NO. 5PA12-2 TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

HOKE COUNTY BOARD OF EDUCATION, *et al.*,	)	
Plaintiffs,	)	
and	)	
	)	From Wake County
CHARLOTTE-MECKLENBURG BOARD OF EDUCATION,	)	
Plaintiff-Intervenor,	)	
v.	)	
STATE OF NORTH CAROLINA; STATE BOARD OF EDUCATION,	)	
Defendants.	)	

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NEW BRIEF FOR THE STATE-APPELLANT

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

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NEW BRIEF FOR THE STATE-APPELLANT

****

ISSUES PRESENTED

I. Did the Court of Appeals erroneously hold that the trial court acted within its authority to mandate the unrestricted acceptance into the pre-kindergarten program of all "at-risk" prospective enrollees across the State?

II. Did the Court of Appeals erroneously affirm the trial court's mandate that the State provide pre-kindergarten services "to any eligible at-risk four year old that applies?"

III. Did the Court of Appeals erroneously require the State to obtain prior trial court approval before making any modifications to the "More at Four" pre-kindergarten program?

executive branches into a solution to a problem" *id.* at 698, 2012 N.C. App. LEXIS 1028, at *21, the State should only be allowed to modify its pre-kindergarten program "by means of a motion filed with the trial court setting forth the basis for and manner of any proposed modification," *id.* at 698, 2012 N.C. App. LEXIS 1028, at *22.

The State of North Carolina's Petition for Discretionary Review from the decision of the Court of Appeals pursuant to N.C.G.S. § 7A-31 was allowed on 7 March 2013. This Court's Order of 30 April 2013 provides that the State's new brief is to be filed and served on or before 20 May 2013.

STATEMENT OF THE GROUNDS FOR APPELLATE REVIEW

This matter is before the Court pursuant to N.C.G.S. § 7A-31 and Rule 15 of the North Carolina Rules of Appellate Procedure by virtue of the Order entered on 7 March 2013 allowing the State's Petition for Discretionary Review.

STATEMENT OF THE FACTS

The current appeal arises from rulings set forth in the "Memorandum Of Decision And Order Re: Pre-Kindergarten Services For At-Risk Four Year Olds" ("MDO") entered by the Honorable Howard E. Manning, Jr. on 18 July 2011. (R pp 646-74) 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

The case was remanded to superior court to permit the plaintiffs to proceed on various claims, with guidance that if the evidence established "that defendants in this case are denying children of the state a sound basic education," it would become "the duty of the court to enter a judgment granting declaratory relief and such other relief as needed to correct the wrong while minimizing the encroachment upon the other branches of government." 346 N.C. at 357, 488 S.E.2d at 261. The decision emphasized the Court's "recognition of the fact that the administration of the public schools of the state is best left to the legislative and executive branches of the government." *Id.*

Hoke County (Leandro II)

Seven years later, this Court's 2004 decision in *Hoke County* considered the State's appeal from a trial court order that the State had "failed in its constitutional duty to provide certain students with the opportunity to attain a sound basic education" as defined in *Leandro I* and the court-imposed remedy to address such constitutional deficiencies. 358 N.C. at 608-09, 599 S.E.2d at 372-73. This Court affirmed with modifications the findings and conclusions of the trial court related to the State's responsibility for, and duty to correct, "those educational methods and practices that contribute to the failure to provide students with a constitutionally-conforming education." 358 N.C. at 609, 599 S.E.2d at 373. As to the trial court's

The Court reviewed "Plaintiffs' Second Amendment to Amended Complaint," (R pp 238-40), which added paragraph 74a asserting a lack of pre-kindergarten services and programs in the plaintiff school districts, and noted that "[a]s relief for the allegations raised in paragraph 74a, plaintiffs sought an order from the trial court that would, in essence, compel the State to provide remedial and preparatory pre-kindergarten services to 'at-risk' four-year-olds in Hoke County."[3] 358 N.C. at 641, 599 S.E.2d at 392. The Court then reviewed the record evidence regarding pre-kindergarten programs, ruling that

> 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.

358 N.C. at 642, 599 S.E.2d at 393. The Court noted the rarity of "specific court-imposed remedies" even for proven constitutional violations and held that imposition of a requirement that the State provide a pre-kindergarten program under the facts and circumstances presented was "inappropriate at this juncture." 358 N.C. at 643, 599 S.E.2d at 393. The Court concluded that the trial court erred when it mandated that

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[3] Earlier in the opinion the Court had concluded that the trial court properly denied the State's motion to strike plaintiffs' 1998 amendment to their Complaint. 358 N.C. at 618-20, 599 S.E.2d at 378-80.

