

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,
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 ELIZABETH LOWERY, individually and as
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 LOWERY, JENNIE G. PEARSON,
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 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
 95 CVS 1158
 COA11-1545

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FILED

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.

**NEW BRIEF OF DEFENDANT-APPELLEE STATE BOARD OF
EDUCATION**

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ISSUES PRESENTED

- I. WHETHER THE COURT OF APPEALS PROPERLY CONCLUDED THAT “AT RISK” FOUR YEAR OLD CHILDREN ARE ENTITLED TO UNRESTRICTED ACCEPTANCE INTO THE EXISTING PRE-KINDERGARTEN PROGRAMS IMPLEMENTED BY DEFENDANTS TO SATISFY THEIR CONSTITUTIONAL OBLIGATION TO PROVIDE THESE CHILDREN THE OPPORTUNITY TO OBTAIN A SOUND BASIC EDUCATION?**
- II. WHETHER THE COURT OF APPEALS DECISION, PROPERLY RECOGNIZING THE STATE BOARD’S PRIMARY CONSTITUTIONAL AUTHORITY, REQUIRES ONLY NOTICE, NOT “PRE-CLEARANCE,” SHOULD THE STATE BOARD DECIDE TO REMEDY THE CONSTITUTIONAL VIOLATION TO “AT RISK” CHILDREN THROUGH DIFFERENT MEANS?**

INTRODUCTION

For nineteen years, the parties in this case have debated the scope of the fundamental constitutional right held by all North Carolina children to the opportunity for a sound basic education. The contours of this right have, over the years, been given form through legislative enactments, executive implementation, and judicial decrees, as the case has progressed through the courts. There have been moments of stark disagreement among the parties, but there have also been moments of coordinated unanimity.

For at-risk pre-kindergarten children who enter school at a disadvantage from the start, one such moment of unanimity was decisive. In 2004, this Court concluded the State had been “deficien[t] in affording ‘at risk’ prospective

enrollees their guaranteed opportunity to obtain a sound basic education” and had a constitutional “obligation to address and correct it.” *Hoke County Board of Education v. State*, 358 N.C. 605, 644, 599 S.E.2d 365, 394 (2004) (“*Leandro II*”). On remand, the Defendants, the State of North Carolina and the State Board of Education (the “State Board,” and together, the “State”) declared in unison in open court that the State had elected to implement a statewide pre-kindergarten program—“More at Four”—for at-risk children as the State’s remedy for the constitutional problem this Court identified. At countless hearings over the ensuing years, the State reaffirmed its commitment and reported to the court on its substantial progress in reaching these at-risk children and removing the barriers to their sound basic education presented by “circumstances such as an unstable home life, poor socio-economic background, and other factors.” *Id.* at 632, 599 S.E.2d at 387.

Then, in 2011, the Legislature purported to abandon the commitments the State had made in open court, erecting in their place new barriers to at-risk children’s right to the opportunity to receive a sound basic education. The Legislature purported to dissolve the existing More at Four program and transfer oversight for pre-kindergarten services away from the State Board—the very entity charged under the Constitution with supervising and administering the State’s free public school system. N.C. Const. art. IX, sec. 5. Worse still, the

Legislature passed a law that would deny access to pre-kindergarten services for 80% or more of those at-risk children seeking them. The trial court concluded the Legislature's actions violated this Court's mandate in *Leandro II* requiring the State to identify and implement a remedy in fulfillment of its constitutional duty whose existence no party to this appeal denies. In short, the trial court held that at-risk children are entitled to unrestricted access to the State's chosen remedy—pre-kindergarten.

Every party in the case—except the Attorney General—agrees with the trial court's ruling. Indeed, the modesty of the trial court's order, as properly interpreted and affirmed by the Court of Appeals, is highlighted by the fact that a named *Defendant*, the State Board of Education, concedes the correctness of the trial court and Court of Appeals decisions. Moreover, while the Attorney General's appeal to the Court of Appeals was pending, the Legislature itself repealed certain portions of the law that had sparked the trial court's review in the first place, including the clause denying access to 80% or more of those at-risk children seeking pre-kindergarten services.

In his appeal below, the Attorney General treated this case as though it were still 2004, and read the trial court's order as if it were the order on appeal in *Leandro II*. But a unanimous panel of the Court of Appeals held that the Attorney General was wrong to ignore the developments in this case over the

past decade, especially the State's coming forward in 2004 with a remedy—statewide pre-kindergarten—that *it chose in the first instance* and has successfully implemented for nearly a decade. In other words, the trial court's actions were held to be not only entirely consistent with but also required by this Court's pronouncements in *Leandro II*—that a remedy was constitutionally required, and that the State should have the chance to develop such a remedy before the courts step in. The trial court was merely holding the State to the solution the *State itself* developed and implemented and the Plaintiffs embraced.

The Court of Appeals took pains to show deference to the State Board and General Assembly as the constitutional entities with the ultimate responsibility for ensuring that all children of this State receive the same opportunity to obtain a sound basic education. To that end, the panel acknowledged that nothing in its opinion was intended to “lock in” the State “to a solution to a problem that no longer works, or addresses a problem that no longer exists.” (Slip op. at 20). But the panel also held that until the State develops a different solution to its admitted constitutional deficiency, or shows that all students finally have the opportunity to “a sufficient education to meet the minimal standard for a constitutionally adequate education,” *Leandro II*, 346 N.C. at 342, 488 S.E.2d at 252, eligible prospective students who knock on the door of an existing pre-kindergarten program must be given unrestricted access. In short, the State is

not *locked in* to pre-kindergarten, but unless and until the State develops an alternative remedy, it cannot *lock out* at-risk children from its pre-kindergarten program.

To summarize, this Court in *Leandro II* found a constitutional deficiency and ordered that a suitable remedy be identified. That remedy was identified and implemented by the State and has served at-risk pre-kindergarten students since 2004. The trial court decreed in 2011, and the Court of Appeals panel unanimously affirmed in 2012, that the State's remedy approved in 2004 cannot be abandoned without a constitutionally adequate alternative, and that at-risk pre-kindergarten children who seek to enroll in existing pre-kindergarten programs have unrestricted access to avail themselves of the opportunity to obtain a sound basic education. The Attorney General stands alone in arguing otherwise.

STATEMENT OF FACTS

The State of North Carolina and the State Board of Education were haled into court in 1994 to answer for their alleged failure to provide "adequate educational opportunities" for the children of North Carolina. (R p 28.) The State moved to dismiss, positing that the courts had no power to oversee the educational programs established by the Legislature and executed by the State

Board. (R p 196.) The trial court denied the motion, which denial was eventually appealed to this Court. (R p 203.)

A. **This Court Held That the State Constitution Guarantees All Children The Opportunity to Obtain a Sound Basic Education (*Leandro I*) And Found That The State Had Violated That Right For At-Risk Pre-Kindergarteners (*Leandro II*)**

In its first landmark decision in this case, this Court unanimously held that “Article I, Section 15 and Article IX, Section 2 of the North Carolina Constitution combine to guarantee *every child* of this state an opportunity to receive a sound basic education in our public schools.” *Leandro v. State*, 346 N.C. 336, 347, 488 S.E.2d 249, 255 (1997) (“*Leandro I*”) (emphasis added). The case was remanded for trial to determine whether the State was meeting its constitutional obligations to North Carolina children. *Id.* at 358, 488 S.E.2d at 261.

On remand, a paramount question was: at what age does the constitutional right to be afforded the opportunity to a sound basic education arise—after the child is enrolled in school, or before? (R pp 244-47.) Put differently, as later framed by this Court:

[A]re four-year-olds guaranteed the right to demonstrate that they are in danger of being denied an opportunity for a sound basic education by virtue of their circumstances or are they precluded from doing so because they are not yet members of the right-bearing school children class?

Leandro II, 358 N.C. at 619, 599 S.E.2d at 379.

The trial court held pre-kindergarten children had the same constitutional rights as school-aged children, and could present evidence at trial that the State had denied them their educational rights. (R S p 237) This Court later affirmed:

We read *Leandro* and our state Constitution, as argued by plaintiffs, as according the right at issue to all children of North Carolina, regardless of their respective ages or needs.

Leandro II, 358 N.C. at 620, 599 S.E.2d at 379.

During the lengthy trial that followed, the parties submitted voluminous evidence regarding, among other things, whether the State had denied pre-kindergarten children their constitutional right to the opportunity for a sound basic education. (*See generally* R S pp 195-238.) In a series of written orders, the trial court found that pre-kindergarten children were indeed being deprived of such a right. As later summarized by this Court, the trial court made a number of specific findings of fact:

(1) that there was an inordinate number of "at-risk" children who were entering the Hoke County school district; (2) that such "at-risk" children were starting behind their non "at-risk" counterparts; and (3) that such "at-risk" children were likely to stay behind, or fall further behind, their non "at-risk" counterparts as they continued their education. In addition, the trial court found that the evidence showed that the State was providing inadequate resources for such "at-risk" prospective enrollees, and that the State's failings were contributing to the "at-risk" prospective enrollees' subsequent failure to avail themselves of the opportunity to obtain a sound basic education.

Leandro II, 358 N.C. at 641, 599 S.E.2d at 392-93. Each of these findings of fact was upheld on appeal as being “well supported by the evidence.” *Id.* at 642, 599 S.E.2d at 393.

Based on these findings, the trial court concluded after trial that, as a matter of law, “State efforts towards providing remedial aid to ‘at-risk’ prospective enrollees were inadequate.” *Id.* This conclusion too was upheld on appeal as being “well supported by the evidence.” *Id.* Indeed, as this Court noted, “judging by its actions, it appears that even the State concedes that ‘at-risk’ prospective enrollees in Hoke County are in need of assistance in order to avail themselves of their right to the opportunity for a sound basic education.” *Id.*

In 2000, the trial court found the time had come for the court to require, as a remedy for the State’s failure to “provid[e] remedial aid for at-risk prospective enrollees,”¹ that all “at-risk children should be provided the opportunity to attend a quality pre-kindergarten educational based program” to put them “in a position to take advantage of the equal opportunity to receive a sound basic education when they reach five-year old kindergarten.” (R S pp 235-36.) In so doing, the trial court was doing nothing more than fulfilling the mandate of *Leandro I* to “enter a judgment granting declaratory relief and such other relief

¹ *Leandro II*, 358 N.C. at 642, 599 S.E.2d at 393.

as needed to correct the wrong while minimizing the encroachment upon the other branches of government.” *Leandro I*, 346 N.C. at 357, 488 S.E.2d at 261.

In its second pronouncement in this case, this Court held the judicial imposition of a particular remedy for the constitutional failures of the legislative and executive branches was “premature.” *Leandro II*, 358 N.C. at 644, 599 S.E.2d at 394. In other words, there was simply not enough evidence *as of the year 2000* to show that a pre-kindergarten program was a “proven effective vehicle by which the State can address the myriad problems associated with such ‘at-risk’ prospective enrollees.” *Id.* Because of the “history and expertise in the field” possessed by the State Board and the General Assembly, this Court held they should be given the opportunity in the first instance to select their own remedy “for achieving constitutional compliance for such students.” *Id.* at 645, 599 S.E.2d at 395.

This Court remanded the case to the trial court with the constitutional challenge laid squarely on the State for the development of a remedy. *Id.* at 649, 599 S.E.2d at 397. As of the 2004 *Leandro II* decision, “[w]hether the State meets this challenge remain[ed] to be determined.” *Id.*

B. On Remand From *Leandro II*, The State Chose Statewide Pre-Kindergarten Education For At-Risk Children, Via The “More At Four” Program, As The Remedy For Its Adjudged Constitutional Failings

On remand from this Court after *Leandro II*, the trial court summoned the State back into court “[t]o provide the State of North Carolina the opportunity to present its plan and outline as to how the State of North Carolina, acting through the Executive and Legislative branches, will address the constitutional educational deficiencies and how it plans to remedy them under the guidelines set forth in this case” by the Supreme Court in *Leandro II*. (R S p 576.) By letter dated 25 October 2004, the State detailed its remedy (the State’s “Remedial Plan”). (R S pp 577-88.) As part of its Remedial Plan, the State represented to the Court that it would “[e]nsure every at-risk four-year-old has access to a quality prekindergarten program.” (R S p 578.) The State continued to insist that the scope of the case was not limited to Hoke County. As it explained to the trial court in 2002, the State understood that its “constitutional obligation to provide a general and uniform system of free public schools” meant the State was required to “tak[e] concrete actions to improve educational opportunities for at-risk students in the plaintiff-party LEAs *along with their similarly disadvantaged peers across the State.*” (Rule 9(b)(5) R S p 2 (emphasis added).)

To further its Remedial Plan, the State represented that it would “continue to expand the More at Four program until at least 40,000 at-risk four-year-olds are assured access to quality pre-kindergarten programs.” (R S p 578.) The State repeatedly affirmed this *statewide* commitment for over a decade, as evidenced, for example, in a subsequent letter dated 9 August 2005. (R S pp 613-14.)

