

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,

Plaintiffs,

From Wake County

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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.

RULE 9(b)(5) SUPPLEMENT TO THE PRINTED RECORD ON APPEAL

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Amended Compliance Report to Trial Court (Excerpt) 1



ROY COOPER
ATTORNEY GENERAL

State of North Carolina

Department of Justice

P. O. Box 629
RALEIGH
27602-0629

REPLY TO:

Thomas J. Ziko
Education Division
(919) 716-6920
(919) 716-6764

FAX:

July 29, 2002

VIA HAND DELIVERY

The Honorable Howard Manning, Jr.
Superior Court Judge
Wake County Courthouse
Raleigh, North Carolina 27602-0351

Re: *Hoke County Bd. of Educ. v. State*

Dear Judge Manning:

Pursuant to the offer in your July 19, 2002, letter to me, the Chairman of the State Board of Education and the Superintendent of Public Instruction have enclosed the attached letter and materials amending the defendants' ninety-day report filed on July 5, 2002.

In addition, in order to keep you fully informed of events pertinent to your rulings, I have also enclosed a copy of the Governor's Executive Order No. 24, "Accelerating Teacher Recruitment and Hiring for *More at Four* and Class Size Reduction in Light of Judicial Requirements, Budget Developments, and Impending School Openings."

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas J. Ziko", followed by a stylized flourish or mark.

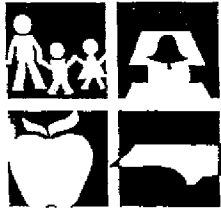
Thomas J. Ziko
Special Deputy Attorney General

TJZ/af

Enclosures

cc: Bob Spearman (via hand delivery)
Ann Majestic (via hand delivery)
Audrey Anderson (via U.S. Mail)





Public Schools of North Carolina

State Board of Education
Phillip J. Kirk, Jr., Chairman
www.ncpublicschools.org

Department of Public Instruction
Michael E. Ward, State Superintendent

July 29, 2002

The Honorable Howard Manning, Jr.
Superior Court Judge
Wake County Courthouse
Post Office Box 351
Raleigh, North Carolina 27602-0351
Fax (919) 715-4046

Re: *Hoke County Board of Education v. State*

Dear Judge Manning:

We have read the Court's letter to Special Deputy Attorney General Tom Ziko dated July 19, 2002.

As Mr. Ziko stated in his cover letter to the report that the State of North Carolina filed with the Court on July 5, 2002, that report was intended to "document some of the actions that the State has taken since the last hearing to expand pre-kindergarten educational programs for at-risk children and to improve performance, instruction, administration and accountability in North Carolina public schools." To that end, the report included a selection of materials that described a variety of activities intended to demonstrate that the State of North Carolina, and the State Board of Education and the Department of Public Instruction in particular, were developing and implementing programs to improve educational opportunities for all at-risk students across the State.

The Court's letter of July 19, 2002, indicates its concern that the State Board of Education and DPI did not document the "concrete" actions they have taken to assist the Hoke County School System or other plaintiff-party LEAs. We want to take this opportunity to put those concerns to rest and assure the Court that the State Board of Education and DPI are taking concrete actions to improve educational opportunities for at-risk students in the plaintiff-party LEAs along with their similarly disadvantaged peers across the State.

The State Board of Education and DPI have always understood that this case was about whether the State was fulfilling its constitutional obligation to provide a "general and uniform system of free public schools" in which every student has the opportunity to obtain a sound basic education. That understating

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is based not only on the Supreme Court's decision in *Leandro* but also our reading of this Court's decisions and orders. More specifically, we understand the Court to have ordered the State to "remedy the Constitutional deficiency for those children who are not being provided the basic educational services set out in paragraph 1 [*i.e.*, a competent teacher, a competent principal and an effective instructional program], whether they are in Hoke County, **or another county within the State.**" Section Four, p. 111.

In light of the State's obligation to provide an opportunity for all students to obtain a sound basic education, the State Board's and DPI's efforts have been directed to establishing and maintaining a State-wide system which provides adequate educational opportunities to all students, especially those at-risk students which were the focus of the Court's decision. The State has never understood the Supreme Court or this Court to have ordered the defendants to provide students in Hoke County or any of the other plaintiff or plaintiff-intervenor school districts special treatment, services or resources which were not available to at-risk students in other LEAs across the State.

However, we want to take this opportunity to assure the Court that **the State Board of Education, the Superintendent of Public Instruction, DPI and all their staff are well aware of the Court's orders directing the State to provide all students, and especially at-risk students, with an effective instructional program, taught by a competent teacher, in a school led by a competent principal.** Section Four, pp. 109-110. The State Board of Education and Superintendent strongly endorse those educational policies and are constantly striving to assure that the general and uniform system of free public schools provides all North Carolina students with those educational opportunities.

The State Board and Superintendent are also mindful that the Court has not dictated the means by which the State is to remedy the constitutional deficiencies which the Court identified in its decisions. As the Court stated in its judgment:

5. The nuts and bolts of how this task [remedying the constitutional deficiencies identified by the Court] should be accomplished is not for the Court to do. Consistent with the direction of *Leandro*, this task belongs to the Executive and Legislative Branches of Government. By directing this be done, the Court is showing proper deference to the Executive and Legislative Branches by allowing them, initially at least, to use their informed judgment as to how best to remedy the Identified constitutional deficiencies.

Section Four, p. 111.

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We appreciate the deference that the Court has shown to the defendants' ability to fashion an appropriate remedy in this case. We believe that the State Board and DPI have the expertise necessary to assemble the "nuts and bolts" of educational reforms into a powerful engine for the advancement of educational opportunities for at-risk children.