Session Law 2011-145, appears at Record pages 439 through 441. A copy of that portion of the 2011 Budget Bill is also appended hereto. (App. 1-4)[4]

Section 10.7 of Session Law 2011-145 is titled "Consolidate More At Four Program Into Division Of Child Development." (App. 1) Section 10.7(a) directs that the "More At Four" program be moved from the Department of Public Instruction to the Department of Health and Human Services and consolidated into the renamed "Division of Child Development and Early Education (DCDEE)." The legislation further provides that "[t]he DCDEE is directed to maintain the More At Four program's high programmatic standards." (App. 1) Other portions of the legislation direct the addition of a reading component to the currently approved "More At Four" curricula for prekindergarten classrooms (Section 10.7(b); App. 2), and that the standards for other non-prekindergarten classrooms shall be revised "for the purpose of placing an emphasis on early reading." (Section 10.7(d); App. 2) Additionally, the Division of Child Development and Early Education is directed to "adopt a policy to encourage all prekindergarten classrooms to blend private pay families with prekindergarten subsidized children." (Section 10.7(e); App. 3)

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[4] Session Law 2011-145 was vetoed after its ratification by the General Assembly but subsequently became law notwithstanding the objections of the Governor on 15 June 2011.

as "Head Start," there would be a total of between 37,000 and 40,000 children served in pre-kindergarten across the State. (T pp 17-18) State funding for pre-kindergarten programs over the last several fiscal years was in the amount of $140.6 million in 2007-2008, $170.6 million in 2008-2009, $165.6 million in 2009-2010, and $160.6 million in 2010-2011. (T pp 23-24) The proposed budget for 2011-2012 included $128.6 million, reflecting a scheduled decrease of $32 million. (T p 24) The witness additionally testified that for the 2011-2012 school year it was approximated that there would be 126,000 four-year-olds in the State, of which approximately 54% were considered "at-risk" just based on socio-economic status. (T p 21) Of the group of 65,000 to 67,000 "at-risk" four-year-olds, there would be no available service for roughly 25,000 to 27,000 children eligible for pre-kindergarten in 2011-2012. (T pp 21-22)

Further testimony characterized what would be left after the 2011-2012 legislation as "the carcass of Pre-Kindergarten for the state of North Carolina." (T p 45) The witness further indicated his opinion that the pre-kindergarten changes meant that the State was moving backward to "retro 1989," (T p 38), and that the proposed legislation would cause the "unraveling of what's occurred over a decade" (T p 41).

enforce any other artificial rule, barrier, or regulation to deny any eligible at-risk four year old admission to the prekindergarten program."[6] (R p 669)

STANDARD OF REVIEW

"Review by the Supreme Court after a determination by the Court of Appeals, whether by appeal of right or by discretionary review, is to determine whether there is error of law in the decision of the Court of Appeals." N.C.R. App. P. 16(a) (2013). In the appellate courts questions of law receive *de novo* review such that the Court "considers the matter anew and freely substitutes its own judgment" for that of the trial tribunal. *In re Appeal of the Greens of Pine Glen Ltd. Partnership*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003).

ARGUMENT

The trial court order affirmed by the Court of Appeals requires the State to provide pre-kindergarten services on a state-wide basis to any eligible at-risk four year old that applies. It further provides that the State shall not deny any eligible at-risk four year old admission to the North Carolina Pre-Kindergarten Program. The potential scope of this mandate is significant, as the trial court found that "[t]here are

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[6] The Court of Appeals found that the 2012 legislation "entirely rewrote the language of section 10.7(f) at issue here." *Hoke County Bd. of Educ.*, 731 S.E.2d at 696, 2012 N.C. App. LEXIS 1028, at *17. The Court therefore dismissed arguments related to the portion of the trial court's order enjoining enforcement of that provision, finding that appellate review of the provision was moot. *Id.* at 696-97, 2012 N.C. App. LEXIS 1028, at **17-18).

The decision of the Court of Appeals additionally infringes on matters properly within the prerogative of the legislative and executive branches of government when it requires that no modification of the state-wide "More at Four" pre-kindergarten program be undertaken without court approval.

I. THE COURT OF APPEALS ERRONEOUSLY UPHELD THE TRIAL COURT'S AUTHORITY TO MANDATE THE UNRESTRICTED ACCEPTANCE OF ALL "AT-RISK" PROSPECTIVE ENROLLEES ACROSS THE STATE.

