental/Educational Need as indicated by the child's performance results on a developmental screening.

Up to 20% of a county's/region's slots may be filled by children above 75% of the State Median Income level who meet at least one of the criteria listed above."

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- length of NCPK day (legislation allows for the NCPK day to be between 6 ½ - 10 hours long)
- Applications already received (to determine if the parent fee estimates from the county allocations sent on 6/29/11 are in line with what program sites are expected to collect based on family income)

5. Will parents have to apply for NCPK services through the child care subsidy system?

No - parents will use the same eligibility determination system that has been used in the past through the More at Four program. This system, however, may change if the local contract administering agency functions are moved to a different agency based on local decision-making.

6. How will eligibility be determined?

Each local NCPK contractor will determine eligibility for the program, based on the current More at Four Program Standards. Verification of parent income is required. For the 2011/2012 school year, DCDEE will accept methods of income verification used in prior years through the More at Four program, except in cases in which programs simply allowed a parent to sign a statement regarding their own income. If the NCPK Contract Administrator has NOT yet verified income for 2011/2012, then income verification must take place using one of the following documents:

- Tax records
- Pay stubs
- Award letters from the Social Security Administration
- Award letters from the Employment Security Commission
- Employer statements
- Business records for self-employed individuals
- Signed statements when an individual claims to have no verifiable countable income

Further details about the income verification expectations will be forthcoming in the next few weeks.

7. Do both parents have to be working or in school?

No – the current More at Four Program Standards for parent eligibility will still apply as they have in the past.

8. How were county allocations determined?

Allocations were determined by using the following information:

- Estimated parent fees added to 2011-2012 available funds
- 2011-2012 available funds compared to 2010-2011 allocations, and a prorated reduction applied
- The reduced allocations were divided by the same cost per slot that contractors received in 2010-2011 for the number of 2011-2012 slots per county

9. What is the administrative allowance for NCPK contract administrators?

DCDEE has an administrative cost cap of 4% of the total NCPK county allocation (or a \$20,000 administrative allowance, whichever is greater). The 4% is based on the DCDEE allocation amount, not expenditures, so the NCPK Contract Administrator can budget for the full administrative amount. If the estimated allocation changes, the 4% amount will be adjusted. Allocations will be finalized when counties respond with the number of slots they anticipate will be filled.

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14. How can Head Start or Title I partner with NCPK?

Head Start and Title I programs can be effective partners with NCPK in a variety of ways. These include:

- Head Start and Title I children may be served in an NCPK slot and counted toward the 20% "at-risk" category as defined in question #9 above.
- NCPK funds can be used to extend the length of the Head Start or Title I school day or school year.
- Given that Head Start and Title I guidelines prohibit the program from collecting a parent fee, the following policy has been developed and approved so that NCPK children and families served in Head Start and Title I settings can be deemed exempt from the co-payment requirement. The funding stream that contributes the highest percentage of funding to the slot shall dictate the fee assessment and collection guidelines to be followed. For example, if Head Start or Title I funding contributes 51% or more of the funds for a child placement, then that family is exempt from the co-pay requirement.

15. What can be counted in the 80% vs. 20% of slots as it relates to "at risk" factors and parent co-pay?

Slots that can be counted in the 20% "at risk category"	Slots that can be counted in the remaining 80% category
<p>At risk families served without a copay, that include:</p> <ul style="list-style-type: none"> -Limited English Proficiency (LEP) as indicated by the family and/or child speaking limited or no English in the home; -Identified Disability as indicated by the child having a current Individualized Education Program (IEP); -Chronic Health Condition as indicated by a health care provider diagnosis (e.g., asthma, childhood obesity, sickle cell anemia, cancer, HIV); -Developmental/Educational Need as indicated by the child's performance results on a developmental screening. 	<ul style="list-style-type: none"> - Families at or below 75% of the state median income level that pay a co-pay to the program/classroom/school. - Head Start or Title I children whose families do not pay a co-pay due to the co-pay policy described in #14 - Military families that do not pay a co-pay as described in #3 - Families that do not pay a co-pay due to the fact that they do not have any verifiable countable income to report

16. Will the same More at Four teacher education standards apply for NCPK teachers?

Yes – As indicated in the current More at Four Program Requirements:

"All teachers will hold, or be working toward a North Carolina (NC) Birth-through- Kindergarten (B-K) Standard Professional II or Preschool Add-on licensure.

