

TENTH DISTRICT

Defendants.

From Wake County

Defendant-Appellant, the State of North Carolina, pursuant to Rules 28(h)(4) and 37 of the North Carolina Rules of Appellate Procedure, respectfully requests leave to file a reply brief addressing arguments set out in the briefs of the Appellees, as well as in the *amicus curiae* briefs filed in support of Appellees. In support of this Motion, the State shows the Court:

1. On 15 May 2012 the Clerk's Office mailed a Calendar notifying the parties that oral argument had been scheduled for 5 June 2012. Accordingly, pursuant to Rule 28(h)(4), the State-Appellant has 14 days, up to and including 29 May 2012, in which to file and serve a motion for leave to file a reply brief.

2. On 25 April 2012 four separate briefs were filed by the Appellees in this action as well as two additional *amicus* briefs in support of the Appellees. These briefs raise numerous issues and arguments that were not addressed in the State's principal brief.

3. It seems unlikely that all of the matters raised in the briefs of the Appellees and their *amici* can be addressed in oral argument. The State believes that it would be beneficial to the Court for the State's position to be available for consideration as the Court decides the important constitutional and other issues presented this case.

4. Pursuant to Rule 28(h), the State's proposed Reply Brief has been submitted with this Motion. The proposed Reply Brief addresses issues arising from the briefs of the Appellees and their *amici* including: (1) the scope of the trial court's order as it relates to the State's provision of pre-kindergarten services on a statewide basis; (2) whether the Supreme Court's decision in *Hoke County* authorizes the judicial imposition of a state-wide remedy; (3) whether the State has changed its legal

position regarding the remedial authority of the trial court; and (4) whether Plaintiffs' purported equal protection challenge is an issue properly presented on appeal.

WHEREFORE, the State of North Carolina respectfully requests that this Court allow its Motion and accept for filing the attached "Reply Brief of the State-Appellant" pursuant to Rule 28(h)(4) of the North Carolina Rules of Appellate Procedure.

Respectfully submitted, this the 29th day of May, 2012.

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Attorney General

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing STATE-APPELLANT'S MOTION FOR LEAVE TO FILE REPLY BRIEF 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 29th day of May, 2012.

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