The decision of the Court of Appeals does not provide any established basis for affirming the trial court's mandate requiring the provision of a state-wide pre-kindergarten program for all "at-risk" four year olds. That result is achieved only by adding significant limitations on the trial court's order under the guise of merely making a "clarification." The trial court's decision reflects a basic misconception as to its authority and jurisdiction. Mandatory state-wide pre-kindergarten is not required under our Constitution and has been rejected as an appropriate remedy by this Court's controlling prior decision in this case.

A. The Memorandum and Decision from the trial court requires the State to provide pre-kindergarten services to any eligible child that applies.

The plain language of the trial court's order does not limit the scope of the remedy it imposes. It unequivocally declares that the State must provide pre-kindergarten services to "any eligible at-risk four year old that applies" and shall not

any eligible at-risk four year old that applies." (R p 669) The trial court's intent is evidenced in part by the use of the term "further" to introduce paragraph 3 as well as by the term "other" to describe the scope of the additional matters being addressed in paragraph 3. Plainly, paragraph 3 is in addition to paragraph 1 and is not redundant or a restriction on the scope of the previous broad mandate. Furthermore, there is no evidentiary or textual basis for the assertion by the Court of Appeals that the trial court's mandate applies only to the State's "existing" pre-kindergarten programs. This invented limitation is utilized four times in the opinion (twice at page 695 and twice on page 696), and is an essential part of the rationale underlying the erroneous decision by the Court of Appeals.

This Court should recognize that the plain language of the MDO mandates the state-wide provision of pre-kindergarten services to any eligible at-risk four year old that applies, as well as ordering that the State shall not deny any eligible at-risk four year old admission to the pre-kindergarten program, and declare that the trial court's order exceeded the proper scope of his authority in this case.

B. There is no constitutional requirement for the State to provide pre-kindergarten services.

The 2004 decision in *Hoke County* explicitly considered and rejected the argument that the prior ruling in *Leandro I* "established a separate constitutional right to pre-kindergarten for 'at-risk' prospective enrollees in Hoke County schools."

enrollees had a right to receive pre-kindergarten services from the State nor did it mandate the provision of pre-kindergarten services on a state-wide basis.

The Record establishes that academic based pre-kindergarten for "at-risk" four year olds was a "remedy" initially ordered by the trial court in October of 2000. (R p 651) This Court's 2004 decision recognized that pre-kindergarten is "a" method for preparing "at-risk" prospective enrollees to avail themselves of their opportunity to obtain a sound basic education, but finds no evidence that "it is either the only qualifying means or even the only known qualifying means." *Hoke County*, 358 N.C. at 644, 599 S.E.2d at 395. The Court therefore held that the imposition of a pre-kindergarten remedy was "not supported by the evidence, findings, and conclusions of the trial court's order" *Id.* at 643 n.17, 599 S.E.2d at 393 n.17. "The evidence and findings 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 narrow remedy that would effectively undermine the authority and autonomy of the government's other branches." *Id.* at 643, 599 S.E.2d at 393.

In proper context, therefore, the issue before this Court is analytically identical to that previously presented, where our Supreme Court declared that the case "does not concern the extent of the State's compliance with the trial court's order regarding

should be focused on the rights and responsibilities of the parties, and any court-imposed remedy premised upon such evidence necessarily should be addressed to correcting the State's deficiencies as they impact the plaintiffs. The 2011 MDO, however, is premised upon testimony and other evidence discussing pre-kindergarten services on a state-wide basis, and purports to mandate a necessary remedy on a state-wide basis.

The 2011 Order affirmed by the Court of Appeals therefore demonstrates similar problems as the orders previously entered in this case, and consideration of this Court's previous caveat is again necessary and appropriate: "The Court recognizes that the trial court took evidence on, and made conclusions about, student performance across the state. However, we remain mindful that the issues of the instant case pertain only to evidence, findings, and conclusions that apply to Hoke County in particular. As a consequence, any findings or conclusions that were intended to apply to the state's school children beyond those of Hoke County are not relevant to the inquiries at issue." *Hoke County*, 358 N.C. at 633 n.14, 599 S.E.2d at 387 n.14 (emphasis added).