*Effective for the 2011-2012 school year, all lead teachers will hold a minimum of a BA/BS degree in early childhood, child development, or a related field and be working toward a B-K license."

Appendix A

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17. How will teachers be supported through NCPK?

The legislation allowed for funding to be used for teacher support. At the state level, funding will be used to support programs such as T.E.A.C.H., WAGES, T.E.A.C.H. Health Insurance, classroom assessments, data collection tools and other initiatives. At the local level, the NCPK Committee will need to determine how funds may be used for other teacher support initiatives.

DCDEE is considering options for a pay scale for teachers with a BA/BS that are working on their B-K license. However, NCPK Contract Administrators will be required to pay B-K licensed teachers (regardless of the NCPK setting) on the DPI pay scale.

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use for administrative costs at four percent (4%) of the county's total child care subsidy funds allocated in the Child Care Development Fund Block Grant plan.

CONSOLIDATE MORE AT FOUR PROGRAM INTO DIVISION OF CHILD DEVELOPMENT

SECTION 10.7.(a) The Department of Public Instruction, Office of Early Learning, and the Department of Health and Human Services are directed to consolidate the More At Four program into the Division of Child Development. The Division of Child Development is renamed the Division of Child Development and Early Education (DCDEE). The DCDEE is directed to maintain the More At Four program's high programmatic standards. The Department of Health and Human Services shall assume the functions of the regulation and monitoring system and payment and reimbursement system for the More At Four program.

All regulation and monitoring functions shall begin July 1, 2011. The More At Four program shall be designated as "prekindergarten" on the five-star rating scale. All references to "prekindergarten" in this section shall refer to the program previously titled the "More At Four" program. All references to "non-prekindergarten" shall refer to all four- and five-star rated facilities.

The Office of State Budget and Management shall transfer positions to the Department of Health and Human Services to assume the regulation, monitoring, and accounting functions within the Division of Child Development's Regulatory Services Section. This transfer shall have all the elements of a Type I transfer as defined in G.S. 143A-6. All funds transferred pursuant to this section shall be used for the funding of prekindergarten slots for four-year-olds and for the management of the program. The Department of Health and Human Services shall incorporate eight consultant positions into the regulation and accounting sections of DCDEE, eliminate the remaining positions, and use position elimination savings for the purpose of funding prekindergarten students. DCDEE may use funds from the transfer of the More At Four program for continuing the teacher mentoring program and contracting for the environmental rating scale assessments.

SECTION 10.7.(b) The Childcare Commission shall adopt rules for programmatic standards for regulation of prekindergarten classrooms. The Commission shall review and approve comprehensive, evidenced-based early childhood curricula with a reading component. These curricula shall be added to the currently approved "More At Four" curricula.

SECTION 10.7.(c) G.S. 143B-168.4(a) reads as rewritten:

"(a) The Child Care Commission of the Department of Health and Human Services shall consist of ~~15-17~~ members. Seven of the members shall be appointed by the Governor and ~~eight~~ 10 by the General Assembly, ~~four-five~~ upon the recommendation of the President Pro Tempore of the Senate, and ~~four-five~~ upon the recommendation of the Speaker of the House of Representatives. Four of the members appointed by the Governor, two by the General Assembly on the recommendation of the President Pro Tempore of the Senate, and two by the General Assembly on the recommendation of the Speaker of the House of Representatives, shall be members of the public who are not employed in, or providing, child care and who have no financial interest in a child care facility. Two of the foregoing public members appointed by the Governor, one of the foregoing public members recommended by the President Pro Tempore of the Senate, and one of the foregoing public members recommended by the Speaker of the House of Representatives shall be parents of children receiving child care services. Of the remaining two public members appointed by the Governor, one shall be a pediatrician currently licensed to practice in North Carolina. Three of the members appointed by the Governor shall be child care providers, one of whom shall be affiliated with a for profit child care center, one of whom shall be affiliated with a for profit family child care home, and one of whom shall be affiliated with a nonprofit facility. Two of the members appointed by the General Assembly on the recommendation of the President Pro Tempore of the Senate, and two by the General Assembly on recommendation of the Speaker of the House of Representatives, shall be child care providers, one affiliated with a for profit child care facility, and one affiliated with a nonprofit child care facility. The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, and the General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint two early childhood education specialists. None may be employees of the State."