The State Board's and DPI's development and implementation of the North Carolina testing program and the ABCs are themselves proof of our ability to institute sweeping educational reforms. The Princeton Review, a private national provider of test preparation and college admissions services, recently ranked the North Carolina testing program the number one testing program in the country. The Princeton Review described the North Carolina testing program as "head and shoulders above the other states, including those ranked at the top."

Moreover, lest anyone forget, it is the North Carolina testing program and the ABCs that make it possible to assess the effectiveness of virtually every other educational reform in North Carolina. As the Court itself found:

The ABCs' lets the sun shine in on problem schools and exposes schools where children are not performing at grade level so that corrective action and attention can be provided to assist in raising the children's performance and increasing their chances for success in the education process.

....

If the ABCs program were not in place, a similar accountability program would, in the Court's opinion, be required so the State, and the public, could have a statewide accountability system to measure educational progress and to assist in measuring whether or not each child is receiving the equal opportunity to obtain a sound basic education as the Constitution requires.

Section One, p. 141-42.

The Court is well aware of the gains that North Carolina has made in both educational opportunities and student academic performance under the ABCs and other recent educational reforms. A report by the National Education Goals Panel, based on an analysis of NAEP 2000 mathematics data, found that North Carolina's and Connecticut's public school fourth graders showed the most improvement in six of seven categories examined. This placed North Carolina among the five states showing the most improvement at both fourth and eighth grades.

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The 2001 SAT results showed North Carolina's average SAT score moved up four points to 992. The national average increased one point to 1020. North Carolina also has the largest gain, 40 points, of any state that tests more than 12 percent of its students for the period of 1991-2001.

At the same time that North Carolina students' SAT scores are climbing, the achievement gap between those students and their peers is closing. According to the National Education Goals Panel, North Carolina is one of only two states to reduce the gap between the highest performing and lowest performing students on the NAEP mathematics test.

Based in part on those achievements, the NAACP presented the NCDPI with the 2001 NAACP Daisy Bates Educational Advocacy Award for a State Governmental Agency for its efforts to improve access, equity and accountability in education.

In even more recent news, the Wake County Public Schools, a plaintiff-intervenor in this action, reported last week that more than 92% of its students had scored at or above grade level on the 2001-02 EOG tests.

We believe that the Court's trust in the State Board's and DPI's ability to develop and implement programs to improve educational opportunities for students at risk of academic failure has not been misplaced. In order to convince the Court that it should continue to defer to the State Board's and DPI's expertise and judgment, we have attached materials that explain the "nuts and bolts" of several State policies, programs and initiatives that we believe are already producing substantial improvements in the educational opportunities available to at-risk students. We believe that, if allowed to continue, these programs will ultimately improve the verifiable academic performance of at-risk students to the level which the Court has indicated is consistent with a constitutional system of public education. **Those "nuts and bolts" are primarily contained in the State's ABCs, Student Accountability Standards and related legislation; the State's plan for implementing recommendations contained in the report of the North Carolina Advisory Commission on Raising Achievement and Closing Gaps and State policies adopted to implement the No Child Left Behind Act of 2001.**

Before we describe the concrete actions that we have taken to implement those programs in Hoke County, the other plaintiff-party LEAs and across the state, we want to apprise the Court of an important piece of pending legislation that we believe directly addresses the critical components of the Court's decision.

SENATE BILL 1275

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In the ninety-day report we filed on July 5, we did not describe the State Board's legislative agenda because the budget crisis has so dominated this short session of the General Assembly that we were unsure what, if any, educational initiatives would be possible. We wanted the ninety-day report to focus on what we had done, rather than what we planned to do. However, we believe that Senate Bill 1275 is so important that it deserves the Court's attention. A copy of the bill is attached.

The Court will observe that Senate Bill 1275 contains a number of sections which address the dropout problem, including a section requiring study of whether raising the compulsory attendance age to 18 will reduce the dropout rate. It also contains a couple of sections intended to improve the teaching of reading, including a section that requires all teachers in kindergarten through eighth grade to take three professional development credits in reading methods during each five-year license renewal cycle. We know that the Court has found the dropout rate to be one indicator of whether the public schools are providing students with the opportunity for a sound basic education. Section Three, pp. 17-20. We also know that the Court has found that effective professional development for teachers is important if they are to be expected to effectively teach at-risk students. Section Four, p. 39.

But as important as legislation on dropouts and professional development is, we want to direct the Court's special attention to Section 6 of Senate Bill 1275. That section states:

The Joint Legislative Education Oversight Committee shall study the fiscal and instructional accountability of local school administrative units. As part of this study, the Committee shall:

- (1) Evaluate the fiscal management and instructional leadership provided by local school administrative units.**
- (2) Analyze whether local school administrative units are utilizing their funding and resources in a proper, strategic manner with regard to their at-risk children.**
- (3) Evaluate State fiscal controls that are available to ensure that local allocation of funding and resources is cost effective and is appropriately focused on enhancing educational leadership, teaching the standard course of study, and improving student learning.**
- (4) Analyze State and local procedures for identifying superintendents, principals, and teachers who need additional**

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training or assistance in order to implement a strategic and cost-effective instructional program that meets the needs of all children, including at-risk children, so that they obtain a sound basic education by achieving grade level or above academic performance.

(5) Identify current and possible actions that the State may implement in order to correct ineffective instructional leadership or teaching in a school or school system. In particular, the Committee shall ensure that fair and efficient procedures are available to the State for removing ineffective superintendents, principals, or teachers and for replacing them with effective, competent ones.

The Committee shall report its findings and any recommendations to the 2003 General Assembly.

(Emphasis added). We wanted to bring this section to your attention because we know that the Court will recognize in its mandates critical components of its own orders and will understand the particular significance of this legislation.

