

SUPREME COURT OF NORTH CAROLINA

HOKE COUNTY BOARD OF)
EDUCATION; HALIFAX COUNTY)
BOARD OF EDUCATION; ROBESON)
COUNTY BOARD OF EDUCATION;)
CUMBERLAND COUNTY BOARD OF)
EDUCATION; VANCE COUNTY)
BOARD OF EDUCATION; RANDY L.)
HASTY, individually and as Guardian Ad)
Litem of RANDELL B. HASTY; STEVEN)
R. SUNKEL, individually and as Guardian)
Ad Litem of ANDREW J. SUNKEL;)
LIONEL WHIDBEE, individually and as)
Guardian Ad Litem of JEREMY L.)
WHIDBEE; TYRONE T. WILLIAMS,)
individually and as Guardian Ad Litem of)
TREVELYN L. WILLIAMS; D.E.)
LOCKLEAR, JR., individually and as)
Guardian Ad Litem of JASON E.)
LOCKLEAR; ANGUS B. THOMPSON II,)
individually and as Guardian Ad Litem of)
VANDALIAH J. THOMPSON; MARY)
ELIZABETH LOWERY, individually and)
as Guardian Ad Litem of LANNIE RAE)
LOWERY, JENNIE G. PEARSON,)
individually and as Guardian Ad Litem of)
SHARESE D. PEARSON; BENITA B.)
TIPTON, individually and as Guardian Ad)
Litem of WHITNEY B. TIPTON; DANA)
HOLTON JENKINS, individually and as)
Guardian Ad Litem of RACHEL M.)
JENKINS; LEON R. ROBINSON,)
individually and as Guardian Ad Litem of)
JUSTIN A. ROBINSON,)
)

From Wake County
95 CVS 1158
COA11-1545

Plaintiffs,)
)
and)
)
CHARLOTTE-MECKLENBURG BOARD)
OF EDUCATION,)
)
Plaintiff-Intervenor,)
)
and)
)
RAFAEL PENN; CLIFTON JONES,)
individually and as Guardian Ad Litem of)
CLIFTON MATTHEW JONES; DONNA)
JENKINS DAWSON, individually and as)
Guardian Ad Litem of NEISHA SHEMAY)
DAWSON and TYLER ANTHONY)
HOUGH-JENKINS,)
)
Plaintiff-Intervenors,)
)
v.)
)
STATE OF NORTH CAROLINA and the)
STATE BOARD OF EDUCATION,)
)
Defendants,)
)
and)
)
CHARLOTTE-MECKLENBURG BOARD)
OF EDUCATION,)
)
Realigned Defendant.)

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Pursuant to Rule 28(i) of the North Carolina Rules of Appellate Procedure, the North Carolina Association of Educators (“NCAE”) hereby moves this Court for leave to file an *amicus curiae* brief in support of Defendant-Appellee State Board of Education. The proposed brief is being filed conditionally herewith. In support of the motion, proposed *amicus* respectfully shows the following:

I. NATURE OF *AMICUS* INTEREST

1. The NCAE is a nonprofit membership organization of public school teachers, principals, teacher assistants, and other school personnel. The NCAE represents the interests of public school educators located in all 100 counties in North Carolina. Members work in traditional public school settings, prekindergarten classrooms, as well as charter schools, higher education, and the North Carolina Virtual Public School. NCAE members include teachers and educators licensed by the North Carolina Department of Public Instruction, under policies adopted by Defendant-Appellee State Board of Education. NCAE members follow the State Board of Education’s policies, including regarding curriculum, testing, and academic programs. The NCAE is committed to equal access to a quality public education for all children and seeks to advocate on behalf of children by sharing its uniquely in-depth understanding of issues affecting Pre K-12 public education. The NCAE and its parent organization, the National

Education Association (“NEA”), provide comprehensive and ongoing assistance to educators who teach children through a variety of programs and publications. From the perspective of classroom educators, pre-kindergarten education for at-risk children is critical to their development and future success in school. Pre-kindergarten is most effectively taught in public schools by licensed educators with standards set by the State Board of Education. At-risk children should have equitable access to such pre-kindergarten education statewide.

II. REASONS WHY AN *AMICUS CURIAE* BRIEF IS DESIRABLE

2. Amicus briefing is desirable because this case presents novel public policy issues regarding the significant if not paramount public interest in the equal opportunity to a sound, basic education. As the Attorney General seeks to retreat from the State’s own plan for constitutional compliance, this case raises crucial issues of the role of the court to enforce continued progress of the State’s own compliance plan developed within the context of a declaratory action for substantive rights under the North Carolina Constitution.

III. QUESTIONS OF LAW ADDRESSED BY *AMICUS* AND *AMICUS*’S POSITION ON THIS ISSUE

3. Movant proposes to submit its brief on the following question of law:

WHETHER THE NORTH CAROLINA COURT OF APPEALS’ AFFIRMATION OF THE ORDER PROHIBITING THE STATE FROM VIOLATING ITS OWN PLAN FOR CONSTITUTIONAL COMPLIANCE FOR AT-RISK PROSPECTIVE ENROLLEES, WITHOUT HAVING SUBSTITUTED ANY ALTERNATIVE, WAS

**CONSISTENT WITH PRIOR RULINGS OF THIS COURT AND THE
NORTH CAROLINA CONSTITUTION.**

4. This brief highlights the importance of reviewing the North Carolina Court of Appeals' affirmation of the trial court's Order within the context of a declaratory action for determining the State's constitutional compliance in its establishment and implementation of the North Carolina educational delivery system. The brief identifies that the need for educational services for at-risk prospective enrollees has grown during the time period when the State developed its plan for constitutional compliance and then, through actions of the General Assembly, established barriers for access. The brief argues that the trial court actions are well within the powers of a 2.1 court and that neither the trial court or court of appeals is excessively intruding in the role of the legislative and executive branches. In fact, the North Carolina State Board of Education stands ready to continue to implement the State's constitutional compliance plan and to accept the court's rightful role as it relates to the North Carolina Constitution.

5. The proposed *amicus* party respectfully requests that this Court grant leave to file its conditionally-filed amicus brief in support of Defendant-Appellee State Board of Education in this case.

Respectfully submitted this 24th day of July, 2013.

NORTH CAROLINA ASSOCIATION OF

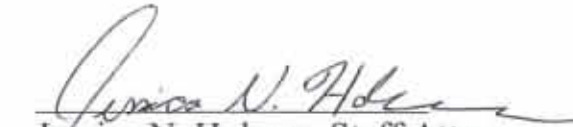
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served a copy of the foregoing on all counsel and parties of record by depositing a copy, contained in a first-class envelope, postage pre-paid, into a depository under the exclusive care and custody of the United States Postal Service, addressed as follows:

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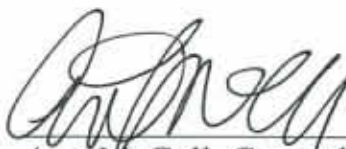
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This the 24~~th~~ day of July, 2013.



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