The Legislature confirmed that “More at Four” was the State’s statewide remedy for the constitutional violation identified in *Leandro II*. For example, in 2005 the General Assembly enacted a law stating, in part:

The Department of Public Instruction . . . shall continue the implementation of the “More at Four” prekindergarten program for at-risk four-year-olds who are at risk of failure in kindergarten. The program is available statewide to all counties that choose to participate, including underserved areas. The goal of the program is to provide quality prekindergarten services to a greater number of at-risk children in order to enhance kindergarten readiness for these children.

S.L. 2005-276, § 10.67(b) (emphasis added) [App. 17-18]; *see also* S.L. 2007-323, § 7.24(a)-(f) [App. 20-21], *as amended by* S.L. 2008-107, § 7.17(a), (c) [App. 25-26] *and as amended by* S.L. 2008-181, § 49.1 [App. 28] (same); S.L. 2010-31, § 7.5(a), (b) [App. 30] (same).

Through the ensuing years, the trial court scheduled over a dozen hearings in this case to hear evidence regarding the State's compliance with the Remedial Plan, among other things. (*See, e.g.*, R S pp 628-80, 801-14.)

C. The 2011 Legislature Restricted Access of Eligible At-Risk Children to the State's Pre-Kindergarten Program

On 15 June 2011, the "Current Operations and Capital Improvements Appropriations Act of 2011" (the "Legislation") became law when the General Assembly overrode the Governor's veto. *See* S.L. 2011-145. Notwithstanding that the More at Four program was created to serve at-risk four-year-old children (R p 520; *see also* R S p 578), and that over 90% of its enrollees had historically been eligible for a free or reduced price lunch (R S p 818), the Legislation *limited* to 20% the percentage of pre-kindergarten seats available to at-risk children going forward. S.L. 2011-145 § 10.7.(f) [App. 33]. In more detail, the Act provided:

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.***

Id. [App. 33] (emphasis added). The Act further directed the Division of Child Development and Early Education to "implement a parent co-payment

requirement for prekindergarten classrooms” *Id.* § 10.7.(h) [App. 33]. Finally, the Legislation purported to “consolidate” the More at Four program into the Division of Child Development and Early Education, removing it from the supervision and administration of the State Board. *Id.* § 10.7.(a).

D. The Trial Court Concluded The Legislation’s Restrictions on At-Risk Children’s Access to the State’s Pre-Kindergarten Program Unconstitutionally Denied Such Children Their Right To The Opportunity To Obtain A Sound Basic Education

While the Legislation was still pending in the General Assembly, the trial court noticed a hearing for 22 June 2011, inviting the State to report regarding its compliance with *Leandro I* and *II* in light of the Legislation. (R p 325.)

Before the hearing, Plaintiffs submitted evidence to show that the challenged portion of the Legislation would “revers[e] much, if not all, of what the *Leandro* litigation has accomplished to date.” (R p 328.) During the hearing, the State’s witnesses and Plaintiffs’ witnesses all agreed that the Legislation represented a sharp break from the prior seven years of implementation of the Remedial Plan. (*See generally* T pp 16-279.) Indeed, *the State’s* lead witness, John Pruette, the Executive Director of the Office of Early Learning in the Department of Public Instruction, testified that the State’s “role [after the Legislation] may be to preside over the carcass of Pre-Kindergarten for the State of North Carolina.” (T p 45.)

On the undisputed evidence, the trial court entered an order on 18 July 2011, making a number of findings of fact,² *none of which have been challenged on appeal*, including:

1. Since *Leandro II*, “the legislative and executive branches of government have determined, using their shared history and expertise in education, that the State’s ability to meet its educational obligations for ‘at-risk’ prospective enrollees was best served through the Smart Start and More at Four programs.” (R p 651.)

2. “[T]he State *committed* to this Court in 2004 that its choice of program to remedy the State’s obligations to ‘at-risk’ prospective enrollees was to ensure that ‘every at risk four year old has access to a quality pre-kindergarten program.’” (R p 651 (emphasis added).)

3. “[T]he State represented to this Court that the State would ‘expand the More at Four Prekindergarten Program and provide access to the program to the estimated 40,000 at-risk four year olds across the State.’” (R pp 651-52.)

4. “[S]even years after *Leandro II*, . . . the State, using the combination of Smart Start and the More at Four Pre-Kindergarten Programs, have indeed selected **pre-kindergarten** combined with the early childhood benefits of Smart Start and its infrastructure with respect to pre-kindergarten programs, as the means to ‘achiev[e] constitutional compliance’ for at-risk prospective enrollees.” (R p 659 (quoting *Leandro II*, 358 N.C. at 644, 599 S.E.2d at 394).)

5. “The More at Four program is a proven, high quality pre-kindergarten program which is nationally ranked

² The trial court’s findings of fact were not individually numbered. The numbers here are supplied for ease of reference.

and which, as of 2010-2011, was serving approximately 35,000 or more at-risk four year olds throughout North Carolina in public schools, private prekindergarten, Head Start and Public school Head Start settings.” (R pp 663-64.)

6. The 2011 Legislation will “effectively limit access to prekindergarten services for many of those at-risk 4 year olds who need the program so they can start kindergarten ready to take advantage of their constitutional right to the opportunity to obtain a sound basic education.” (R p 664.)

7. Section 10.7.(f) of the Legislation will “limit[] the number of at-risk children eligible for the former MAF prekindergarten program to 20% of the slots in the ‘new’ prekindergarten program while reserving 80% of the slots for 4 year olds that are not at-risk.” (R p 665.)

8. The 20% cap in section 10.7.(f) would “limit the at-risk 4 year olds who would have been eligible for those [prekindergarten] seats prior to the enactment of section 10.7.(f) to only 6,400 prekindergarten slots with 25,600 slots in the prekindergarten program open to non-at risk 4 year olds.” (R p 666 (emphasis omitted).)

9. “The evidence in the record is undisputed that the co-pay requirement [of Section 10.7.(h) of the Legislation] will cause a severe and significant impact on the ability of at-risk children to access the program and have the remediation that they need to be prepared for kindergarten.” (R p 666.)

10. “[T]he State, by enacting the foregoing 2011 Budget sections, 10.7(a) through (j), has taken the prekindergarten program (formerly MAF) established for at-risk 4 year olds and reduced the number of slots available to at-risk 4 year olds upwards of 80% *without providing any alternative* high quality prekindergarten option for at-risk 4 year olds at all.” (R p 668 (emphasis added).)

11. “[T]here is no evidence that there is the capacity (number of available slots) in NCPK to provide for all the at-risk 4 year olds to be served under the present scheme, especially with the 20% limitation now in place, as well as the non-at-risk 4 year olds that have been given the opportunity to participate in NCPK.” (R p 668.)

12. “[T]he undisputed record shows that the capacity for all NCPK slots has been reduced from the 2010/2011 school year and that if the present plan is implemented as set out in the Budget Bill, . . . several thousand at-risk 4 year olds who are eligible to attend NCPK will not be provided with slots because of the limitations on their participation to 20%.” (R p 668.)

On these undisputed findings of fact, the trial court concluded:

1. The “artificial barrier” erected by the Legislation, making prekindergarten slots “no longer available to at-risk 4 year olds who are eligible to attend NCPK (formerly MAF) . . . , or any other barrier, to access to prekindergarten for at-risk 4 year olds may not be enforced.” (R p 668.)

2. The 20% cap “cannot stand and may not be enforced” to the extent “it results in barring eligible at-risk 4 year olds from prekindergarten slots by displacing those slots in favor of non at-risk 4 year olds under the guise of ‘blending’ or other reasons.” (R p 665.)

3. “[T]he imposition of a co-pay requirement may not be used to block an at-risk 4 year old from taking advantage of the NCPK program when he or she is eligible to be provided the prekindergarten experience.” (R p 667.)

Finally, on these undisputed findings of fact and conclusions of law, the trial court ordered, in relevant part:

1. “The State of North Carolina shall not deny any eligible at-risk four year old admission to the North Carolina

Pre-Kindergarten Program (NCPK) and shall provide the quality services of the NCPK to any eligible at-risk four year old that applies.” (R p 669.)

2. “The State of North Carolina shall not Implement or enforce that portion of the 2011 Budget Bill, section 10.7.(f). that limits, restricts, bars or otherwise interferes, in any manner, with the admission of all eligible at-risk four year olds that apply to the prekindergarten program, including but not limited to the 20% cap restriction, or for that matter any percentage cap, of the four year olds served within the prekindergarten program, NCPK.” (R p 669.)

3. “Further, the State of North Carolina shall not implement, apply or enforce any other artificial rule, barrier, or regulation to deny any eligible at-risk four year old admission to the prekindergarten program, NCPK.” (R p 669.)

E. The Attorney General Appealed On Behalf Of The State Of North Carolina, But The State Board Of Education Opposes The Appeal

The Attorney General appealed from the trial court’s order solely on behalf of the State of North Carolina, as directed by the General Assembly. (R pp 686-88.) In doing so, however, the Attorney General *did not* challenge any of the trial court’s findings of fact. (R p 729.)

The State Board of Education did not appeal from the trial court’s 18 July 2011 order. (*See* R pp 686-88.) The State Board, since this Court’s *Leandro II* decision in 2004 and continuing to date, has represented in open court that it is committed to offering and expanding pre-kindergarten services through the More at Four program as the only identified and available remedy for the

constitutionally deficient educational opportunities the State had previously provided at-risk children. The State Board refuses to retreat from its judicial admissions and commitments to meeting its constitutional obligations to at-risk pre-kindergarten children and therefore does not join the appeal of the Attorney General. Unless and until some alternative, constitutionally adequate remedy becomes available, the State Board remains committed and bound to the principle articulated by the Court of Appeals—that otherwise eligible at-risk pre-kindergarten children have unrestricted access to the State’s existing pre-kindergarten programs.

F. While the Attorney General’s Appeal was Pending Before the Court of Appeals, the Legislature Revised the Legislation

In 2012, the General Assembly passed a bill that “entirely rewrote the language of section 10.7.(f),” the 80% exclusionary cap, and repealed a provision of the Legislation requiring certain pre-kindergarten students to make a co-payment in order to attend. S.L. 2012-13 [Appellant’s App. 5-9]. The Court of Appeals held that the statutory revisions mooted the portion of the Attorney General’s appeal as to whether the trial court properly enjoined the Legislation. (Slip op. at 16-17). No party to this appeal argues otherwise.

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). “[O]nly the decision of [the Court of Appeals] is before [this Court] for review.” *State v. Brooks*, 337 N.C. 132, 149, 446 S.E.2d 579, 590 (1994). In other words, this Court “inquire[s] into proceedings in the trial court solely to determine the correctness of the decision of the Court of Appeals.” *State v. Williams*, 274 N.C. 328, 333, 163 S.E.2d 353, 356 (1968).

The principle that it is the *Court of Appeals* decision on review and not directly the *trial court* order is particularly important here, because the Attorney General has repeatedly chided the Court of Appeals for resolving purported ambiguities in the trial court’s order in favor of a narrow, rather than a more expansive, reading. (See, e.g., Appellant’s Br. at 15-20). The Attorney General wants this Court to read (and then reject) the *trial court order* as a “mandate for state-wide pre-kindergarten.” (*Id.* at 14). That argument, however, ignores the meaning of the order as understood and affirmed by the Court of Appeals. Rather, the Court of Appeals properly read the order to require “the unrestricted acceptance of all ‘at-risk’ four year old prospective enrollees who seek to enroll

in *existing* pre-kindergarten programs across the State.” (Slip op. at 16 (emphasis added)).

Likewise, there is no need for this Court to revisit the trial court’s findings of fact, insofar as they were affirmed by the Court of Appeals because the Attorney General has not challenged any specific findings of the trial court. (R p 729.) These unchallenged findings are “presumed to be supported by competent evidence and [are] binding on appeal.” *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

Even had the Attorney General challenged any of the trial court’s findings, those findings, “made by the court in a non-jury trial[,] have the force and effect of a jury verdict and are conclusive on appeal if there is evidence to support them, although the evidence might have supported findings to the contrary.” *Henderson County v. Osteen*, 297 N.C. 113, 120, 254 S.E.2d 160, 165 (1979); *accord* N.C. Const. art. IV, § 14 [App. 2].

The trial court’s conclusions of law are reviewed de novo. *In re Appeal of the Greens of Pine Glen Ltd. Partnership*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003). Nevertheless, because trial courts have broad power to fashion judicial remedies for constitutional violations, such remedies are reviewed on appeal for reasonableness. *Cf. Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 31 (1971).