The State Board and the State Superintendent recommended elements of and strongly support Senate Bill 1275 because it is consistent with many of the State Board's own initiatives and reflects an important step in the development of new policies and laws directed toward improving educational opportunities for at-risk students. We believe the studies required under this bill will lead to more effective allocation of educational resources to assure improved educational opportunities for at-risk students and increase the State Board's and DPI's ability to intervene to correct mismanagement in those LEAs that are not providing all their students with adequate educational opportunities.

The fiscal year did not end until June 30 and DPI did not finalize the financial data from the LEAs for the 2001-02 fiscal year until July 15th. We intend to analyze that data along with the ABCs, Student Accountability data and other indicia of student performance for the 2001-02 school year.

Assuming Senate Bill 1275 passes, DPI will then be in a position to provide the General Assembly with some of the information necessary for it to evaluate the fiscal management and instructional leadership provided by local school administrative units and analyze whether local school administrative units are utilizing their funding and resources in a proper, strategic manner with regard to their at-risk children. The General Assembly's study will provide a blue print for how the "nuts and bolts" of future educational reforms should be assembled to assure not only that the educational

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opportunities for at-risk students continue to improve but also that we are in compliance with the State Board's constitutional obligations.

Even if Senate Bill 1275 does not pass, DPI's own analysis of LEA financial and student performance data will help the State Board better understand how LEAs are utilizing their budget flexibility and the correlation between the allocation of resources to particular line items and student performance. That in turn will help the State Board and DPI refine the "nuts and bolts" of a range of programs such as the Student Accountability Standards and Closing the Achievement Gap to assure that adequate educational resources are being allocated to effective educational opportunities and interventions for at-risk students. We believe such analyses and reforms will directly address the Court's order regarding the State's obligation to assure that LEAs are implementing and maintaining cost-effective, successful educational programs in their schools.

In order to accomplish these tasks in the face of the reductions in DPI staff necessitated by the budget shortfall, the State Board has initiated the process to reorganize the Board's strategic priorities to intensify its focus on the implementation of those educational programs and reforms such as Student Accountability Standards, Closing the Achievement Gap, and the No Child Left Behind Act of 2001 which directly address the State's obligations under Leandro. The State Board has scheduled a planning session for September to begin that reorganization.

In the meantime, the State Board and DPI continue to implement important programs and policies which are changing the State's general and uniform system of free public schools to provide more educational opportunities for at-risk students across the State.

IMPLEMENTATION OF THE RECOMMENDATIONS OF THE NORTH CAROLINA ADVISORY COMMISSION ON RAISING ACHIEVEMENT AND CLOSING GAPS

The State Board of Education recently took concrete action toward improving educational opportunities for at-risk students when it adopted its implementation plan for recommendations contained in the report of the North Carolina Advisory Commission on Raising Achievement and Closing Gaps. The implementation plan could not be included in the ninety-day report because the State Board of Education did not take final action on the plan until its July 11, 2002 meeting. A copy of the implementation plan is included with the attached materials.

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The Court quoted extensively from the Commission's report in Section Four of its decision and relied upon the report to support its emphasis on the importance of competent teachers, professional development for teachers, and parental involvement to improved student performance. Section Four, pp. 34-35, 40, and 55-57. Throughout the trial of this case, the State Board and Superintendent have presented numerous reports and studies indicating that we agree with and have implemented policies and practices to improve the quality of principals and teachers and to increase parents' involvement in their children's education, both in and out of school. **However, we are mindful of the difference between the advisory nature of the reports the State Board and DPI receive from various commissions and committees and the legal obligations which this Court's orders impose upon us. That is why the State Board of Education has adopted a plan to implement the recommendations contained in the Commission's report.** We believe that our implementation plan demonstrates not only that the State Board and DPI understand their obligations to those North Carolina students at-risk for academic failure but also that they are committed to providing the "nuts and bolts" necessary to turn the Court's orders into additional educational opportunities for at-risk students.

While we trust the Court will study the entire implementation plan, we direct the Court's attention to the plan for implementing Recommendations # 5 and # 6. The Court quoted these Recommendations in Section Four of its decision in support of its finding that "the evidence is clear and convincing that meaningful staff development for teachers is necessary for teachers to be able to keep up and effectively teach all children, especially at-risk children." Section Four, p. 44. Again, we believe that this implementation plan is evidence that the State Board has taken concrete action to implement programs which will provide higher quality educational opportunities to at-risk students and contribute to closing the performance gap between at-risk students and their more privileged peers.

IMPLEMENTATION OF THE NO CHILD LEFT BEHIND ACT OF 2001

The State's Consolidated Application under the No Child Left Behind Act of 2001 (NCLB) is further evidence that the State Board and DPI are taking concrete action to provide and maintain a general and uniform system of free public schools which effectively addresses the academic needs of at-risk students. The State's implementation of NCLB will be the driving force behind the annual distribution of millions of dollars of Title I funds. The Court has consistently emphasized in its findings that students at-risk for academic failure are as likely to fail in the wealthier LEAs represented by the plaintiff-intervenors as they are in the poorer LEAs represented by the plaintiffs.

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However, no matter how "wealthy" the County (LEA) is in terms of Local funding support, the school systems' scores show that these two groups of children exist in each LEA and the disparities between their academic performance are just as stark in "wealthy" systems such as Wake, CMS, Orange and Forsyth as in the school systems in the middle and at the low end of the Local funding spectrum.

When one looks at the percentage comparisons of students who are failing to achieve grade level proficiency on the basis of ethnicity, the higher percentage of at-risk students falls squarely on blacks, Hispanics and American Indians although the numbers of Hispanic and American Indian students is small when compared to the number of black and whites in the school system statewide.

Section Three, p. 67.

The Court also specifically found that the logical reason at-risk students in wealthier LEAs have test scores similar to their peers in poorer LEAs is:

[T]hat in the "wealthier" LEAs which have such greater amounts of Local Funding available per ADM, those LEAs are not strategically and logically directing and spending those funds in the best manner possible to accomplish the mandate of **Leandro** which requires each LEA to provide all of its children with the equal opportunity to obtain a sound basic education.