SECTION 10.7.(d) The additional curricula approved and taught in prekindergarten classrooms shall also be taught in four- and five-star rated facilities in the

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non-prekindergarten four-year-old classrooms. The Child Care Commission shall increase standards in the four- and five-star-rated facilities for the purpose of placing an emphasis on early reading. The Commission shall require the four- and five-star-rated facilities to teach from the Commission's approved curricula. The Division of Child Development may use funds from the Child Care Development Fund Block Grant to assist with the purchase of curricula or adjust rates of reimbursements to cover increased costs.

SECTION 10.7.(e) The Division of Child Development and Early Education shall adopt a policy to encourage all prekindergarten classrooms to blend private pay families with prekindergarten subsidized children in the same manner that regular subsidy children are blended with private pay children. The Division may implement a waiver or transition period for the public classrooms.

SECTION 10.7.(f) The prekindergarten program may continue to serve at-risk children identified through the existing "child find" methods in which at-risk children are currently served within the Division of Child Development. The Division of Child Development shall serve at-risk children regardless of income. However, the total number of at-risk children served shall constitute no more than twenty percent (20%) of the four-year-olds served within the prekindergarten program. Any age-eligible child who is a child of either of the following shall be eligible for the program: (i) an active duty member of the Armed Forces of the United States, including the North Carolina National Guard, State military forces, or a reserve component of the Armed Forces, who was ordered to active duty by the proper authority within the last 18 months or is expected to be ordered within the next 18 months or (ii) a member of the Armed Forces of the United States, including the North Carolina National Guard, State military forces, or a reserve component of the Armed Forces, who was injured or killed while serving on active duty. Eligibility determinations for prekindergarten participants may continue through local education agencies and local North Carolina Partnership for Children, Inc., partnerships.

SECTION 10.7.(g) The Division of Child Development and Early Education (DCDEE) shall adopt policies that improve the quality of childcare for subsidized children. The DCDEE shall phase in a new policy in which child care subsidies will be paid, to the extent possible, for child care in the higher quality centers and homes only. The DCDEE shall define higher quality, and subsidy funds shall not be paid for one- or two-star-rated facilities. For those counties with an inadequate number of three-, four-, and five-star-rated facilities, the DCDEE shall establish a transition period that allows the facilities to continue to receive subsidy funds while the facilities work on the increased star ratings. The DCDEE may allow exemptions in counties where there is an inadequate number of three-, four-, and five-star-rated facilities for nonstar-rated programs, such as religious programs.

SECTION 10.7.(h) The Division of Child Development and Early Education shall implement a parent co-payment requirement for prekindergarten classrooms the same as what is required of parents subject to regular child care subsidy payments. All at-risk children and age-eligible children of military personnel as described in subsection (g) of this section are exempt from the co-payment requirements of this subsection.

Fees for families who are required to share in the cost of care shall be established based on a percent of gross family income and adjusted for family size. Fees shall be determined as follows:

FAMILY SIZE	PERCENT OF GROSS FAMILY INCOME
1-3	10%
4-5	9%
6 or more	8%

SECTION 10.7.(i) All prekindergarten classrooms regulated pursuant to this section shall be required to participate in the Subsidized Early Education for Kids (SEEK) accounting system to streamline the payment function for these classrooms with a goal of eliminating duplicative systems and streamlining the accounting and payment processes among the subsidy reimbursement systems. Prekindergarten funds transferred may be used to add these programs to SEEK.