ARGUMENT

I. THE COURT OF APPEALS PROPERLY CONCLUDED THAT “AT RISK” FOUR YEAR OLD CHILDREN ARE ENTITLED TO UNRESTRICTED ACCEPTANCE INTO THE EXISTING PRE-KINDERGARTEN PROGRAMS IMPLEMENTED BY DEFENDANTS TO SATISFY THEIR CONSTITUTIONAL OBLIGATION TO PROVIDE THESE CHILDREN THE OPPORTUNITY TO OBTAIN A SOUND BASIC EDUCATION

A. The Court of Appeals and The Trial Court Properly Deferred to Defendants To Develop and Commit To A Remedy As Mandated By This Court

This Court recognized in 1997 that our Constitution “guarantee[s] *every child* of this state an opportunity to receive a sound basic education in our public schools.” *Leandro I*, 346 N.C. at 347, 488 S.E.2d at 255 (emphasis added). This constitutional right extends “to all children of North Carolina, regardless of their respective ages or needs,” including prospective kindergarten enrollees who come from disadvantaged backgrounds (“at-risk” children). *Leandro II*, 358 N.C. at 620, 599 S.E.2d at 379. Nonetheless, as of 2002, there was “evidence . . . well support[ing]” the fact “that the State was providing inadequate resources for such ‘at-risk’ prospective enrollees, and that the State’s failings were contributing to the ‘at-risk’ prospective enrollees’ subsequent failure to avail themselves of the opportunity to obtain a sound basic education.” *Leandro II*, 358 N.C. at 641-42, 599 S.E.2d at 392-93. The State conceded as much. *Id.* at 642, 599 S.E.2d at 393.

This Court remanded in 2004 to allow the State, in light of its expertise, an opportunity in the first instance to select its own remedy “for achieving constitutional compliance for such students.” *Id.* at 644, 599 S.E.2d at 394.

1. The State Committed To A Remedial Plan In 2004

In response to the court’s order for a remedial plan, the State harnessed its “history and expertise in the field” to develop a Remedial Plan. *Id.* The State submitted a letter on 25 October 2004—the day of the hearing—detailing its identified remedy (the State “Remedial Plan”). (R S pp 577-88 [App. 51-62].) As part of its Remedial Plan, the State represented to the Court that it would “[e]nsure every at-risk four-year-old has access to a quality prekindergarten program.” (R S p 578 [App. 52].) To further its Remedial Plan, the State represented that it would “continue to expand the More at Four program until at least 40,000 at-risk four-year-olds are assured access to quality pre-kindergarten programs.” (R S p 578 [App. 52].)

The More at Four program had been established in 2001, in part in response to this ongoing litigation. (R S p 581 [App. 55].) “The purpose of More at Four is to provide a high quality, classroom-based educational program for at-risk children during the year prior to kindergarten entry.” (R p 520.) On remand from *Leandro II*, the State committed to grow the More at Four program as the State’s remedy for the existing constitutional violation. In fulfillment of

its promise to the court, the State sought “additional resources” from the Legislature “to carry out the *commitments* [the State] has described” in its Remedial Plan. (R S p 584, 588 [App. 58, 62] (emphasis added).)

Over the subsequent months, the State was called into court for a series of hearings on the parties’ progress in implementing the State’s Remedial Plan. (See, e.g., R S pp 589-92; 603-10 [App. 63-74].) For example, the trial court set a 9 August 2005 hearing at which it “expected a report from the State on the issue of overall Leandro compliance.” (R S p 612 [App. 75].)

At the 9 August 2005 hearing, the State reaffirmed the commitments it set forth in its Remedial Plan first submitted the previous year. The State represented that, since the Remedial Plan was developed, “the Governor, the General Assembly and the State Board of Education have taken substantial action to implement each of the components of that Plan.” (R S pp 613-14 [App. 76-77].) For example, on 20 July 2005, the Governor issued “Executive Order No. 80 [to] set aside \$16.6 million for the 2005-06 school year to support an additional 3,200 slots” in the More at Four program. (R S p 615 [App. 78]; see also R S pp 625-27 [App. 79-81].) Similarly, the Office of School Readiness was created under the supervision of the State Board on 1 July 2005, and was charged with “align[ing], coordinat[ing] and leverag[ing] the multiple

public pre-kindergarten programs and resources in these districts to improve services to programs serving at-risk four-year-olds.” (R S p 615 [App. 78].)

Moreover, the Legislature repeatedly affirmed these commitments. For example, in 2005, the Legislature declared that the State “shall continue the implementation of the ‘More at Four’ prekindergarten program for at-risk four-year-olds” and that “[t]he program is available statewide.” S.L. 2005-276, § 10.67(b) [App. 17-18]. Through the ensuing years, and in accordance with this Court’s *Leandro II* mandate, the trial court scheduled over a dozen hearings in this case to hear evidence regarding, among other things, the State’s compliance with the Remedial Plan. (*See, e.g.*, R S pp 628-80, 801-14.)

2. As The Constitutionally Created Body With the Power To Administer North Carolina’s Free Public School System, The State Board Had The Authority To Commit To A Remedial Plan

Under our Constitution, “[t]he General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students.” N.C. Const. art. IX, § 2(1) [App. 3]. It is the independent State Board of Education, however, that is constitutionally required to “supervise and administer the free public school system and the educational funds provided for its support.” N.C. Const. art. IX,

§ 5 [App. 4]. The General Assembly has codified this constitutional grant of authority in N.C. Gen. Stat. § 115C-12 [App. 5-15].

The State Board's "duties and responsibility are wide ranging in the field of education." *Godwin v. Johnston County Board of Education*, 301 F. Supp. 1339, 1340 (E.D.N.C. 1969). Many of these duties and responsibilities are non-delegable. Rather, the State Board has constitutional and statutory obligations that are mandatory. In *Godwin* for example, the State Board argued that it was the local school boards that bore responsibility for school desegregation. The *Godwin* court disagreed, finding that North Carolina law placed this responsibility squarely on the shoulders of the State Board. *See id.* at 1341-42.

Here, the State Board has been defending itself against judicial findings and conclusions of unconstitutional behavior for 19 years. The State Board was ordered in 2004 by this Court, acting unanimously, to come forward with a plan to remedy the system's failure to provide an opportunity for a sound basic education to at-risk prospective enrollees. The State Board complied with the remand order, committing to grow the More at Four program. The State Board is bound by its judicially mandated constitutional obligations.

B. The Court of Appeals Properly Required That At-Risk Children Be Given Unrestricted Access To Existing Pre-Kindergarten Programs

1. Pre-Hearing Evidence That The Legislation Was Unconstitutional

Before the 20 June 2011 trial court hearing, Plaintiffs submitted evidence to show that the Legislation would “revers[e] much, if not all, of what the *Leandro* litigation has accomplished to date.” (R p 328.) For example, Plaintiffs submitted affidavits and questionnaires from county-level school administrators demonstrating that the Legislation would significantly decrease the number of pre-kindergarten spaces available for at-risk children in their counties, causing them to turn away otherwise entitled four-year-olds. (*See, e.g.*, R pp 347-48, 354, 358-60, 364-65, 369, 378, 380, 385, 387, 389, 391, 393, 396, 400, 402, 404, 616-17.)

Plaintiffs also submitted to the trial court an October 2010 report from the FPG Child Development Institute at the University of North Carolina at Chapel Hill entitled “Long-Term Effects of the North Carolina More at Four Pre-kindergarten Program.” (R S p 817 [App. 83].) The report unambiguously showed, based on quantitative data, that the More at Four program improved the test scores and achievement levels several years later of those pre-kindergarten children who had enrolled and received the program’s benefits. (R S p 818 [App. 84].) For example, in one key metric, the report found that low-income

More at Four graduates “performed significantly better” than poor students who had not attended More at Four. (R S p 819 [App. 85].) The report expressly found that More at Four graduates had better educational outcomes than students who had been relegated to mere subsidized daycare facilities. (T p 68 [App. 48].) This was the same report that had been submitted to the trial court on 19 November 2010 *by the State* as evidence of their compliance with the *Leandro II* mandate. (R S p 815 [App. 82].)

Plaintiffs were not alone in warning that the Legislation would run afoul of *Leandro II*. The State Board, acting through its Chairman, Dr. William C. Harrison, executed a resolution on 2 June 2011 noting that portions of the Legislation would “break[] an improving system” by denying access to the More at Four program. (R pp 467-69.) In addition, the NC Head Start-State Collaboration Office—supervised by the State Board of Education—issued a brief explaining that a “co-pay” requirement like that in the Legislation would “displace approximately 6,500 [More at Four] children” from classrooms operated by the Head Start – More at Four partnership. (R p 507; *see also* T p 59 [App. 45].)

2. All Of The Hearing Evidence, Especially That Submitted By The State, Demonstrated That The Legislation Denied At-Risk Children Access to Their Right to an Opportunity For a Sound Basic Education

Five witnesses testified live at the 22 June 2011 hearing. (T p 3 [App. 36].) *Not one witness suggested that the Legislation would enable at-risk children to continue to obtain the opportunity for a sound basic education. (See generally T pp 16-279.)* Indeed, *the State's* lead witness, John Pruette, the Executive Director of the Office of Early Learning in the Department of Public Instruction, testified that the State's "role [because of the Legislation] may be to preside over the carcass of Pre-Kindergarten for the State of North Carolina." (T p 45 [App. 42].)

Mr. Pruette further testified, without contradiction, that the More at Four standards for teachers and instruction exceed those of even the highest rated private daycare facilities. (T pp 20, 65-66 [App. 37, 46-47]; *see also* R p 638.) Mr. Pruette noted that these standards had yielded "profound" results. (T p 31 [App. 39].) For example, he explained that the "academic achievement gap closed by up to 40 percent" in one "longitudinal study that looked at More at Four participants specifically as compared to like children who did not have the benefit of the program." (T p 31 [App. 39].) Likewise, a study from Duke University demonstrated that "the more Smart Start and More at Four Resources in a county, the better the results on the third grade EOG." (T p 69 [App. 49];

see also R pp 539-71.) Because of its success, the North Carolina More at Four program had been recognized “as a model for the nation.” (T p 37 [App. 40].) Indeed, one national organization had consistently rated the North Carolina More at Four program as “the number one Pre-Kindergarten model in the nation.” (T p 73 [App. 50]; *see also* R pp 601-10.)

In addition, Mr. Pruette testified that the challenged portions of the Legislation would bring about “the unraveling of what’s occurred over a decade.” (T p 41 [App. 41].) Mr. Pruette explained that the law would change the program from focusing entirely on at-risk children to making available no more than 20% of the spaces to at-risk children. (T p 55-56 [App. 43-44].) Moreover, he noted that the Legislation includes a “co-pay” requirement for participation in pre-kindergarten. (T p 26 [App. 38].) Mr. Pruette testified that this co-pay requirement will cut off many federal sources of funding, because the federal programs prohibit the charging of such co-pays. (T p 26 [App. 38].)

In light of this evidence, the trial court determined that the State was abandoning the only remedy that had been shown to be effective in addressing the constitutional violation found in *Leandro II*. (R pp 663-64.) Indeed, More at Four is the *only* remedy that the State has ever proffered during the past decade to address its pre-kindergarten constitutional deficiencies identified in *Leandro II*. In other words, the Court of Appeals properly affirmed the order

that the State must not ignore the Supreme Court's mandate for a remedy by abandoning the remedy the State itself identified and the court adopted. The Court of Appeals merely holds the State to the judicial representations it has been making for seven years on *Leandro II* remand, requiring unrestricted acceptance for prospective at-risk students in existing pre-kindergarten programs to ensure they have the opportunity to obtain a sound basic education.

As the Court of Appeals properly held, this principle of unrestricted acceptance was well within the power of the judiciary to require of the Defendants. Indeed, this Court embraced this framework in *Leandro II*:

Certainly, when the State fails to live up to its constitutional duties, a court is empowered to order the deficiency remedied, and if the offending branch of government or its agents either fail to do so or have consistently shown an inability to do so, a court is empowered to provide relief *by imposing a specific remedy* and instructing the recalcitrant state actors to implement it.

Leandro II, 358 N.C. at 642-43, 599 S.E.2d at 393 (emphasis added).

The central flaw in the Attorney General's argument is that he reads the 2012 Court of Appeals decision in a vacuum, as though it were 2004 and the *trial court* made the first attempt to craft a remedy for the constitutional violation found by the Supreme Court in *Leandro II*. From this faulty premise, the Attorney General now criticizes the trial court for purportedly encroaching upon the expertise of the legislative and executive branches.

The Attorney General has it precisely backwards. It was always the State's burden to come forward with a remedial plan and demonstrate to the court that it would adequately address the previously determined constitutional violation. The State, with the full backing of the Legislature and harnessing the expertise of the State Board, did just that in an unbroken series of hearings from 2004 through 2011. At frequent intervals, the trial court haled the State back into court to report on its successful implementation of North Carolina's statewide Remedial Plan, with the ultimate test always being whether the State was adequately remedying the constitutional violation. The Court of Appeals is simply holding the State to its own remedy, the remedy the State Board remains bound and committed to follow. Whether some unidentified alternative remedial plan might at some point in the future satisfy the Constitution's requirement that all students receive the opportunity for a sound basic education is simply not presented in this case. (*See* R p 668 (unchallenged finding of fact that the State has not suggested any alternative remedy).)

C. The Court of Appeals Properly Affirmed the Statewide Application of the Trial Court's Order, as the State Has For Years Relied on a Statewide Remedy to Address Its Constitutional Violations

The Attorney General is likewise mistaken in attempting to shift the burden to the trial court and Court of Appeals to justify the statewide application of the Remedial Plan that the State had implemented statewide for 7 years. *See* Appellant's Br. at 17-23. Indeed, the North Carolina Constitution requires the State Board to administer a "*uniform system* of free public schools." N.C. Const. art. IX, §§ 2 (1), 5 [App. 3, 4] (emphasis added).