The biggest problem is with the "wealthier" LEAs, because they have so much more money available, and their at-risk results are, in comparison with a poor county like Hoke, worse because their at-risk population should be performing much better if sheer money available was a factor.

Section Three, pp. 74-75.

The Court has also found that, despite its ability to promote improved student performance, the ABCs school-based accountability model has some inherent limitations.

[O]ne weakness in the ABCs occurs when the test result data is not disaggregated (analyzed among racial and socioeconomic groups) at the individual school level to be sure that all students' needs are being met. A masking effect can occur where one sub-population within a school is not

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growing but a large percentage of students routinely score very well on the tests. Seemingly good test results, when broken down, may show that certain subgroups are making little progress and falling behind. The school systems that have done the best on the ABC's are those that disaggregate test data according to race and socioeconomic status to compare the performance of different groups of students. Robinson, Nov. 16, 1999, at 16,17, 19. Suffice it to say that the ABCs program is a work in progress and heading in the right direction for the benefit of the school children of North Carolina.

....

The plaintiffs also criticize the ABCs system's focus on individual schools, claiming that the focus on individual schools tends to mask systematic problems statewide, particularly performance gaps between poor counties and economically advantaged counties.

This criticism is not justified. By using the information on performance in "The Green Book" and the information in Volume II of the "ABCs Annual Report Card," one can easily determine that there is a performance disparity between groups of students by race, by economic status and by levels of parent education. In addition, the information provided permits a cohort (group of students in grade 3 for a particular year) to be followed in their academic performance on the EOG tests through the 8th grade on a yearly basis.

Having studied this data, the Court is very much aware of the student achievement gaps between different socioeconomic and racial groups and poor and "rich" counties. This information is important in this Court's ultimate determination of the question as to whether the State of North Carolina is providing an equal opportunity to receive a sound basic education to all children in North Carolina regardless of wealth or circumstance and regardless of where the children live.

Section One, pp. 137 and 139-140.

The accountability provisions in the State's Consolidated Application under NCLB will provide a mechanism for improving the performance of at-risk students in those schools in which the poor performance of subgroups of at-risk students is masked by the higher performance of a large population of wealthier students. As we noted in the ninety-day report, NCLB and the State's Consolidated Application require all schools to make "Adequate Yearly Progress" (AYP) toward the

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ultimate objective of 100% of students at proficiency within twelve years. Like the ABCs, the Consolidated Application defines proficiency as Level III performance on the EOGs. However, unlike the growth and performance composites under the ABCs, which are based on the aggregate performance of all the students in a school, AYP measures the improvement in academic performance of identifiable subgroups of students, based on poverty, race and ethnicity, disability, and limited English proficiency, in a particular school. Because AYP requires all students to demonstrate improved proficiency on the EOGs, NCLB works to ensure that no child will be left behind his classmates.

In order to incorporate the schools' new obligations to demonstrate AYP for all student subgroups, the State Board has recently revised its policy regarding ABCs incentive awards for certified personnel. Under the State Board's former ABCs incentive award policies, certified staff in schools which made Expected Growth were eligible for a \$750 incentive award and certified staff in schools which made Exemplary Growth were eligible for a \$1,500 incentive award. Under the new State Board policies implementing NCLB, certified staff in schools which make Expected Growth are eligible for a \$600 incentive award, certified staff in schools which make High Growth (formerly Exemplary Growth) are eligible for an additional \$600 incentive award and certified staff in schools which make AYP are eligible for an additional \$600 incentive award. Therefore, teachers in schools which make High Growth on their ABCs and demonstrate enough improvement in the academic performance of student subgroups to make their AYP objectives will qualify for \$1,800 in incentive awards. Under the new policy, teacher assistants in those schools would be eligible for a \$200 incentive award for each component or a total of \$600.

On the other hand, Title I schools that fail to make their AYP objectives will be subject to a variety of escalating improvement, corrective action, and restructuring measures intended to place those schools back on course to meet 100% student proficiency. Although the sanctions in NCLB are limited to schools receiving Title I funds, the fact that 989 of approximately 1,828 North Carolina public elementary schools received Title I funding in 2001-02 guarantees that NCLB will have a broad impact in North Carolina.

The State's implementation of the AYP requirements of NCLB is likely to have significant effect on many of the LEAs that have previously been successful under the ABCs. For example, under analyses DPI staff conducted on the 2000-01 EOG results, 75% of North Carolina schools would not have made AYP in 2000-01. Thus, under NCLB we expect the at-risk students in many otherwise successful schools will be entitled to additional educational opportunities and some of those schools will be subject to some type of intervention or sanctions. The particular interventions and sanctions required under NCLB are listed as "Federal Interventions, Sanctions" in the attached materials pertaining to Continually Low-Performing Schools.

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No one who understands this Court's decision can fail to appreciate the close correlation between that decision and the remedial provisions in NCLB.

First, under NCLB DPI requires each superintendent of an LEA that receives Title I funds to sign a "Statement of Assurances" and complete a "Local Educational Agency Plan" in which he or she commits to making sixteen different improvements in those schools in the LEA that receive Title I funds and describes how the LEA will meet its obligations under NCLB. A copy of the "Statement of Assurances" and a "Local Educational Agency Plan" form is attached. We apologize for not attaching the text of NCLB but the law is over 1000 pages long; even the sections listed in the Statement of Assurances total over 100 pages. The text of NCLB is available on the US Department of Education website at: <http://www.ed.gov/legislation/ESEA02>. If the Court does want a copy of NCLB, please let us know and we see that one is delivered to you.