The appropriately limited scope of the case is further illustrated by this Court's discussion of the amendment to the Complaint in 1998, which added paragraph 74a alleging that in the "plaintiff districts" the lack of "prekindergarten services" resulted

Here, the imposition of a state-wide remedy ignores the express language of this Court clearly declaring that it was "confining the parameters of our holding to the trial court's findings and conclusions concerning 'at-risk' students within the Hoke County school system." 358 N.C. at 634, 599 S.E.2d at 388 (emphasis added). That decision set forth a lengthy procedural history analysis leading to the ruling that "our consideration of the case is properly limited to the issues relating solely to Hoke County as raised at trial" *id.* at 613, 599 S.E.2d at 375, and the statement that "our holding mandates cannot be construed to extend to the other four rural districts named in the complaint" *id.* at 613 n.5, 599 S.E.2d at 375 n.5.

The Court of Appeals did not and cannot explain how jurisdiction in the trial court to consider imposing a judicial remedy to compensate specific named parties for their proven injuries authorizes the trial court to impose a state-wide mandate for the State to provide pre-kindergarten services to any eligible "at-risk" four year old that applies.

II. THE COURT OF APPEALS HAS ERRONEOUSLY REQUIRED THE STATE TO SUBMIT ANY PROPOSED MODIFICATION OF ITS PRE-KINDERGARTEN PROGRAM FOR PRIOR APPROVAL BY THE TRIAL COURT.

The erroneous holding by the Court of Appeals that the trial court acted within its authority to mandate the unrestricted acceptance of all "at-risk" prospective enrollees across the State is compounded by the imposition of a pre-clearance

This Court further ruled that "[o]nly . . . a clear showing will justify a judicial intrusion into an area so clearly the province, initially at least, of the legislative and executive branches as the determination of what course of action will lead to a sound basic education." *Id.* at 623, 599 S.E.2d at 381 (citing *Leandro I*, 346 N.C. at 357, 488 S.E.2d at 261).

A. The claims before the trial court do not establish continuing jurisdiction over pre-kindergarten services on a state-wide basis.

The proper scope of the remedial authority of the trial court is defined by evidence establishing an entitlement to relief for the parties to the action. However, the broad mandates of the trial court, as affirmed by the Court of Appeals, conflate two separate legal concepts: the constitutional right of every child in North Carolina for an opportunity to obtain a sound basic education with the remedy necessary to compensate the parties to the action before the trial court for their proven injuries. Establishing an evidentiary basis for the trial court to order a remedy for certain named parties in a specific action does not authorize the judicial imposition of any remedy for others that do not share the parties' zone of protection. This Court has previously expressly defined the relevant "zone of interest" as being comprised of Hoke County students, examined the evidence to determine whether plaintiffs made a clear showing that harm had been inflicted on Hoke County students, and reviewed the matter to determine "whether the trial court's imposed remedies serve as proper

referencing testimony in a prior hearing that one school "had had five principals in seven years" (T p 182) and in a statement concerning the counties in the State that had the lowest "real estate wealth capacity" (T p 200).

The 2011 Memorandum of Decision and Order does not point to any evidence specifically establishing that any students within the Hoke County school system have been denied their constitutional right to the opportunity to obtain a sound basic education. The trial court made no findings regarding the adequacy of educational opportunities available in Hoke County or any other school system. A discussion of the "potential statewide impact" of properly enacted legislation along with speculation regarding the reduced number of "slots" that will be available in the future does not provide a proper basis for judicial imposition of a requirement that pre-kindergarten services must be made available to all eligible "at-risk" four year olds on a state-wide basis.

B. The State's policy decision to provide a program of pre-kindergarten services on a state-wide basis does not validate the pre-clearance requirement.

Instead of specifically addressing issues involving Hoke County or the other parties to this action, both the trial court and the Court of Appeals attempt to justify the state-wide mandate on the basis of the State's purported failure to maximize the

binding commitments. By its very terms, it is the first step in the "development of a long-range plan to meet the needs of at-risk students." (R p 479) The language quoted in the MDO is expressly identified as what the State desires and hopes to be able to achieve: "the State intends to expand the More at Four Prekindergarten Program for at-risk four-year-olds towards its goal of access for the estimated 40,000 at-risk four-year-olds in the state." (R p 483 (emphasis added)) Furthermore, the "Action Plan" explicitly includes the recognition that "the Legislature will need to appropriate additional resources to allow the State to expand" its pre-kindergarten services. (R p 483)

In proper context, matters included in the "Action Plan" are policy statements that did not and could not create a state-wide pre-kindergarten program capable of accepting for enrollment all "at-risk" four year olds on a yearly basis. It plainly was not a legislative enactment. And, even when legislation is ratified expressing the "goal" of providing pre-kindergarten services to a greater number of "at-risk" children as it did in 2008 (R p 653), such policy statements do not bind the State and are not judicially enforceable years later. "[O]ne Legislature cannot restrict or limit by statute the right of a succeeding Legislature to exercise its constitutional power to legislate in its own way." *Plemmer v. Matthewson*, 281 N.C. 722, 726-27, 190 S.E.2d 204,

the need to compensate the parties – the plaintiffs – for their proven injuries. Here, the established entitlement to relief relates to Hoke County students.