The term "uniform" here clearly does not relate to "schools," . . . but the term has reference to and qualifies the word "system" and is sufficiently complied with where, by statute or authorized regulation of the public-school authorities, provision is made for establishment of schools of like kind throughout all sections of the State and available to all of the school population of the territories contributing to their support.

Board of Education v. Board of Comm'rs, 174 N.C. 469, 473, 93 S.E. 1001, 1002 (1917).

In other words, "the North Carolina Constitution requires that access to a sound basic education be provided equally in every school district." *Leandro I*, 346 N.C. at 349, 488 S.E.2d at 256 (1997); *see also King ex rel. Harvey-Barrow v. Beaufort Cnty. Bd. of Educ.*, 364 N.C. 368, 372, 704 S.E.2d 259, 261 (2010) (the Constitution requires "equal access" to the opportunity for a sound basic

education throughout the state). “[T]he requirement of equal opportunities for all public school students is part of the General Assembly’s constitutional duty to provide for the public schools.” *Beaufort Cnty. Bd. of Educ. v. Beaufort Cnty. Bd. of Comm’rs*, 363 N.C. 500, 509, 681 S.E.2d 278, 285 (2009) (Newby, J., concurring).

For these reasons, the State committed to a *statewide* Remedial Plan—a key component of which involved growing the More at Four program throughout North Carolina—to remedy the constitutional violation found in *Leandro II*. (R S pp 584, 588 [App. 58, 62]); S.L. 2005-276, § 10.67(b) [App. 17-18] (“The program is available statewide”). For seven years, the State implemented its Remedial Plan on a *statewide* basis. At regular hearings, including the hearing giving rise to the order on appeal, the trial court accepted evidence from the parties showing the effectiveness of the Remedial Plan on a *statewide* basis. The hearing testimony *offered by the State* demonstrated without contradiction the adverse *statewide* effects of restrictions like those in the Legislation. Based on this evidence and based on the representations made by the State on a recurring basis to the trial court since *Leandro II*, the Court of Appeals properly affirmed the principle that at-risk children be granted unrestricted acceptance into existing pre-kindergarten programs expressly

designed to ensure at-risk children equal opportunity to obtain a sound basic education throughout North Carolina.

Thus, the Attorney General is wrong to repeatedly harken back to the limited scope of the evidence and issues before this Court in 2004 in *Leandro II*. This Court properly focused on Hoke County in 2004, but since that time, the State has for nearly a decade made this a case about its chosen *statewide* remedy. That is, there is no need to parse the language of the Complaint or the evidence before this Court *in 2004* to determine the scope of the issues involved *today*, after the parties have acquiesced, under judicial supervision, in the statewide reach of this case for years. Indeed, the State itself introduced primarily statewide evidence at the hearing giving rise to the order on appeal. In other words, the parties engaged in “litigation by consent” of the statewide issues. *See Roberts v. William N. and Kate B. Reynolds Memorial Park*, 281 N.C. 48, 58, 187 S.E.2d 721, 726 (1972). *Cf. N.C. R. Civ. P. 15(b)* [App. 1] (“When issues not raised by the pleadings are tried by the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.”); *Smith v. McRary*, 306 N.C. 664, 671, 295 S.E.2d 444, 448, n.1 (1982) (pleadings regarded as amended with or without formal motion to amend); *Graves v. Walston*, 302 N.C. 332, 341, 275 S.E.2d 485, 491 (1981) (pleadings are automatically “deemed amended to conform to the proof”).

Moreover, it would be nonsensical for the principle on appeal—that at-risk children be given unrestricted acceptance to existing pre-kindergarten programs—to apply in one area of the State but not in others. Instead, the principle is a natural outgrowth of the central holdings in *Leandro II*—that the time had come for the State to come forward with, and commit to, a remedy for its adjudged constitutional violations. Nor would it be practical, efficient, or wise to require every locality in the state to initiate its own lawsuit against the already taxed State Board, seeking affirmation of this same principle for its children, which may take many more years.

To argue otherwise ignores this Court's grave concern in 2004 that too much time had already passed without a proper remedy for at-risk children:

In our view, the unique procedural posture and substantive importance of the instant case compel us to adopt and apply the broadened parameters of a declaratory judgment action that is premised on issues of great public interest. The children of North Carolina are our state's most valuable renewable resource. If inordinate numbers of them are wrongfully being denied their constitutional right to the opportunity for a sound basic education, our state courts cannot risk further and continued damage because the perfect civil action has proved elusive. We note that the instant case commenced ten years ago. If in the end it yields a clearly demonstrated constitutional violation, ten classes of students as of the time of this opinion will have already passed through our state's school system without benefit of relief. We cannot similarly imperil even one more class unnecessarily.

Leandro II, 358 N.C. at 616, 599 S.E.2d at 377. Now, nine years later, these same concerns apply statewide, by the repeated consent of the parties.

* * *

The trial court's order is not an "unprecedented . . . mandate for state-wide pre-kindergarten," as the Attorney General contends. *See* Appellant's Br. at 14. To the contrary, the trial court simply precluded the State from abandoning the Remedial Plan the State itself had adopted and implemented over the past eight years—a plan that effectively remedied its previous constitutional violations and protected the rights of at-risk prospective students—and for which no alternative remedy has been suggested by any party.

II. THE COURT OF APPEALS DECISION, PROPERLY RECOGNIZING THE STATE BOARD'S PRIMARY CONSTITUTIONAL AUTHORITY, REQUIRES ONLY NOTICE, NOT "PRE-CLEARANCE," SHOULD THE STATE BOARD DECIDE TO REMEDY THE CONSTITUTIONAL VIOLATIONS TO "AT RISK" CHILDREN THROUGH DIFFERENT MEANS

Under the North Carolina Constitution, the State Board is a constitutional entity—created in Article IX—that is separate and apart from the legislative branch (created by Article II) and the executive branch (created by Article III). Section 4 of Article IX creates the State Board and identifies its members. N.C. Const. art. IX, sec. 4. Section 5 of Article IX then expressly provides:

Powers and duties of Board. The State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support, except the

funds mentioned in Section 7 of this Article, and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly.

N.C. Const. art. IX, sec. 5 [App. 4]. Whatever the scope of the legislative powers vested in the General Assembly, no entity has the authority, short of amending the Constitution, to remove from the State Board its constitutional power and duty to “supervise and administer the free public school system and the educational funds provided for its support.” *Id.*; see also *Guthrie v. Taylor*, 279 N.C. 703, 710, 185 S.E.2d 193, 198-99 (1971).³

The trial court, the Court of Appeals, and this Court are well aware of this separation of powers. Thus, in *Leandro I* this Court recognized the importance of the courts “minimizing the encroachment upon the other branches of government,” 346 N.C. at 357, 488 S.E.2d at 261, and in *Leandro II* required the State Board and legislature to develop a remedial plan in the first instance. On remand, the trial court deferred to the State Board and legislature for years, requiring only that they report back on their progress in pursuing their selected remedy for the constitutional deficiencies found by this Court in

³ Indeed, the portion of the Legislation that transferred the supervision and administration over the pre-kindergarten program from the State Board to the Department of Health and Human Services’ Division of Child Development and Early Education, S.L. 2011-145, § 10.7.(a) [App. 32], likely offends the Constitution’s vesting of such power exclusively in the State Board of Education. However, this issue has not, thus far, been litigated.

Leandro II. In like manner, the Court of Appeals concluded its opinion with several sentences recognizing the primacy and expertise of the State Board in educational matters:

Additionally, we would like to emphasize that while MAF was the remedy chosen by the legislative and executive branches in 2001 to deal with the problems presented by “at risk” four year olds, it is not necessarily a permanent or everlasting solution to the problem. What is required of the State to provide as “a sound basic education” in the 21st century was not the same as it was in the 19th century, nor will it be the same as it will be in the 22nd century. It would be unwise for the courts to attempt to lock the legislative and executive branches into a solution to a problem that no longer works, or addresses a problem that no longer exists. Therefore, should the problem at hand cease to exist or should its solution be superseded by another approach, the State should be allowed to modify or eliminate MAF.

(Slip op. at 19-20).

The Attorney General challenges a single sentence in this paragraph, which follows the pronouncements above: “This should be done by means of a motion filed with the trial court setting forth the basis for and manner of any proposed modification.” (*Id.* at 20). Taking this sentence out of context, the Attorney General argues that the Court of Appeals has created a “pre-clearance” requirement that usurps the autonomy of the State in educational matters.

This Court should reject the Attorney General’s reading of this single sentence. First, no such “motion” requirement appears in the trial court’s order. Second, the sentence makes no mention of “pre-clearing” anything. Read in

context, the sentence, rather than placing a pre-clearance burden on the State, merely emphasized the flexibility of the Court of Appeals' decision and the inviolate authority of the State to develop new solutions to existing and evolving problems. Third, the parties have been reporting to the trial court on their progress periodically *for over a decade*. This is, of course, standard practice in a case designated exceptional under Rule 2.1 of the General Rules of Practice for the Superior and District Courts, as this case has been designated since 1997. *See Leandro I*, 358 N.C. at 612, 599 S.E.2d at 375; (R p 232).

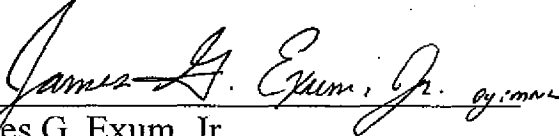
True, the sentence in question uses the word "motion" and not "notice." Nevertheless, read in the context of the deference paid the State Board in the rest of the paragraph and the regularity of status hearings in Rule 2.1 cases, the State Board submits that the Court of Appeals had periodic notices in mind and not a formal motion. The State Board therefore asks this Court to read the sentence as requiring nothing more than notice to the trial court should the State, or the State Board, develop alternative remedies to established constitutional violations. This would, as a practical matter, do no more than continue to give the trial court the opportunity to resume hearings or other proceedings as appropriate in these Rule 2.1 proceedings.

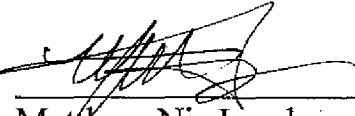
CONCLUSION

For the reasons set forth above, the decision of the Court of Appeals should be affirmed.

Respectfully submitted this the 24th day of July 2013.

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CERTIFICATE OF SERVICE

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

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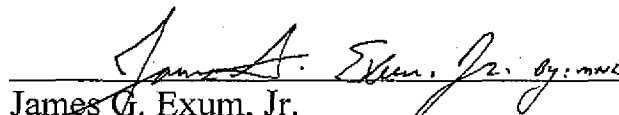
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This the 24th day of July, 2013.


James G. Exum, Jr.

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
95 CVS 1158
COA11-1545

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.

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Rule 15. Amended and supplemental pleadings, NC ST RCP § 1A-1, Rule 15

West's North Carolina General Statutes Annotated
Chapter 1A. Rules of Civil Procedure (Refs & Annos)
Article 3. Pleadings and Motions

Rules Civ.Proc., G.S. § 1A-1, Rule 15

Rule 15. Amended and supplemental pleadings

Currentness

(a) Amendments.--A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 30 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within 30 days after service of the amended pleading, unless the court otherwise orders.

(b) Amendments to conform to the evidence.--When issues not raised by the pleadings are tried by the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, either before or after judgment, but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues raised by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be served thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) Relation back of amendments.--A claim asserted in an amended pleading is deemed to have been interposed at the time the claim in the original pleading was interposed, unless the original pleading does not give notice of the transactions, occurrences, or series of transactions or occurrences, to be proved pursuant to the amended pleading.

(d) Supplemental pleadings.--Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which may have happened since the date of the pleading sought to be supplemented, whether or not the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead thereto, it shall so order, specifying the time therefor.

Credits

Added by Laws 1967, c. 954, § 1.

Editors' Notes

COMMENT

This rule is, except for section (c), substantially a counterpart to federal Rule 15. Section (c) is drawn from the New York Civil Practice Law and Rules, Rule 3025. As such, it deals with a most critical aspect of the whole approach of these rules

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*** Annotations current through MARCH 9, 2012 ***

CONSTITUTION OF NORTH CAROLINA
ARTICLE IV. JUDICIAL

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N.C. Const. art. IV, § 14 (2012)

Sec. 14. Waiver of jury trial

In all issues of fact joined in any court, the parties in any civil case may waive the right to have the issues determined by a jury, in which case the finding of the judge upon the facts shall have the force and effect of a verdict by a jury.

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CONSTITUTION OF NORTH CAROLINA
ARTICLE IX. EDUCATION

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N.C. Const. art. IX, § 2 (2012)

Sec. 2. Uniform system of schools

(1) *General and uniform system: term.* The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students.

(2) *Local responsibility.* The General Assembly may assign to units of local government such responsibility for the financial support of the free public schools as it may deem appropriate. The governing boards of units of local government with financial responsibility for public education may use local revenues to add to or supplement any public school or post-secondary school program.