As you can see, the "Statement of Assurances" includes, among other things, a commitment to ensure, through incentives or voluntary transfers, the provision of professional development, recruitment programs, or other effective strategies, that low-income students and minority students are not taught at higher rates than other students by unqualified, out-of-field, or inexperienced teachers. Superintendents must also commit to take into account the experience of model programs for the educationally disadvantaged, and the findings of relevant scientifically based research indicating which services may be most effective if focused on students in the earliest grades at schools that receive Title I funds. We know that both those assurances directly address the Court's findings regarding the educational needs of at-risk students.

In addition to the assurances made by the local superintendents, State policies under NCLB will require Title I schools to prove that all student subgroups, many of which will be distinguished by the factors the Court identifies as placing a child at-risk of academic failure, *e.g.*, race, ethnicity, poverty and limited English proficiency, are making AYP. This obligation directly addresses the Court's finding that wealthier LEAs are failing to meet the educational needs of their disadvantaged students.

State policies under NCLB will require Title I schools to have "highly qualified," *i.e.*, fully licensed under North Carolina law, teachers in "core subject areas" such as language arts, mathematics, science and social studies. We have sent a letter to local superintendents informing them of their obligation to notify parents whenever their child has been taught by anyone less than a "highly qualified" teacher for four consecutive weeks. These policies directly address the Court's finding regarding the importance of a competent teacher to a student's opportunity to obtain a sound basic education.

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The State Board's decision to adopt a new policy for financial incentives for certified staff at schools that make AYP directly addresses the Court's finding regarding the correlation between the allocation of resources and student academic performance. "The point is that money should be spent with specific goals in mind and with a method of accountability in place to measure whether or not the money that is spent is being appropriately spent to obtain the results desired." Section One, p. 118. Like the ABCs, this policy will provide teachers with a real incentive to provide more effective educational opportunities to at-risk students.

State policies under NCLB will give low performing, low-income students attending Title I schools which did not make AYP for two years the right to attend another public school within the LEA. This directly addresses the Court's finding that the plaintiff parties are not allocating their available resources to provide educational opportunities to at-risk students and provides those students the opportunity to transfer to schools with a better record of improving at-risk student performance.

State policies under NCLB will require Title I schools that fail to make AYP for three years to provide their students with "supplemental educational services," including services from private providers, paid through Title I funds. This obligation directly addresses the Court's finding regarding the importance of effective instructional programs to a student's opportunity to obtain a sound basic education.

State policies under NCLB will require the State to intervene and change the administration in those Title I schools which fail to make AYP for four or more years. These interventions include replacing school staff, implementing new curricula, decreasing the discretion of local school administrators, reorganizing the school or executing a complete State takeover. These interventions directly address the Court's findings that the State "must roll up its sleeves, step in, and utilizing its constitutional authority and power over the LEAs, cause effective educational change when and where required." Section Four, p. 108.

We urge the Court to study the State Consolidated Application, NCLB and the attached responses to "Frequently Asked Questions" in order to fully appreciate the significance of these educational reforms.

STUDENT ACCOUNTABILITY STANDARDS AND PERSONAL EDUCATION PLANS

We believe that the State Board's Student Accountability Standards and the Personal Education Plans mandated under G.S. § 115C-105.41 require LEAs to reallocate available educational resources to address the educational needs of at-risk students and assure that students who are not at grade level will receive additional educational opportunities. Consequently, the implementation of the State

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Board's Student Accountability Standards and G.S. § 115C-105.41 continue to play a critical role in the State Board's efforts to improve educational opportunities for students identified as at-risk of academic failure.

The Court will recall that the State Board adopted its Student Accountability Standards in April 1999, just before the trial of this case began. In Section One of its decision, the Court recognized that the Student Accountability Standards provided a sufficient means for measuring a student's acquisition of a sound basic education:

The State Board of Education has adopted new Student Accountability Standards that require teachers and principals to place increased emphasis on student performance on EOG and EOC tests in promotion and retention decision.

But while the Student Accountability Standards set Level III performance on EOG tests as the benchmark for promotion, the Standards recognize the principal's authority to make the final promotion/retention decision based upon documented evidence of a student's performance other than the EOG test results. *E.g.*, Plaintiffs' Exhibit 52, pp. 1-6; N.C.G.S. § 115C-288(a). A principal may promote a student who does not score Level III or Level IV on the EOG tests or a principal may retain a student who has scored Level III or Level IV on the EOG tests. The final decision remains the principal's based upon his or her professional judgment of student's documented performance throughout the academic year. However, promotion in this manner, in the absence of valid proof of performance at or above grade level as established by Level III or above performance, does not necessarily mean the student has obtained, or been offered the opportunity to obtain, a sound basic education for that year.

A teacher's professional observation and assessment of the student's performance during the academic year, when endorsed by the professional judgment of the principal, is a constitutionally sufficient measure of a student's acquisition of a sound basic education provided that the student is actually performing at an achievement level that is not less than grade level as defined by Level III.

With the foregoing in mind and considering all the evidence, the Court finds that the professional observation and assessment of a student's performance made by a qualified and competent teacher is a more accurate measure of a student's actual knowledge and ability than any other single measure of a student's academic ability, including performance on standardized tests.

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Furthermore, teacher grades are the only output measure of student performance which encompass all the subjects and courses that may be included in a sound basic education.

Section One, pp. 167-168.

Consistent with its plans for implementing the Student Accountability Standards, the State Board instituted the first Gateway for students in the 5th grade during the 2000-01 academic year. The institution of the 5th grade Gateway meant that fifth graders who did not score at Level III on the EOGs were entitled to focused interventions followed by the opportunity to retake the EOG before their principals made the decision to promote or retain them. Under the Student Accountability Standards, those students who did not demonstrate Level III proficiency must be given "personal education plans" that include diagnostic evaluation, intervention strategies, and monitoring strategies. The Court will recall that during the hearings held in the fall of 2001, Dr. Henry Johnson testified that following implementation of the 5th grade Gateway 92% of fifth graders were able to meet the promotion's standards and advance to 6th grade. We believe that those results demonstrate that the Gateways provide a particularly effective combination of student incentives, *i.e.*, promotion or retention decisions linked to EOG performance coupled with additional educational opportunities for students below grade level. We therefore believe the Gateways provide a singularly effective means for improving the academic performance of at-risk students.