A proper reading of the *Hoke County* decision undercuts judicial imposition of an expansive state-wide remedy. The Court specifically and expressly limited its holding to the issue of whether at-risk prospective enrollees in the Hoke County school system were entitled to relief. If, as a result of the 2011-2012 Budget provisions at issue, the State was found to be providing inadequate relief, the trial court properly could impose only a remedy to compensate the "at-risk" prospective enrollees in Hoke County for their proven injuries.

C. The pre-clearance requirement unnecessarily raises significant separation of powers concerns.

The decree by the Court of Appeals that the State can only alter its pre-kindergarten program "by means of a motion filed with the trial court setting forth the basis for and manner of any proposed modification" 731 S.E.2d at 698, 2012 N.C. App. LEXIS 1028, at *22, appears to insert the judiciary far into the realm of policy choices and value determinations that the Constitution commits to the legislative and executive branches. The fundamental importance of this concept has been emphasized by this Court:

> the principle of separation of powers was clearly in the minds of the framers of the Constitution; and the people of North Carolina, by specifically including a separation of powers provision in the

State ex rel. Martin v. Preston, 325 N.C. 438, 448-49, 385 S.E.2d 473, 478 (1989) (citations omitted).

The 2011 legislation reflects policy decisions by our legislature as to the parameters of the State's pre-kindergarten program and the part it plays in furtherance of the State's constitutional duty to provide its citizens with the opportunity to receive a sound basic education. As such, it is not properly subject to review and approval by the judiciary merely because the program is not as expansive as it previously was or because it does not include all potentially eligible persons. "[I]t must be remembered that classification is exclusively a legislative function. Because it is such, a court may not substitute its judgment of what is reasonable for that of the legislative body, particularly when the reasonableness of a particular classification is fairly debatable." *A-S-P Assocs. v. Raleigh*, 298 N.C. 207, 226, 258 S.E.2d 444, 456 (1979).

Recognition of the existence of such policy questions simply acknowledges that courts are ill-suited to make decisions which revolve around policy choices and value determinations that the Constitution commits to the legislative or executive branches. *Bacon v. Lee*, 353 N.C. 696, 717, 549 S.E.2d 840, 854, *cert. denied*, 533 U.S. 975, 150 L. Ed. 2d 804 (2001). And in *Leandro I* this Court reiterated that "[t]he legislature, unlike the courts, is not limited to addressing only cases and controversies brought before it by litigants." 346 N.C. at 355, 488 S.E.2d at 259.

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This the 20th day of May, 2013.

Electronically Submitted
John F. Maddrey
Solicitor General

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2011-145
HOUSE BILL 200

AN ACT TO SPUR THE CREATION OF PRIVATE SECTOR JOBS; REORGANIZE AND REFORM STATE GOVERNMENT; MAKE BASE BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS OF STATE DEPARTMENTS AND INSTITUTIONS; AND TO ENACT BUDGET RELATED AMENDMENTS.

The General Assembly of North Carolina enacts:

. . . .

PART II. CURRENT OPERATIONS AND EXPANSION GENERAL FUND

. . . .

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2012-13
HOUSE BILL 966

AN ACT TO REPEAL THE PROHIBITION ON TEACHER PREPAYMENT, CLARIFY ELIGIBILITY FOR THE NC PRE-K PROGRAM, AND ENACT 2012-2013 SALARY SCHEDULES FOR TEACHERS AND SCHOOL ADMINISTRATORS.

The General Assembly of North Carolina enacts:

REPEAL PROHIBITION ON PREPAYMENT OF TEACHERS

SECTION 1. Section 5 of S.L. 2011-379 is repealed.