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ARTICLE IX. EDUCATION

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N.C. Const. art. IX, § 5 (2012)

Sec. 5. Powers and duties of Board

The State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support, except the funds mentioned in Section 7 of this Article, and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly.

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CHAPTER 115C. ELEMENTARY AND SECONDARY EDUCATION
SUBCHAPTER 02 . ADMINISTRATIVE ORGANIZATION OF STATE AND LOCAL EDUCATION AGENCIES
ARTICLE 2. STATE BOARD OF EDUCATION

Go to the North Carolina Code Archive Directory

N.C. Gen. Stat. § 115C-12 (2012)

§ 115C-12. Powers and duties of the Board generally

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:

(1) Financial Powers. -- The financial powers of the Board are set forth in Article 30 of this Chapter.

(1a) To Submit a Budget Request to the Director of the Budget. -- The Board shall submit a budget request to the Director of the Budget in accordance with G.S. 143C-3-3. In addition to the information requested by the Director of the Budget, the Board shall provide an analysis relating each of its requests for expansion funds to anticipated improvements in student performance.

(2) Repealed by Session Laws 1985 (Regular Session, 1986), c. 975, s. 24.

(3), (4) Repealed by Session Laws 1987 (Regular Session, 1988), c. 1025, s. 1.

(5) Apportionment of Funds. -- The Board shall have authority to apportion and equalize over the State all State school funds and all federal funds granted to the State for assistance to educational programs administered within or sponsored by the public school system of the State.

(6) Power to Demand Refund for Inaccurate Apportionment Due to False Attendance Records. -- When it shall be found by the State Board of Education that inaccurate attendance records have been filed with the State Board of Education which resulted in an excess allotment of funds for teacher salaries in any school unit in any school year, the school unit concerned may be required to refund to the State Board the amount allotted to said unit in excess of the amount an accurate attendance record would have justified.

(7) Power to Alter the Boundaries of City School Administrative Units and to Approve Agreements for the Consolidation and Merger of School Administrative Units Located in the Same County. -- The Board shall have authority, in its discretion, to alter the boundaries of city school administrative units and to approve agreements submitted by county and city boards of education requesting the merger of two or more contiguous city school administrative units and the merger of city school administrative units with county school administrative units and the consolidation of all the public schools in the respective units under the administration of one board of education: Provided, that such merger of units and reorganization of school units shall not have the effect of abolishing any special taxes that may have been voted in any such units.

(8) Power to Make Provisions for Sick Leave and for Substitute Teachers. -- The Board shall provide for sick leave with pay for all public school employees in accordance with the provisions of this Chapter and shall promulgate rules and regulations providing for necessary substitutes on account of sick leave and other teacher absences.

The minimum pay for a substitute teacher who holds a teaching certificate shall be sixty-five percent (65%) of the daily pay rate of an entry-level teacher with an "A" certificate. The minimum pay for a substitute teacher who does not hold a teaching certificate shall be fifty percent (50%) of the daily pay rate of an entry-level teacher with an "A" certificate. The pay for noncertified substitutes shall not exceed the pay of certified substitutes.

Local boards may use State funds allocated for substitute teachers to hire full-time substitute teachers.

If a teacher assistant acts as a substitute teacher, the salary of the teacher assistant for the day shall be the same as the daily salary of an entry-level teacher with an "A" certificate.

(9) Miscellaneous Powers and Duties. -- All the powers and duties exercised by the State Board of Education shall be in conformity with the Constitution and subject to such laws as may be enacted from time to time by the General Assembly. Among such duties are:

- a. To certify and regulate the grade and salary of teachers and other school employees.
- b. To adopt and supply textbooks.
- c. To adopt rules requiring all local boards of education to implement the Basic Education Program on an incremental basis within funds appropriated for that purpose by the General Assembly and by units of local government. Beginning with the 1991-92 school year, the rules shall require each local school administrative unit to implement fully the standard course of study in every school in the State in accordance with the Basic Education Program so that every student in the State shall have equal access to the curriculum as provided in the Basic Education Program and the standard course of study.

The Board shall establish benchmarks by which to measure the progress that each local board of education has made in implementing the Basic Education Program.

c1. To issue an annual "report card" for the State and for each local school administrative unit, assessing each unit's efforts to improve student performance based on the growth in performance of the students in each school and taking into account progress over the previous years' level of performance and the State's performance in comparison with other states. This assessment shall take into account factors that have been shown to affect student performance and that the State Board considers relevant to assess the State's efforts to improve student performance.

c2. Repealed by Session Laws 1995 (Regular Session, 1996), c. 716, s. 1.

c3. To develop a system of school building improvement reports for each school building. The purpose of school building improvement reports is to measure improvement in the growth in student performance at each school building from year to year, not to compare school buildings. The Board shall include in the building reports any factors shown to affect student performance that the Board considers relevant to assess a school's efforts to improve student performance. Local school administrative units shall produce and make public their school building improvement reports by March 15, 1997, for the 1995-96 school year, by October 15, 1997, for the 1996-97 school year, and annually thereafter. Each report shall be based on building-level data for the prior school year.

c4. To develop guidelines, procedures, and rules to establish, implement, and enforce the School-Based Management and Accountability Program under Article 8B of this Chapter in order to improve student performance, increase local flexibility and control, and promote economy and efficiency.

d. To formulate rules and regulations for the enforcement of the compulsory attendance law.

e. To manage and operate a system of insurance for public school property, as provided in Article 38 of this Chapter.

In making substantial policy changes in administration, curriculum, or programs the Board should conduct hearings throughout the regions of the State, whenever feasible, in order that the public may be heard regarding these matters.

(9a), (9b) Repealed by Session Laws 2005-458, s. 1, effective October 2, 2005.

(9c) Power to Develop Content Standards and Exit Standards. -- The Board shall develop a comprehensive plan to revise content standards and the standard course of study in the core academic areas of reading, writing, mathematics, science, history, geography, and civics. The Board shall involve and survey a representative sample of parents, teachers, and the public to help determine academic content standard priorities and usefulness of the content standards. A full review of available and relevant academic content standards that are rigorous, specific, sequenced, clear, focused, and measurable, whenever possible, shall be a part of the process of the development of content standards. The revised content standards developed in the core academic areas shall (i) reflect high expectations for students and an in-depth mastery of the content; (ii) be clearly grounded in the content of each academic area; (iii) be defined grade-by-grade and course-by-course; (iv) be understandable to parents and teachers; (v) be developed in full recognition of the time available to teach the core academic areas at each grade level; and (vi) be measurable, whenever possible, in a reliable, valid, and efficient manner for accountability purposes.

High school course content standards shall include the knowledge and skills necessary to pursue further postsecondary education or to attain employment in the 21st century economy. The high school course content standards also shall be aligned with the minimum undergraduate course requirements for admission to the constituent institutions of The University of North Carolina. The Board may develop exit standards that will be required for high school graduation.

The Board also shall develop and implement an ongoing process to align State programs and support materials with the revised academic content standards for each core academic area on a regular basis. Alignment shall include revising textbook criteria, support materials, State tests, teacher and school administrator preparation, and ongoing professional development programs to be compatible with content standards. The Board shall develop and make available to teachers and parents support materials, including teacher and parent guides, for academic content standards. The State Board of Education shall work in collaboration with the Board of Governors of The University of North Carolina to ensure that teacher and school administrator degree programs, ongoing professional development, and other university activity in the State's public schools align with the State Board's priorities.

(10) Power to Provide for Programs or Projects in the Cultural and Fine Arts Areas. -- The Board is authorized and empowered, in its discretion, to make provisions for special programs or projects of a cultural and fine arts nature for the enrichment and strengthening of educational opportunities for the children of the State.

For this purpose, the Board may use funds received from gifts or grants and, with the approval of the Director of the Budget, may use State funds which the Board may find available in any budget administered by the Board.

(11) Power to Conduct Education Research. -- The Board is authorized to sponsor or conduct education research and special school projects considered important by the Board for improving the public schools of the State. Such research or projects may be conducted during the summer months and involve one or more local school units as the Board may determine. The Board may use any available funds for such purposes.

(12) Duty to Provide for Sports Medicine and Emergency Paramedical Program. -- The State Board of Education is authorized and directed to develop a comprehensive plan to train and make available to the public schools personnel who shall have major responsibility for exercising preventive measures against sports related deaths and injuries and for providing sports medicine and emergency paramedical services for injuries that occur in school related activities. The plan shall include, but is not limited to, the training, assignment of responsibilities, and appropriate additional reimbursement for individuals participating in the program.

The State Board of Education is authorized and directed to develop an implementation schedule and a program funding formula that will enable each high school to have a qualified sports medicine and emergency paramedical program by July 1, 1984.

The State Board of Education is authorized and directed to establish minimum educational standards necessary to enable individuals serving as sports medicine and emergency paramedical staff to provide such services, including first aid and emergency life saving skills, to students participating in school activities.

(13) Power to Purchase Liability Insurance. -- The Board is authorized to purchase insurance to protect board members from liability incurred in the exercise of their duty as members of the Board.

(14) Duty to Provide Personnel Information to Local Boards. -- Upon request, the State Board of Education and the Department of Public Instruction shall furnish to any county or city board of education any and all available personnel information relating to certification, evaluation and qualification including, but not limited to, semester hours or

quarterly hours completed, graduate work, grades, scores, etc., that are on that date in the files of the State Board of Education or Department of Public Instruction.

(15) Duty to Develop Noncertified Personnel Position Evaluation Descriptions. -- The Board is authorized and directed to develop position evaluation descriptions covering those positions in local school administrative units for which certification by the State Board of Education is not normally a prerequisite. The position evaluation descriptions required in this subdivision are to be used by local boards of education as the basis for assignment of noncertified employees to an appropriate pay grade in accordance with salary grades and ranges adopted by the State Board of Education. No appropriations are required by this subdivision.

(16) Power with Regard to Salary Schedules. -- The Board shall provide for sick leave with pay for all public school employees in accordance with the provisions of this Chapter and shall promulgate rules and regulations providing for necessary substitutes on account of sick leave and other teacher absences.

a. Support personnel refers to all public school employees who are not required by statute or regulation to be certified in order to be employed. The State Board of Education is authorized and empowered to adopt all necessary rules for full implementation of all schedules to the extent that State funds are made available for support personnel.

b. Salary schedules for the following public school support personnel shall be adopted by the State Board of Education: school finance officer, office support personnel, teacher assistants, maintenance supervisors, custodial personnel, and transportation personnel. The Board shall classify these support positions in terms of uniform pay grades included in the salary schedule of the State Personnel Commission.

By the end of the third payroll period of the 1995-96 fiscal year, local boards of education shall place State-allotted office support personnel, teacher assistants, and custodial personnel on the salary schedule adopted by the State Board of Education so that the average salary paid is the State-allotted amount for the category. In placing employees on the salary schedule, the local board shall consider the education, training, and experience of each employee, including experience in other local school administrative units. It is the intent of the General Assembly that a local school administrative unit not fail to employ an employee who was employed for the prior school year in order to implement the provisions of this sub-subdivision. A local board of education is in compliance with this sub-subdivision if the average salary paid is at least ninety-five percent (95%) of the State-allotted amount for the category at the end of the third payroll period of the 1995-96 fiscal year, and at least ninety-eight percent (98%) of the State-allotted amount for the category at the end of the third payroll period of each subsequent fiscal year. The Department of Public Instruction shall provide technical assistance to local school administrative units regarding the implementation of this sub-subdivision.

c. Salary schedules for other support personnel, including but not limited to maintenance and school food service personnel, shall be adopted by the State Board of Education. The Board shall classify these support positions in terms of uniform pay grades included in the salary schedule of the State Personnel Commission. These schedules shall apply if the local board of education does not adopt a salary schedule of its own for personnel paid from other than State appropriations.

(17) Power to Provide for School Transportation Programs. -- The State Board of Education is authorized and empowered to promulgate such policies, rules, and regulations as it may deem necessary and desirable for the operation of a public school transportation system by each local administrative unit in the State. Such policies, rules, and regulations shall include, but are not limited to, fund allocations and fiscal support to assure the effective and efficient use of funds appropriated by the General Assembly in support of the school transportation system. Nothing herein shall be construed to affect in any way or to lessen in any way the full and complete authority of local boards of education to assign pupils to schools in accordance with *G.S. 115C-366*.

(18) Duty to Develop and Implement a Uniform Education Reporting System, Which Shall Include Standards and Procedures for Collecting Fiscal and Personnel Information. --

a. The State Board of Education shall adopt standards and procedures for local school administrative units to provide timely, accurate, and complete fiscal and personnel information, including payroll information, on all school personnel. All local school administrative units shall comply with these standards and procedures by the beginning of the 1987-88 school year.

b. The State Board of Education shall develop and implement a Uniform Education Reporting System that shall include requirements for collecting, processing, and reporting fiscal, personnel, and student data, by means of electronic transfer of data files from local computers to the State Computer Center through the State Communications Network.