In Section Four of its decision, the Court praised the Student Accountability Standards. It also supported the General Assembly's decision to require LEAs to develop and implement "a personal education plan for academic improvement with focused intervention and performance benchmarks . . . for any student not performing at least at grade level, as identified by the State end-of-grade test." G.S. § 115C-105.41. Describing these educational reforms, the Court expressly found that:

The State has also acknowledged and recognized the educational goal of remedial intervention and preventative education for children who are not performing at grade level (Level III) or above by first adopting policies to require a plan for remediation and in 2001, enacting legislation to require a remediation plan all for children in grades three through eight who are not performing at grade level. Remediation is now required as one important component of the new Student Accountability Standards under the ABC's of Education.

Under the Student Accountability Standards, referred to on occasion as the No-Social Promotions Policy adopted by the State Board

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in April, 1999, local school officials were required to develop Personal Education Plans ("PEPs") for students in the Gateways grades-three, five and eight, who are not performing at or above grade level. In 2001, the General Assembly enacted legislation that goes further and ***requires that all students who have not demonstrated grade level proficiency and are placed at risk of academic failure have a PEP. Sec. 28.17(e); N.C.G.S. 115C-105.41.***

Sec 28.17(e) requires the PEP to include, as an educational goal, "**focused intervention and accelerated activities [which] should include research-based best practices**" and requires LEAs to provide these services and transportation to participate in them free of charge. The legislation, however, does not provide specific allocated funding to the LEAs to cover the cost of carrying out the PEPs for children who have failed to perform on the "Gateway" EOG test at grade level.

While the plaintiff-parties characterize the legislation as an unfunded mandate, **the importance of the legislation lies in the State's acknowledged educational goal to ensure that each child identified as at-risk of educational failure receives a PEP, additional intervention and remedial educational services. As a result of this acknowledged goal, those children who have failed to achieve grade level performance of subject matter on "Gateway" EOG tests are receiving additional intervention and remediation services.**

By enacting this legislation, the State irrefutably acknowledges that it is the State's educational policy to require that each failing student be offered "focused intervention," a remedial plan designed to address the child's demonstrated areas of weakness so that the child can be helped to achieve Level III or above and get on track to obtain a sound basic education.

The Legislature also mandated specific expenditures of funds to improve student accountability to complement the requirements of N.C.G.S. 115C-105.41. Section 28.33(a) requires, in part, that "**Funds appropriated for the 2001-2002 fiscal year and the 2002-2003 fiscal year for Student Accountability Standards shall be used to assist students in performing at or above grade level in reading and mathematics in grades 3-8 as mandated by the State's end-of-grade tests. . . . Funds in this allocation category shall be used to improve the academic performance of (i) students who are performing at Level I or II on either reading or mathematics end of grades test in**

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grades 3-8 and (ii) students who are performing at Level I or II on the writing tests in grades 4 and 7. These funds may also be used to improve the academic performance of students who are performing at Level I or II on the high school end-of-course tests.

The legislation is important in that the State has adopted a policy that mandates specific allocation of educational funding for increased educational opportunity to each student placed at risk of academic failure through the requirement of extra individual tutorial and remediation.

It is also important in that it constitutes an irrefutable admission by the State that each student at risk of academic failure who is performing below Level III on the EOG and EOC tests needs more focused assistance, intervention and that financial resources are necessary to accomplish the action mandated. North Carolina's ABCs accountability system is indeed driving more than just teachers and students.

Make no mistake about the pressing need for such action. The Gateways, no promotion-policy, "high-stakes" component of the ABC's has arrived. In the spring of 2002, all North Carolina students in the third, fifth, and eighth grades will face EOG tests that, by statute, will largely determine whether they can advance to the next grade. Principals must consider the EOG test scores when determining whether to promote or retain the student. N.C.G.S. 115C-288(a).
(Section Four, pp. 54-55) (Emphasis in original).

The State Board and DPI remain committed to implementing every aspect of the Student Accountability Standards. During the 2001-02 academic year, the State Board required LEAs to implement promotion and retention Gateways in grades 3 and 8. **We cannot provide the Court with the data regarding the benefits of the 3rd and 8th grade Gateways because the ABCs data for the 2001-02 academic year and the results the Student Accountability Standards are not yet available.** In fact, some LEAs have not yet completed their summer school interventions, retested their students or made their final promotion and retention decisions. LEAs will report that data to us in September. When we do have the opportunity to analyze this year's EOG and Student Accountability results, we hope to see improvements in the performance of 3rd and 8th graders similar to those that 5th graders achieved last year.

But our inability to report the Student Accountability data does not mean that the State Board or DPI is neglecting its obligations to the Court or at-risk students. The State Board is committed to reviewing the LEAs' implementation of the Student Accountability Standards and PEPs under G.S. § 115C-105.41 in order to assure that

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they are not continuing social promotions practices and that students who are not at grade level are receiving the required educational interventions and accelerated activities. In order to assure that the LEAs are fulfilling their legal obligations to identify students at-risk of academic failure, include effective instructional programs in their PEPs and provide them with the instructional services described in the PEPs, **DPI has decided to require all LEAs to report the following information: the number of students given PEPs, a description of the focused interventions and accelerated activities required in the PEPs, an assurance that the PEPs include research based practices with citation to the appropriate authority, the source of the funding for the interventions and accelerated activities, a description of the procedures the LEA will use to monitor implementation of the PEPs, a description of the policies the LEA has adopted to assure parental involvement in the implementation and review of PEPs, and a description of the appeal rights the LEA has provided to parents who have complaints about the development or implementation of PEPs.**

As noted above, we do not yet have the 2001- 02 ABCs data. As the Court knows the ABCs data allows us to identify the schools which are in greatest need of improvement. If Hoke County or any of the other plaintiff-party LEAs contains a low performing school, then the State will send an assistance team to that school. Again, the direct assistance to plaintiff-parties will be determined by their demonstrated, relative need under the State's ABCs policies. At present, the State Board and DPI believe it would be unfair and unjustified to provide plaintiff-parties with special treatment or benefits that are not warranted under the State's general and uniform system of free public schools. Instead, consistent with the ABCs legislation, the State Board and DPI will continue to target State resources to those schools which have the greatest need for improvement.