CLARIFY NC PRE-K PROGRAM ELIGIBILITY

SECTION 2.(a) Section 10.7(f) of S.L. 2011-145 reads as rewritten:

"**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~~ The Division of Child Development and Early Education shall establish income eligibility requirements for the program not to exceed seventy-five percent (75%) of the State median income. Up to twenty percent (20%) of children enrolled may have family incomes in excess of seventy-five percent (75%) of median income if they have other designated risk factors. Furthermore, 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 2.(b) Section 10.7(h) of S.L. 2011-145 is repealed.

TEACHER SALARY SCHEDULES

SECTION 3.(a) The following monthly salary schedules shall apply for the 2012-2013 fiscal year to certified personnel of the public schools who are classified as teachers. The schedules contain 36 steps, with each step corresponding to one year of teaching experience. Public school employees paid according to this salary schedule and receiving NBPTS certification or obtaining a master's degree shall not be prohibited from receiving the appropriate increase in salary. Provided, however, teachers employed during the 2011-2012 school year who did not work the required number of months to acquire an additional year of experience shall not receive a decrease in salary as otherwise would be required by the salary schedule below.

2012-2013 Monthly Salary Schedule

Years of Experience	"A" Teachers	NBPTS Certification
	"A" Teachers	
0	$3,043	N/A
1	$3,043	N/A

21	$4,715	$5,281
22	$4,780	$5,354
23	$4,843	$5,424
24	$4,907	$5,496
25	$4,975	$5,572
26	$5,042	$5,647
27	$5,115	$5,729
28	$5,185	$5,807
29	$5,257	$5,888
30	$5,330	$5,970
31	$5,404	$6,052
32	$5,482	$6,140
33	$5,561	$6,228
34	$5,668	$6,348
35+	$5,781	$6,475

SECTION 3.(b) Section 29.12(d) of S.L. 2011-145 reads as rewritten:

"**SECTION 29.12.(d)** The first step of the salary schedule for school psychologists shall be equivalent to ~~Step 5,~~ Step 9, corresponding to ~~five~~ nine years of experience, on the salary schedule established in this section for certified personnel of the public schools who are classified as "M" teachers. Certified psychologists shall be placed on the salary schedule at an appropriate step based on their years of experience. Certified psychologists shall receive longevity payments based on years of State service in the same manner as teachers.

Certified psychologists with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars ($126.00) per month in addition to the compensation provided for certified psychologists. Certified psychologists with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars ($253.00) per month in addition to the compensation provided for certified psychologists."

SCHOOL-BASED ADMINISTRATOR SALARY SCHEDULE

SECTION 4.(a) The following base salary schedule for school-based administrators shall apply only to principals and assistant principals. This base salary schedule shall apply for the 2012-2013 fiscal year, commencing July 1, 2012. Provided, however, school-based administrators (i) employed during the 2011-2012 school year who did not work the required number of months to acquire an additional year of experience and (ii) employed during the 2012-2013 school year in the same classification shall not receive a decrease in salary as otherwise would be required by the salary schedule below.

2012-2013 Principal and Assistant Principal Salary Schedules

	Classification				
Years of Exp	Assistant Principal	Prin I (0-10)	Prin II (11-21)	Prin III (22-32)	Prin IV (33-43)
0-8	$3,781	-	-	-	-
9	$3,931	-	-	-	-
10	$4,074	-	-	-	-
11	$4,189	-	-	-	-
12	$4,243	$4,243	-	-	-
13	$4,298	$4,298	-	-	-
14	$4,353	$4,353	$4,408	-	-
15	$4,408	$4,408	$4,464	-	-
16	$4,464	$4,464	$4,521	$4,579	-
17	$4,521	$4,521	$4,579	$4,640	$4,701
18	$4,579	$4,579	$4,640	$4,701	$4,762
19	$4,640	$4,640	$4,701	$4,762	$4,828
20	$4,701	$4,701	$4,762	$4,828	$4,891
21	$4,762	$4,762	$4,828	$4,891	$4,956
22	$4,828	$4,828	$4,891	$4,956	$5,025
23	$4,891	$4,891	$4,956	$5,025	$5,092
24	$4,956	$4,956	$5,025	$5,092	$5,166

SECTION 5. Section 2 of this act is effective when it becomes law. The remainder of this act becomes effective July 1, 2012.

In the General Assembly read three times and ratified this the 5th day of June, 2012.

~~Philip E. Berger~~ TOM APODACA
~~President Pro Tempore of the Senate~~
PRESIDING OFFICER OF THE SENATE

Thom Tillis
Speaker of the House of Representatives

Beverly E. Perdue
Governor

Approved 4:43 p.m. this eleventh day of June, 2012