All local school administrative units shall comply with the requirements of the Uniform Education Reporting System by the beginning of the 1989-90 school year.

c. The State Board of Education shall comply with the provisions of *G.S. 116-11(10a)* to plan and implement an exchange of information between the public schools and the institutions of higher education in the State. The State Board of Education shall require local boards of education to provide to the parents of children at a school all information except for confidential information received about that school from institutions of higher education pursuant to *G.S. 116-11(10a)* and to make that information available to the general public.

d. The State Board of Education shall modify the Uniform Education Reporting System to provide clear, accurate, and standard information on the use of funds at the unit and school level. The plan shall provide information that will enable the General Assembly to determine State, local, and federal expenditures for personnel at the unit and school level. The plan also shall allow the tracking of expenditures for textbooks, educational supplies and equipment, capital outlay, at-risk students, and other purposes. The revised Uniform Education Reporting System shall be implemented beginning with the 1999-2000 school year.

(19) Duty to Identify Required Reports and to Eliminate Unnecessary Reports and Paperwork. -- Prior to the beginning of each school year, the State Board of Education shall identify all reports that are required at the State level for the school year.

The State Board of Education shall adopt policies to ensure that local school administrative units are not required by the State Board of Education, the State Superintendent, or the Department of Public Instruction staff to (i) provide information that is already available on the student information management system or housed within the Department of Public Instruction; (ii) provide the same written information more than once during a school year unless the information has changed during the ensuing period; or (iii) complete forms, for children with disabilities, that are not necessary to ensure compliance with the federal Individuals with Disabilities Education Act (IDEA). Notwithstanding the foregoing, the State Board may require information available on its student information management system or require the same information twice if the State Board can demonstrate a compelling need and can demonstrate there is not a more expeditious manner of getting the information.

The State Board shall permit schools and local school administrative units to submit all reports to the Department of Public Instruction electronically.

The State Board of Education, in collaboration with the education roundtables within the Department of Public Instruction, shall consolidate all plans that affect the school community, including school improvement plans. The consolidated plan shall be posted on each school's Web site for easy access by the public and by school personnel.

The State Board shall report to the Joint Legislative Education Oversight Committee by November 15 of each year on the reports it has consolidated or eliminated for the upcoming school year.

(19a) Duty to Consolidate Applications for State Funding. -- The State Board of Education shall adopt policies to streamline the process for local school administrative units applying for State funding. The policies shall provide for a consolidation of all such applications.

(20) Duty to Report Appointment of Caretaker Administrators and Boards. -- Pursuant to *G.S. 120-30.9G* the State Board of Education shall submit to the Attorney General of the United States within 30 days any rules, policies, procedures, or actions taken pursuant to *G.S. 115C-64.4* which could result in the appointment of a caretaker administrator or board to perform any of the powers and duties of a local board of education where that school administrative unit is covered by the Voting Rights Act of 1965.

(21) Duty to Monitor Acts of School Violence. -- The State Board of Education shall monitor and compile an annual report on acts of violence in the public schools. The State Board shall adopt standard definitions for acts of school violence and shall require local boards of education to report them to the State Board in a standard format adopted by the State Board. The State Board shall submit its report on acts of violence in the public schools to the Joint Legislative Education Oversight Committee by March 15 of each year.

(22) Duty to Monitor the Decisions of Teachers to Leave the Teaching Profession. -- The State Board of Education shall monitor and compile an annual report on the decisions of teachers to leave the teaching profession. The State Board shall adopt standard procedures for each local board of education to use in requesting the information from

teachers who are not continuing to work as teachers in the local school administrative unit and shall require each local board of education to report the information to the State Board in a standard format adopted by the State Board.

(23) Power to Adopt Eligibility Rules for Interscholastic Athletic Competition. -- The State Board of Education shall adopt rules governing interscholastic athletic activities conducted by local boards of education, including eligibility for student participation. With regard to middle schools and high schools, the rules shall provide for the following:

a. All coaches, school nurses, athletic directors, first responders, volunteers, students who participate in interscholastic athletic activities, and the parents of those students shall receive, on an annual basis, a concussion and head injury information sheet. School employees, first responders, volunteers, and students must sign the sheet and return it to the coach before they can participate in interscholastic athletic activities, including tryouts, practices, or competition. Parents must sign the sheet and return it to the coach before their children can participate in any such interscholastic athletic activities. The signed sheets shall be maintained in accordance with sub-subdivision d. of this subdivision.

For the purpose of this subdivision, a concussion is a traumatic brain injury caused by a direct or indirect impact to the head that results in disruption of normal brain function, which may or may not result in loss of consciousness.

b. If a student participating in an interscholastic athletic activity exhibits signs or symptoms consistent with concussion, the student shall be removed from the activity at that time and shall not be allowed to return to play or practice that day. The student shall not return to play or practice on a subsequent day until the student is evaluated by and receives written clearance for such participation from (i) a physician licensed under Article 1 of Chapter 90 of the General Statutes with training in concussion management, (ii) a neuropsychologist licensed under Article 18A of Chapter 90 of the General Statutes with training in concussion management and working in consultation with a physician licensed under Article 1 of Chapter 90 of the General Statutes, (iii) an athletic trainer licensed under Article 34 of Chapter 90 of the General Statutes, (iv) a physician assistant, consistent with the limitations of *G.S. 90-18.1*, or (v) a nurse practitioner, consistent with the limitations of *G.S. 90-18.2*.

c. Each school shall develop a venue specific emergency action plan to deal with serious injuries and acute medical conditions in which the condition of the patient may deteriorate rapidly. The plan shall include a delineation of roles, methods of communication, available emergency equipment, and access to and plan for emergency transport. This plan must be (i) in writing, (ii) reviewed by an athletic trainer licensed in North Carolina, (iii) approved by the principal of the school, (iv) distributed to all appropriate personnel, (v) posted conspicuously at all venues, and (vi) reviewed and rehearsed annually by all licensed athletic trainers, first responders, coaches, school nurses, athletic directors, and volunteers for interscholastic athletic activities.

d. Each school shall maintain complete and accurate records of its compliance with the requirements of this subdivision pertaining to head injuries.

The State Board of Education may authorize a designated organization to apply and enforce the Board's rules governing participation in interscholastic athletic activities at the high school level.

(24) Duty to Develop Standards for Alternative Learning Programs, Provide Technical Assistance on Implementation of Programs, and Evaluate Programs. -- The State Board of Education shall adopt standards for assigning students to alternative learning programs. These standards shall include (i) a description of the programs and services that are recommended to be provided in alternative learning programs and (ii) a process for ensuring that an assignment is appropriate for the student and that the student's parents are involved in the decision. The State Board also shall adopt policies that define what constitutes an alternative school and an alternative learning program.

The State Board of Education shall also adopt standards to require that local school administrative units shall use (i) the teachers allocated for students assigned to alternative learning programs pursuant to the regular teacher allotment and (ii) the teachers allocated for students assigned to alternative learning programs only to serve the needs of these students.

The State Board of Education shall provide technical support to local school administrative units to assist them in developing and implementing plans and proposals for alternative learning programs.

The State Board shall evaluate the effectiveness of alternative learning programs and, in its discretion, of any other programs funded from the Alternative Schools/At-Risk Student allotment. Local school administrative units shall report to the State Board of Education on how funds in the Alternative Schools/At-Risk Student allotment are spent and shall otherwise cooperate with the State Board of Education in evaluating the alternative learning programs. As part of

its evaluation of the effectiveness of these programs, the State Board shall, through the application of the accountability system developed under *G.S. 115C-105.35*, measure the educational performance and growth of students placed in alternative schools and alternative programs. If appropriate, the Board may modify this system to adapt to the specific characteristics of these schools. Also as part of its evaluation, the State Board shall evaluate its standards adopted under this subdivision and make any necessary changes to those standards based on strategies that have been proven successful in improving student achievement and shall report to the Joint Legislative Education Oversight Committee by April 15, 2006 to determine if any changes are necessary to improve the implementation of successful alternative learning programs and alternative schools.

(25) Duty to Report to Joint Legislative Education Oversight Committee. -- Upon the request of the Joint Legislative Education Oversight Committee, the State Board shall examine and evaluate issues, programs, policies, and fiscal information, and shall make reports to that Committee. Furthermore, beginning October 15, 1997, and annually thereafter, the State Board shall submit reports to that Committee regarding the continued implementation of Chapter 716 of the 1995 Session Laws, 1996 Regular Session. Each report shall include information regarding the composition and activity of assistance teams, schools that received incentive awards, schools identified as low-performing, school improvement plans found to significantly improve student performance, personnel actions taken in low-performing schools, and recommendations for additional legislation to improve student performance and increase local flexibility.

(25a) [Development of Goals and Annual Report on Improvement in Graduation Rate.] Prior to the 2010-2011 school year, the State Board of Education shall:

- a. Develop a growth model establishing annual goals for continuous and substantial improvement in the four-year cohort graduation rate by local school administrative units.
- b. Establish as a short-term goal that local school administrative units meet the annual growth model goals for improvement in the four-year cohort graduation rate beginning with the graduating class of 2011 and continuing annually thereafter.
- c. Establish as long-term minimum goals statewide four-year cohort graduation rates of seventy-four percent (74%) by 2014; eighty percent (80%) by 2016; and ninety percent (90%) by 2018.
- d. Establish as a long-term goal with benchmarks and recommendations to reach a statewide four-year cohort graduation rate of one hundred percent (100%).

The State Board of Education shall report to the Joint Legislative Education Oversight Committee by November 15, 2010, and annually thereafter on the goals, benchmarks, and recommendations described in this section. Such goals, benchmarks, and recommendations shall appropriately differentiate for students with disabilities and other specially identified subcategories within each four-year cohort. The report shall include goals and benchmarks by local school administrative unit, the strategies and recommendations for achieving the goals and benchmarks, any evidence or data supporting the strategies and recommendations, and the identity of the persons employed by the State Board of Education who are responsible for oversight of local school administrative units in achieving the goals and benchmarks.

(25b) [More at Four Reports.] --

- a. The State Board of Education shall submit an annual report no later than March 15 of each year to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Education Oversight Committee, the Senate Appropriations Committee on Education, the House of Representatives Appropriations Subcommittee on Education, the Office of State Budget and Management, and the Fiscal Research Division. The report shall include the following:
 1. The number of children participating in State prekindergarten.
 2. The number of children participating in State prekindergarten who have never been served in other early education programs, such as child care, public or private preschool, Head Start, Early Head Start, or early intervention programs.
 3. The expected State prekindergarten expenditures for the programs and the source of the local contributions.
 4. The results of an annual evaluation of the program.
- b. The Office of Early Learning shall contract with an independent research organization not affiliated with the Department of Health and Human Services, the Department of Public Instruction, or the Office of the Governor to produce an annual report to include longitudinal review of the More at Four program and academic, behavioral, and other

child-specific outcomes. The review shall include a quasi-experimental research design of a representative sample of children who complete the More at Four program every other year and shall report on their sustained progress until the end of grade 6. The review shall also study a representative sample of children who do not enter the More at Four program but who are of the same grade level and demographic as those who complete the program, and their sustained progress shall also be reviewed until the end of grade 6. The review shall be presented to the Joint Legislative Education Oversight Committee by January 31 of every year.

(26) Duty to Monitor and Make Recommendations Regarding Professional Development Programs. -- The State Board of Education, in collaboration with the Board of Governors of The University of North Carolina, shall identify and make recommendations regarding meaningful professional development programs for professional public school employees. The programs shall be aligned with State education goals and directed toward improving student academic achievement. The State Board shall annually evaluate and, after consultation with the Board of Governors, make recommendations regarding professional development programs based upon reports submitted by the Board of Governors under *G.S. 116-11(12a)*.

(27) Reporting Dropout Rates, Corporal Punishment, Suspensions, Expulsions, and Alternative Placements. -- The State Board shall report by March 15 of each year to the Joint Legislative Education Oversight Committee on the numbers of students who have dropped out of school, been subjected to corporal punishment, been suspended, been expelled, been reassigned for disciplinary purposes, or been provided alternative education services. The data shall be reported in a disaggregated manner, reflecting the local school administrative unit, race, gender, grade level, ethnicity, and disability status of each affected student. Such data shall be readily available to the public. The State Board shall not include students that have been expelled from school when calculating the dropout rate. The Board shall maintain a separate record of the number of students who are expelled from school and the reasons for the expulsion.

(27a) Reducing School Dropout Rates. -- The State Board of Education shall develop a statewide plan to improve the State's tracking of dropout data so that accurate and useful comparisons can be made over time. The plan shall include, at a minimum, how dropouts are counted and the methodology for calculating the dropout rate, the ability to track students movements among schools and districts, and the ability to provide information on who drops out and why.