SECTION 10.7.(j) Based on market analysis and within funds available, the Division of Child Development and Early Education shall establish reimbursement rates based on newly increased requirements of four- and five-star-rated facilities and the higher teacher standards within the prekindergarten class rooms, specifically More At Four teacher standards, when establishing the rates of reimbursements. Additionally, the prekindergarten curriculum

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day shall cover six and one-half to 10 hours daily and no less than 10 months per year. The public classrooms will have a one-year transition period to become licensed through the Division of Child Development and may continue to operate prekindergarten, formerly "More At Four," classrooms during the 2011-2012 fiscal year.

MENTAL HEALTH CHANGES

SECTION 10.8.(a) For the purpose of mitigating cash flow problems that many nonsingle-stream local management entities (LMEs) experience at the beginning of each fiscal year, the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall adjust the timing and method by which allocations of service dollars are distributed to each nonsingle-stream LME. To this end, the allocations shall be adjusted such that at the beginning of the fiscal year the Department shall distribute not less than one-twelfth of the LME's continuation allocation and subtract the amount of the adjusted distribution from the LME's total reimbursements for the fiscal year.

SECTION 10.8.(b) Of the funds appropriated in this act to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of twenty-nine million one hundred twenty-one thousand six hundred forty-four dollars (\$29,121,644) for the 2011-2012 fiscal year and the sum of twenty-nine million one hundred twenty-one thousand six hundred forty-four dollars (\$29,121,644) for the 2012-2013 fiscal year shall be allocated for the purchase of local inpatient psychiatric beds or bed days. In addition, at the discretion of the Secretary of Health and Human Services, existing funds allocated to LMEs for community-based mental health, developmental disabilities, and substance abuse services may be used to purchase additional local inpatient psychiatric beds or bed days. These beds or bed days shall be distributed across the State in LME catchment areas and according to need as determined by the Department. The Department shall enter into contracts with the LMEs and community hospitals for the management of these beds or bed days. The Department shall work to ensure that these contracts are awarded equitably around all regions of the State. Local inpatient psychiatric beds or bed days shall be managed and controlled by the LME, including the determination of which local or State hospital the individual should be admitted to pursuant to an involuntary commitment order. Funds shall not be allocated to LMEs but shall be held in a statewide reserve at the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to pay for services authorized by the LMEs and billed by the hospitals through the LMEs. LMEs shall remit claims for payment to the Division within 15 working days of receipt of a clean claim from the hospital and shall pay the hospital within 30 working days of receipt of payment from the Division. If the Department determines (i) that an LME is not effectively managing the beds or bed days for which it has responsibility, as evidenced by beds or bed days in the local hospital not being utilized while demand for services at the State psychiatric hospitals has not reduced, or (ii) the LME has failed to comply with the prompt payment provisions of this subsection, the Department may contract with another LME to manage the beds or bed days, or, notwithstanding any other provision of law to the contrary, may pay the hospital directly. The Department shall develop reporting requirements for LMEs regarding the utilization of the beds or bed days. Funds appropriated in this section for the purchase of local inpatient psychiatric beds or bed days shall be used to purchase additional beds or bed days not currently funded by or through LMEs and shall not be used to supplant other funds available or otherwise appropriated for the purchase of psychiatric inpatient services under contract with community hospitals, including beds or bed days being purchased through Hospital Utilization Pilot funds appropriated in S.L. 2007-323. Not later than March 1, 2012, the Department shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division on a uniform system for beds or bed days purchased (i) with local funds, (ii) from existing State appropriations, (iii) under the Hospital Utilization Pilot, and (iv) purchased using funds appropriated under this subsection.

SECTION 10.8.(c) Of the funds appropriated in this act to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, for mobile crisis teams, the sum of five million seven hundred thousand dollars (\$5,700,000) shall be distributed to LMEs to support 30 mobile crisis teams.