CONTINUALLY LOW PERFORMING AND HIGH PRIORITY SCHOOLS

The implementation of G.S. § 115C-105.37A "Continually Low-Performing Schools" (CLPS) provides further evidence of the State's commitment to improving student educational opportunities in low performing schools. CLPS are those schools which have received State-mandated assistance and have been designated low performing under the ABCs for at least two of three consecutive years. Under State Board policies, CLPS are subject to escalating State interventions within shorter time frames than those specified in NCLB. Six schools were identified as CLPS for the 2001-02 school year. During this past school year, the State assigned full-time assistance teams to each of these schools. Moreover, leadership teams from the LEAs' central offices and the schools met with DPI staff on a quarterly basis to discuss and review progress in the schools and to plan for improved instructional leadership in the schools. In June 2002, DPI held a two-day institute for the 285 teachers in the

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CLPS. During that time, DPI provided instruction in the following areas: effective instructional strategies in all content areas; reading across the curriculum; managing classroom behavior; and the impact of NCLB on high schools.

The thirty-seven "High Priority Schools," which are schools in which 80% or more of the students are eligible for free and reduced lunch and 45% of the students are below grade level, are in their second year of assistance. These High Priority Schools were entitled to funds to ensure that no class in kindergarten through third grade has more than 15 students and one additional instructional position. During the 2001-02 school year, the High Priority Schools received additional funds for teacher professional development. During the 2002-03 school year, the High Priority Schools will receive additional funds to extend all their teacher contracts for ten days, including five days of instruction. In addition, the State Board and DPI have offered voluntary assistance teams to all High Priority Schools.

TEACHER RECRUITMENT, RETENTION AND PROFESSIONAL DEVELOPMENT

The State Board is well aware of the teacher shortage and the need to have competent teachers in every classroom. Consequently, the State Board has taken numerous concrete actions to increase both the quality and availability of teachers in North Carolina.

Education Week's 2002 Quality Counts report ranked North Carolina first in the nation in its efforts to improve teacher quality. This is the second year in a row North Carolina has received this honor.

To increase the number of fully licensed teachers, the State Board has created three Regional Alternative Licensure Centers which opened on April 8, 2002. DPI staff designed these Centers to facilitate the licensing of lateral entry and provisionally licensed teachers. Prior to the creation of the Centers, the only route to full teacher licensure was through a college or university with an approved teacher education program. For some lateral entry and provisionally licensed teachers, this meant the programs they needed were not readily accessible. Many lateral entry and provisionally licensed teachers were frustrated not only with the variability in programs of study issued by the colleges and universities, but also the difficulties they experienced when they attempted to arrange course schedules consistent with the days and times available to working teachers. Through the Centers, teachers with lateral entry or provisional licenses can obtain programs of study identifying the courses they must complete in order to be fully licensed. The coordinators of each Center are working with colleges and universities to arrange for the necessary courses to be offered at times convenient to working adults, and to facilitate enrollment of interested lateral entry and provisionally licensed teachers.

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North Carolina has committed to participating in a project designed by the Education Commission of the States (ECS) to address issues related to recruiting and retaining high quality teachers for urban and isolated rural hard-to-staff schools. ECS will conduct an audit of teacher recruitment and retention policies and practices at both the local and state levels, consider the policies and practices of institutions of higher education involved in teacher preparation, and review past efforts to address the issues. Based on their study of the issues, ECS will provide the State Board with a report that defines the nature of the problem and the factors that contribute to teacher recruitment and retention problems. The ECS will also make recommendations for policy changes and other appropriate actions on both the state and local levels.

It is our hope that this project will help the State Board develop the "nuts and bolts" of a program which will contribute to the presence of a competent, certified and well-trained teacher in every North Carolina classroom.

With respect to professional development, the State Board believes that there is a need for a strong, consistent and uniform professional development program targeted to deliver instruction to North Carolina educators in areas aligned with the Board's strategic priorities, especially closing the achievement gap in reading and writing. To pursue that objective, the State Superintendent has appointed Bill Harrison, Superintendent of Cumberland County Schools, a plaintiff-intervenor party in this case, to chair a special committee representing stakeholder LEAs to advise the State Board regarding the development of a such a program.

"Reading First" is a new program in NCLB that provides \$20.7 million to North Carolina to establish reading programs for children in grades K through 3. The State Board intends to use some of those funds to pay for targeted teacher development and other efforts to ensure that teachers can identify children at-risk of reading failure and to provide instruction to help them become proficient readers.

In March 2002, DPI in conjunction with the Center for School Leadership Development, which is a program of the University of North Carolina, developed a program to deliver on-site professional development services to teachers and administrators from schools with growing achievement gaps. Thus far the providers have identified critical needs in these schools and have developed a plan for appropriate services to address those needs through instruction to be delivered in the schools during the 2002-03 school year. The services are modeled on assistance teams and will continue through the entire academic year.