(28) Duty to Develop Rules for Issuance of Driving Eligibility Certificates. -- The State Board of Education shall adopt the following rules to assist schools in their administration of procedures necessary to implement *G.S. 20-11* and *G.S. 20-13.2*:

a. To define what is equivalent to a high school diploma for the purposes of *G.S. 20-11* and *G.S. 20-13.2*. These rules shall apply to all educational programs offered in the State by public schools, charter schools, nonpublic schools, or community colleges.

b. To establish the procedures a person who is or was enrolled in a public school or in a charter school must follow and the requirements that person shall meet to obtain a driving eligibility certificate.

c. To require the person who is required under *G.S. 20-11(n)* to sign the driving eligibility certificate to provide the certificate if he or she determines that one of the following requirements is met:

1. The person seeking the certificate is eligible for the certificate under *G.S. 20-11(n)(1)* and is not subject to *G.S. 20-11(n1)*.

2. The person seeking the certificate is eligible for the certificate under *G.S. 20-11(n)(1)* and *G.S. 20-11(n1)*.

These rules shall apply to public schools and charter schools.

d. To provide for an appeal to an appropriate education authority by a person who is denied a driving eligibility certificate. These rules shall apply to public schools and charter schools.

e. To define exemplary student behavior and to define what constitutes the successful completion of a drug or alcohol treatment counseling program. These rules shall apply to public schools and charter schools.

The State Board also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a public school or in a charter school no longer meets the requirements for a driving eligibility certificate.

The State Board shall develop a form for parents, guardians, or emancipated juveniles, as appropriate, to provide their written, irrevocable consent for a school to disclose to the Division of Motor Vehicles that the student no longer

meets the conditions for a driving eligibility certificate under *G.S. 20-11(n)(1)* or *G.S. 20-11(n1)*, if applicable, in the event that this disclosure is necessary to comply with *G.S. 20-11* or *G.S. 20-13.2*. Other than identifying under which statutory subsection the student is no longer eligible, no other details or information concerning the student's school record shall be released pursuant to this consent. This form shall be used for students enrolled in public schools or charter schools.

The State Board of Education may use funds appropriated for drivers education to cover the costs of driving eligibility certificates.

(29) To Issue Special High School Diplomas to Veterans of World War II, Korea, and Vietnam. -- The State Board of Education shall issue special high school diplomas to all honorably discharged veterans of World War II, the Korean Conflict, and the Vietnam era who request special diplomas and have not previously received high school diplomas.

(30) Duty to Adopt Model Guidelines and Policies for the Establishment of Local Task Forces on Closing the Academic Achievement Gap. -- The State Board shall adopt a Model for local school administrative units to use as a guideline to establish local task forces on closing the academic achievement gap at the discretion of the local board. The purpose of each task force is to advise and work with its local board of education and administration on closing the gap in academic achievement and on developing a collaborative plan for achieving that goal. The State Board shall consider the recommendations of the Commission on Improving the Academic Achievement of Minority and At-Risk Students to the 2001 Session of the General Assembly in establishing its guidelines.

(30a) Duty to Assist Schools in Meeting Adequate Yearly Progress. -- The State Board of Education shall:

a. Identify which schools are meeting adequate yearly progress with subgroups as specified in the No Child Left Behind Act of 2001;

b. Study the instructional, administrative, and fiscal practices and policies employed by the schools selected by the State Board of Education that are meeting adequate yearly progress specified in the No Child Left Behind Act of 2001;

c. Create assistance models for each subgroup based on the practices and policies used in schools that are meeting adequate yearly progress. The schools of education at the constituent institutions of The University of North Carolina, in collaboration with the University of North Carolina Center for School Leadership Development, shall assist the State Board of Education in developing these models; and

d. Offer technical assistance based on these assistance models to local school administrative units not meeting adequate yearly progress, giving priority to those local school administrative units with high concentrations of schools that are not meeting adequate yearly progress. The State Board of Education shall determine the number of local school administrative units that can be served effectively in the first two years. This technical assistance shall include peer assistance and professional development by teachers, support personnel, and administrators in schools with subgroups that are meeting adequate yearly progress.

(31) To Adopt Guidelines for Individual Diabetes Care Plans. -- The State Board shall adopt guidelines for the development and implementation of individual diabetes care plans. The State Board shall consult with the North Carolina Diabetes Advisory Council established by the Department of Health and Human Services in the development of these guidelines. The State Board also shall consult with local school administrative unit employees who have been designated as responsible for coordinating their individual unit's efforts to comply with federal regulations adopted under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794. In its development of these guidelines, the State Board shall refer to the guidelines recommended by the American Diabetes Association for the management of children with diabetes in the school and day care setting and shall consider recent resolutions by the United States Department of Education's Office of Civil Rights of investigations into complaints alleging discrimination against students with diabetes.

The guidelines adopted by the State Board shall include:

a. Procedures for the development of an individual diabetes care plan at the written request of the student's parent or guardian, and involving the parent or guardian, the student's health care provider, the student's classroom teacher, the student if appropriate, the school nurse if available, and other appropriate school personnel.

b. Procedures for regular review of an individual care plan.

c. Information to be included in a diabetes care plan, including the responsibilities and appropriate staff development for teachers and other school personnel, an emergency care plan, the identification of allowable actions to be taken, the extent to which the student is able to participate in the student's diabetes care and management, and other information necessary for teachers and other school personnel in order to offer appropriate assistance and support to the student. The State Board shall ensure that the information and allowable actions included in a diabetes care plan as required in this subdivision meet or exceed the American Diabetes Association's recommendations for the management of children with diabetes in the school and day care setting.

d. Information and staff development to be made available to teachers and other school personnel in order to appropriately support and assist students with diabetes.

The State Board shall ensure that these guidelines are updated as necessary and shall ensure that the guidelines and any subsequent changes are published and disseminated to local school administrative units.

(32) Duty to Encourage Early Entry of Motivated Students into Four-Year College Programs. -- The State Board of Education, in cooperation with the Education Cabinet, shall work with local school administrative units, the constituent institutions of The University of North Carolina, local community colleges, and private colleges and universities to (i) encourage early entry of motivated students into four-year college programs and to (ii) ensure that there are opportunities at four-year institutions for academically talented high school students to get an early start on college coursework, either at nearby institutions or through distance learning.

The State Board of Education shall also adopt policies directing school guidance counselors to make ninth grade students aware of the potential to complete the high school courses required for college entry in a three-year period.

(33) Duty to Develop Recommended Programs for Use in Schools on Memorial Day. -- The State Board of Education shall develop recommended instructional programs that enable students to gain a better understanding of the meaning and importance of Memorial Day. All schools, especially schools that hold school on Memorial Day, shall instruct students on the significance of Memorial Day.

(34) Duty to Protect the Health of School-Age Children From Toxicants at School. -- The State Board shall address public health and environmental issues in the classroom and on school grounds by doing all of the following:

a. Develop guidelines for sealing existing arsenic-treated wood in playground equipment or establish a time line for removing existing arsenic-treated wood on playgrounds and testing the soil on school grounds for contamination caused by the leaching of arsenic-treated wood in other areas where children may be at particularly high risk of exposure.

b. Establish guidelines to reduce students' exposure to diesel emissions that can occur as a result of unnecessary school bus idling, nose-to-tail parking, and inefficient route assignments.

c. Study methods for mold and mildew prevention and mitigation and incorporate recommendations into the public school facilities guidelines as needed.

d. Establish guidelines for Integrated Pest Management consistent with the policy of The North Carolina School Boards Association, Inc., as published in 2004. These guidelines may be updated as needed to reflect changes in technology.

e. Establish guidelines for notification of students' parents, guardians, or custodians as well as school staff of pesticide use on school grounds.

(35) To Encourage Local Boards of Education to Enter into Agreements Regarding the Joint Use of Facilities for Physical Activity. -- The State Board of Education shall encourage local boards of education to enter into agreements with local governments and other entities regarding the joint use of their facilities for physical activity. The agreements should delineate opportunities, guidelines, and the roles and responsibilities of the parties, including responsibilities for maintenance and liability.

(36) Duty to Charge Tuition for the Governor's School of North Carolina. -- The State Board of Education may implement a tuition charge for students attending the Governor's School of North Carolina to cover the costs of the School.

(37) To Adopt Guidelines for Fitness Testing. -- The State Board of Education shall adopt guidelines for the development and implementation of evidence-based fitness testing for students statewide in grades kindergarten through eight.

(38) Duty to Report Certain Information Regarding Students With Immediate Family Members in the Military. -- The State Board of Education shall submit an annual report no later than March 15 of each year to the Joint Legislative Education Oversight Committee and to the House of Representatives and Senate Appropriations Subcommittees on Education containing the information relating to the needs of students with immediate family members in the military submitted to it pursuant to *G.S. 115C-47(60)*.

(39) Power to Accredite Schools. -- Upon the request of a local board of education, the State Board of Education shall evaluate schools in local school administrative units to determine whether the education provided by those schools meets acceptable levels of quality. The State Board shall adopt rigorous academic standards for accreditation after consideration of (i) the standards of regional and national accrediting agencies, (ii) the Common Core Standards adopted by the National Governors Association Center for Best Practices and the Council of Chief State School Officers, and (iii) other information it deems appropriate.

The local school administrative unit shall compensate the State Board for the actual costs of the accreditation process.

HISTORY: 1955, c. 1372, art. 2, s. 2; art. 17, s. 6; art. 18, s. 2; 1957, c. 541, s. 11; 1959, c. 1294; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 584, s. 20.1; c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 236; c. 476, s. 138; c. 675; 1975, c. 686, s. 1; c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935; c. 986; 1981, c. 423, s. 1; 1983, c. 630, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 16; 1985, c. 479, s. 55(c)(3); c. 757, s. 145(a); 1985 (Reg. Sess., 1986), c. 975, s. 24; 1987, c. 414, s. 1; 1987 (Reg. Sess., 1988), c. 1025, ss. 1, 3; 1989, c. 585, s. 1; c. 752, s. 65(c); c. 778, s. 6; 1991, c. 529, s. 3; c. 689, s. 196(b); 1991 (Reg. Sess., 1992), c. 880, s. 3; c. 900, s. 75.1(e); 1993, c. 321, ss. 125, 133(a), 139(b); 1993 (Reg. Sess., 1994), c. 769, ss. 19(a), 19.9; 1995, c. 60, s. 1; c. 324, s. 17.15(a); c. 450, s. 4; c. 509, s. 59; 1995 (Reg. Sess., 1996), c. 716, s. 1; 1996, 2nd Ex. Sess., c. 18, ss. 18.4, 18.28(a); 1997-18, s. 15(a), (c)-(e); 1997-221, s. 12(a); 1997-239, s. 1; 1997-443, s. 8.27(a), (e); 1997-443, s. 8.29(o), (u); 1997-507, s. 3; 1998-153, s. 16(b); 1998-212, ss. 9.16(a), 9.23; 1999-237, s. 8.25(d); 1999-243, s. 5; 1999-397, s. 3; 2001-86, s. 1; 2001-151, s. 1; 2001-424, ss. 28.30(e), (f), 31.4(a); 2002-103, s. 1; 2002-126, s. 7.15; 2002-159, s. 63; 2002-178, s. 1(a); 2003-251, s. 1; 2003-419, s. 1; 2005-155, s. 1; 2005-276, ss. 7.18, 9.34(a); 2005-446, s. 1; 2005-458, ss. 1, 2; 2006-75, s. 1; 2006-143, s. 1; 2006-203, s. 30; 2006-260, s. 1; 2009-305, s. 4; 2009-334, s. 1; 2009-451, s. 7.39(a); 2010-31, s. 7.5(c), (g); 2010-111, s. 1; 2010-112, s. 4(a); 2010-161, s. 1; 2011-145, ss. 7.9, 7.13(a); 2011-147, s. 3; 2011-185, s. 9(b); 2011-282, s. 4; 2011-306, s. 3; 2011-379, ss. 2(a), (b), 6(a); 2011-391, s. 14(b).

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2005-276
SENATE BILL 622**

**AN ACT TO MAKE BASE BUDGET APPROPRIATIONS FOR CURRENT
OPERATIONS OF STATE DEPARTMENTS, INSTITUTIONS, AND
AGENCIES, AND FOR OTHER PURPOSES.**

The General Assembly of North Carolina enacts:

PART I. INTRODUCTION AND TITLE OF ACT

INTRODUCTION

SECTION 1.1. The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget in accordance with the Executive Budget Act. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes and the savings shall revert to the appropriate fund at the end of each fiscal year, except as otherwise provided by law.

TITLE OF ACT

SECTION 1.2. This act shall be known as the "Current Operations and Capital Improvements Appropriations Act of 2005."

PART II. CURRENT OPERATIONS AND EXPANSION/GENERAL FUND

CURRENT OPERATIONS AND EXPANSION/GENERAL FUND

SECTION 2.1. Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated, are made for the biennium ending June 30, 2007, according to the following schedule:

Current Operations – General Fund	2005-2006	2006-2007
EDUCATION		
Community Colleges System Office	\$ 787,685,943	\$ 767,295,886
Department of Public Instruction	6,607,998,945	6,579,807,097

findings and recommendations to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by April 30, 2006.

MORE AT FOUR

SECTION 10.67.(a) Of the funds appropriated in this act to the Department of Health and Human Services, the sum of sixty-six million six hundred forty-six thousand six hundred fifty-three dollars (\$66,646,653) for the 2005-2006 fiscal year and the sum of sixty-six million six hundred forty-six thousand six hundred fifty-three dollars (\$66,646,653) for the 2006-2007 fiscal year shall be used to implement "More at Four", a voluntary prekindergarten program for at-risk four-year-olds.