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ASSISTANCE TO HOKE COUNTY AND OTHER PLAINTIFF- PARTY LEAs

DPI staff have been in contact with and have provided assistance to Hoke County teachers and administrators. Those contacts and that assistance, however, have been in the context of DPI's role in providing and maintaining the constitutionally required general and uniform system of free public schools. DPI has provided assistance to teachers and staff of the plaintiff-party LEAs through a variety of programs, including: the Summer Leadership Conference; the Improving Minority and At-Risk Student Achievement Conference; Standard Course of Study Workshops; and the Comprehensive School Reform Grants programs. These programs include instruction or presentations intended to help Hoke County and other plaintiff-party LEAs provide effective instruction to at-risk students. As the Court knows from the evidence presented during the trial, these professional development activities are not single events but rather are part of DPI's continuous efforts to assure that education professionals in the field have the skills and information necessary to effectively meet the educational needs of their students and the administrative needs of their staffs.

For example, our list of attendees at the Summer Leadership Conference shows that forty-nine administrators from the plaintiff-party LEAs, including Allen Strickland, the new superintendent in Hoke County, attended that DPI co-sponsored conference which included presentations on Leandro, NCLB, Student Accountability, Closing the Achievement Gap, financial management and data driven professional development. The list of attendees for the Improving Minority and At-Risk Student Achievement Conference shows that forty-three teachers and educators from Hoke County alone attended that conference which is devoted to providing educators with effective techniques for improving the performance of at-risk and minority students. Literally hundreds of educators from the plaintiff-party LEAs attended professional development workshops on the Standard Course of Study during the past fiscal year, even though the budget crisis forced the cancellation of numerous workshops. During the past year, the DPI Division of School Improvement has held seventeen days of conferences for schools in plaintiff-party LEAs during which DPI staff covered such topics as school reform models, instructional strategies in academic subject areas, reading across the curriculum, closing achievement gaps and grant writing. We have documentation regarding specific events and attendees and would be happy to provide it if the Court desires.

Since January 2002, the Closing the Achievement Gap Section of DPI has been involved in an intensive program in three schools that have growing achievement gaps; one of those schools, Rowland Middle School, is in Robeson County, a plaintiff-party LEA. Under that program, DPI staff have spent about three days working with teachers and staff of Rowland Middle School to provide instruction in such areas as lesson

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planning, classroom management strategies, and disaggregating and analyzing test data.

On May 29-30, 2002, Closing the Achievement Gap staff attended a series of instructional workshops on strategies for the effective teaching of reading, writing, mathematics, science and social studies on the campus of UNC-Pembroke for teachers from Hoke County and Robeson County schools.

These are only some of the activities that the Closing the Achievement Gap Section has undertaken. Since the Court issued Section Four of its decision, Closing the Achievement Gap Section members have held numerous workshops and made many presentations for both professionals and the public on how to close the achievement gap.

DPI also sponsors, in conjunction with the North Carolina Association of School Administrators, a series of orientation seminars for new superintendents. The orientation program consists of four modules delivered in two day conferences over the course of a year. During that orientation, DPI financial services staff provide new superintendents with instruction on the budget and financial control issues, including the flexibility they have in their budgets for addressing the needs of at-risk students.

DPI also partners with the Principals' Executive Program to provide seminars for principals in low-performing and high priority schools.

We hope that this information alleviates the Court's concern that the State Board of Education and DPI have not been providing LEAs with the guidance and assistance they may need to improve educational opportunities for at-risk students within their currently available resources.

CONCLUSION

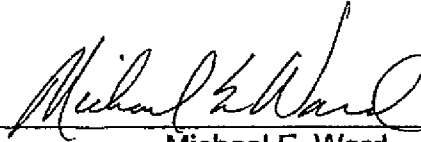
In conclusion, we want to assure the Court that the State Board and DPI are very much aware of their obligations under the Court's orders and are committed to implementing existing programs and developing new programs that assure that LEAs are providing at-risk students with effective instructional programs, taught by competent teachers in a school managed by a competent principal. We are confident that the implementation of the Student Accountability Standards and the legislatively mandated PEPs are requiring LEAs to reallocate their existing educational resources to substantially improve the educational opportunities they are providing to at-risk students. We also believe the NCLB places additional obligations on LEAs to assure that students at-risk of academic failure are making adequate progress toward Level III proficiency on the EOGs. Finally, we believe that the implementation of the Closing the

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Gap recommendations can only speed the State's progress toward the goal of 100% of students at or above grade level.

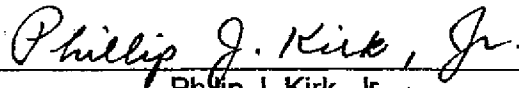
We hope that results of the studies described in Senate Bill 1275 will provide us with even more tools, such as graduated budget flexibility, for improving student performance. Although the report of the Governor's Education First Task Force is only advisory, we will also be working to translate those recommendations into effective implementation plans just as we have developed implementation plans for the recommendations of the Commission on Raising Achievement and Closing Gaps. But while we are waiting for those new tools, we are committed to using to our current authority to assure that the at-risk students in all LEAs are receiving the educational opportunities and focused interventions that they need to obtain a sound basic education.

We trust that the information we have included in this letter satisfies any concerns that the Court may have had regarding the State Board's, the State Superintendent's or DPI staff's commitment to their constitutional obligations. We have in place laws and policies which require LEAs to allocate resources to provide additional educational opportunities to at-risk students. We are taking aggressive steps to implement those laws and policies in order to assure that the academic performance of at-risk students continues to improve. Finally, we are working to refine those educational programs and develop new programs which we believe will help bring North Carolina's public school students closer to 100% proficiency.



Michael E. Ward

State Superintendent, North Carolina Department of Public Instruction



Philip J. Kirk, Jr.

Chairman, North Carolina State Board of Education

July 29, 2002

Date

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by depositing a copy with the United States Postal Service, first class mail, postage pre-paid, addressed as follows:

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This the 24th day of July, 2013.

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