SECTION 10.67.(b) The Department of Health and Human Services and the Department of Public Instruction, with guidance from the Task Force, shall continue the implementation of the "More at Four" prekindergarten program for at-risk four-year-olds who are at risk of failure in kindergarten. The program is available statewide to all counties that choose to participate, including underserved areas. The goal of the program is to provide quality prekindergarten services to a greater number of at-risk children in order to enhance kindergarten readiness for these children. The program shall be consistent with standards and assessments established jointly by the Department of Health and Human Services and the Department of Public Instruction. The program shall include:

- (1) A process and system for identifying children at risk of academic failure.
- (2) A process and system for identifying children who are not being served first priority in formal early education programs, such as child care, public or private preschools, Head Start, Early Head Start, early intervention programs, or other such programs, who demonstrate educational needs, and who are eligible to enter kindergarten the next school year, as well as children who are underserved.
- (3) A curriculum or several curricula that are recommended by the Task Force. The Task Force will identify and approve appropriate research-based curricula. These curricula shall: (i) focus primarily on oral language and emergent literacy; (ii) engage children through key experiences and provide background knowledge requisite for formal learning and successful reading in the early elementary years; (iii) involve active learning; (iv) promote measurable kindergarten language-readiness skills that focus on emergent literacy and mathematical skills; and (v) develop skills that will prepare children emotionally and socially for kindergarten.
- (4) An emphasis on ongoing family involvement with the prekindergarten program.
- (5) Evaluation of child progress through preassessment and postassessment of children in the statewide evaluation, as well as ongoing assessment of the children by teachers.

- (6) Guidelines for a system to reimburse local school boards and systems, private child care providers, and other entities willing to establish and provide prekindergarten programs to serve at-risk children.
- (7) A system built upon existing local school boards and systems, private child care providers, and other entities that demonstrate the ability to establish or expand prekindergarten capacity.
- (8) A quality-control system. Participating providers shall comply with standards and guidelines as established by the Department of Health and Human Services, the Department of Public Instruction, and the Task Force. The Department may use the child care rating system to assist in determining program participation.
- (9) Standards for minimum teacher qualifications. A portion of the classroom sites initially funded shall have at least one teacher who is certified or provisionally certified in birth-to-kindergarten education.
- (10) A local contribution. Programs must demonstrate that they are accessing resources other than "More at Four".
- (11) A system of accountability.
- (12) Consideration of the reallocation of existing funds. In order to maximize current funding and resources, the Department of Health and Human Services, the Department of Public Instruction, and the Task Force shall consider the reallocation of existing funds from State and local programs that provide prekindergarten-related care and services.

SECTION 10.67.(c) The Department of Health and Human Services shall plan for expansion of the "More at Four" program within existing resources to include four- and five-star-rated centers and schools serving four-year-olds and develop guidelines for these programs. The Department shall analyze guidelines for use of the "More at Four" funds, State subsidy funds, and Smart Start subsidy funds and devise a complementary plan for administration of funds for all four-year-old classrooms. The four- and five-star-rated centers that choose to become a "More at Four" program shall, at a minimum, receive curricula and access to training and workshops for "More at Four" programs and be considered along with other "More at Four" programs for T.E.A.C.H. funding. The Department shall ensure that no individual receives funding from more than one source for the same purpose or activity during the same funding period. For purposes of this subsection, sources shall include T.E.A.C.H., W.A.G.E.\$., and T.E.A.C.H. Health Insurance programs for individual recipients.

The "More at Four" program shall review the number of slots filled by counties on a monthly basis and shift the unfilled slots to counties with waiting lists. The shifting of slots shall occur through December 30, 2005, at which time any remaining funds for slots unfilled shall be used to meet the needs of the waiting list for subsidized child care.

SECTION 10.67.(d) The Department of Health and Human Services, the Department of Public Instruction, and the Task Force shall submit a report by February 1, 2006, to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Education Oversight Committee, the Senate Appropriations Committee on

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2007-323
HOUSE BILL 1473**

**AN ACT TO MAKE BASE BUDGET APPROPRIATIONS FOR CURRENT
OPERATIONS OF STATE DEPARTMENTS, INSTITUTIONS, AND
AGENCIES, AND FOR OTHER PURPOSES.**

The General Assembly of North Carolina enacts:

PART I. INTRODUCTION AND TITLE OF ACT

INTRODUCTION

SECTION 1.1. The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes and, except as allowed by the State Budget Act, or this act, the savings shall revert to the appropriate fund at the end of each fiscal year.

TITLE OF ACT

SECTION 1.2. This act shall be known as the "Current Operations and Capital Improvements Appropriations Act of 2007."

PART II. CURRENT OPERATIONS AND EXPANSION/GENERAL FUND

CURRENT OPERATIONS AND EXPANSION/GENERAL FUND

SECTION 2.1. Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated, are made for the biennium ending June 30, 2009, according to the following schedule:

Current Operations – General Fund	2007-2008	2008-2009
EDUCATION		
Community Colleges System Office	\$ 938,106,160	\$ 899,643,003
Department of Public Instruction	7,714,429,569	7,708,315,285

student achievement, retention, and employability; and (ii) recommendations for improvement of the program.

NC WISE POSITIONS

SECTION 7.22. Notwithstanding G.S. 143C-6-4, the State Board of Education may, subject to the approval of the Office of State Budget and Management, in consultation with the Office of Information Technology Services, and after consultation with the Joint Legislative Commission on Governmental Operations, use funds appropriated in this act for NC WISE to create a maximum of 10 positions and incur expenditures necessary to maintain and administer the NC WISE system within the Department of Public Instruction.

21ST CENTURY LITERACY COACHES

SECTION 7.23.(a) Funds are appropriated in this act to support the selection and hiring of new literacy coaches for middle schools or other public schools with an eighth grade class. No more than one literacy coach shall be placed in each such school. The State Board of Education, in consultation with the North Carolina Teacher Academy, shall develop a site selection process including formal criteria. The site must receive formal approval by the State Board of Education to receive funds for this purpose. To be selected schools must:

- (1) Contain an eighth grade class, and
- (2) Ensure that literacy coaches will have no administrative responsibilities in the schools in which they are placed.

SECTION 7.23.(b) National Board for Professional Teaching Standards (NBPTS) certified teachers serving in these positions shall be exempt from the requirements in G.S. 115C-296.2(b)(2)d. and shall remain on the NBPTS teacher salary schedule.

MORE AT FOUR PROGRAM AND OFFICE OF SCHOOL READINESS

SECTION 7.24.(a) The Department of Public Instruction shall continue the implementation of the "More at Four" prekindergarten program for at-risk four-year-olds who are at risk of failure in kindergarten. The program is available statewide to all counties that choose to participate, including underserved areas. The goal of the program is to provide quality prekindergarten services to a greater number of at-risk children in order to enhance kindergarten readiness for these children. The program shall be consistent with standards and assessments established jointly by the Department of Health and Human Services and the Department of Public Instruction. The program shall include:

- (1) A process and system for identifying children at risk of academic failure.
- (2) A process and system for identifying children who are not being served in formal early education programs, such as child care, public or private preschools, Head Start, Early Head Start, early intervention programs, or other such programs, who demonstrate educational needs,

and who are eligible to enter kindergarten the next school year, as well as children who are underserved.

- (3) A curriculum or several curricula that are research-based and/or built on sound instructional theory. These curricula shall: (i) focus primarily on oral language and emergent literacy; (ii) engage children through key experiences and provide background knowledge requisite for formal learning and successful reading in the early elementary years; (iii) involve active learning; (iv) promote measurable kindergarten language-readiness skills that focus on emergent literacy and mathematical skills; and (v) develop skills that will prepare children emotionally and socially for kindergarten.
- (4) An emphasis on ongoing family involvement with the prekindergarten program.
- (5) Evaluation of child progress through a statewide evaluation, as well as ongoing assessment of the children by teachers.
- (6) Guidelines for a system to reimburse local school boards and systems, private child care providers, and other entities willing to establish and provide prekindergarten programs to serve at-risk children.
- (7) A system built upon existing local school boards and systems, private child care providers, and other entities that demonstrate the ability to establish or expand prekindergarten capacity.
- (8) A quality-control system. Participating providers shall comply with standards and guidelines as established by the Department of Health and Human Services and the Department of Public Instruction. The Department may use the child care rating system to assist in determining program participation.
- (9) Standards for minimum teacher qualifications. A portion of the classroom sites initially funded shall have at least one teacher who is certified or provisionally certified in birth-to-kindergarten education.
- (10) A local contribution. Programs must demonstrate that they are accessing resources other than "More at Four."
- (11) A system of accountability.
- (12) Consideration of the reallocation of existing funds. In order to maximize current funding and resources, the Department of Health and Human Services and the Department of Public Instruction shall consider the reallocation of existing funds from State and local programs that provide prekindergarten-related care and services.

SECTION 7.24.(b) The Department of Public Instruction shall implement a plan to expand "More at Four" program standards within existing resources to include four- and five-star-rated centers and schools serving four-year-olds and develop guidelines for these programs. The "NC Prekindergarten Program Standards" initiative shall recognize four- and five-star-rated centers that choose to apply and meet equivalent "More at Four" program standards as high quality pre-k classrooms. Classrooms meeting these standards shall have access to training and workshops for

"More at Four" programs. Whenever expansion slots are available, these classrooms shall have first priority to receive them.

The "More at Four" program shall review the number of slots filled by counties on a monthly basis and shift the unfilled slots to counties with waiting lists. The shifting of slots shall occur through January 31 of each year, at which time any remaining funds for slots unfilled shall be used to meet the needs of the waiting list for subsidized child care.

SECTION 7.24.(c) The Department of Public Instruction shall submit a report by February 1, 2008, to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Education Oversight Committee, the Senate Appropriations Committee on Education, the House of Representatives Appropriations Subcommittee on Education, and the Fiscal Research Division. This final report shall include the following:

- (1) The number of children participating in the program.
- (2) The number of children participating in the program who have never been served in other early education programs, such as child care, public or private preschool, Head Start, Early Head Start, or early intervention programs.
- (3) The expected expenditures for the programs and the source of the local match for each grantee.
- (4) The location of program sites and the corresponding number of children participating in the program at each site.
- (5) A comprehensive cost analysis of the program, including the cost per child served by the program.
- (6) The status of the NC Prekindergarten initiatives as outlined in this section.

SECTION 7.24.(d) For the 2007-2008 and the 2008-2009 fiscal years, the "More at Four" program 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 of (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 is ordered to active duty by the proper authority within the last 18 months or 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, shall be eligible for the program.

SECTION 7.24.(e) The "More at Four" program funding shall not supplant any funding for classrooms serving four-year-olds as of the 2005-2006 fiscal year. Support of existing four-year-old classrooms with "More at Four" program funding shall be permitted when current funding is eliminated, reduced, or redirected as required to meet other specified federal or State educational mandates.

SECTION 7.24.(f) If a county is unable to increase "More at Four" slots because of a documented lack of available resources necessary to provide the required local contribution for the additional slots allocated to the county for the 2007-2008 fiscal year, the contract agency for that county may appeal to the Office of School Readiness for an exception to the required local amount for those additional slots. The Office of School Readiness may grant an exception and allot funds to pay up to ninety percent (90%) of the full cost of the additional slots for that county if it finds that (i) there is in fact a documented lack of available resources in the county and (ii) granting the exception will not reduce access statewide to "More at Four" slots.

ADMINISTRATIVE FUNDING FOR TEACHING FELLOWS PROGRAM

SECTION 7.25.(a) G.S. 115C-363.23A(f) reads as rewritten:

"(f) All funds appropriated to or otherwise received by the Teaching Fellows Program for scholarships, all funds received as repayment of scholarship loans, and all interest earned on these funds, shall be placed in a revolving fund. This revolving fund shall be used for scholarship loans granted under the Teaching Fellows Program. With the prior approval of the General Assembly in the Current Operations Appropriations Act, the revolving fund may also be used for campus and summer program support, and costs related to disbursement of awards and collection of loan repayments.

~~With the prior approval of the General Assembly in the Current Operations Appropriations Act, the revolving fund may also be used by the~~ The Public School Forum, as administrator for the Teaching Fellows Program, for Program, may use up to eight hundred ten thousand dollars (\$810,000) annually from the fund balance for costs associated with administration of the Teaching Fellows Program."

SECTION 7.25.(b) The funding provided for in this section shall be used to meet current administrative expenses of the Program and continue minority recruitment initiatives.

SECTION 7.25.(c) The Teaching Fellows Program shall report to the Joint Legislative Education Oversight Committee by March 15, 2008, on:

- (1) Actual expenditures for the 2006-2007 fiscal year and budgeted expenditures for the 2007-2008 fiscal year for administration of the Program and
- (2) Initiatives to recruit minorities to the Program.

SECTION 7.25.(d) The General Assembly urges the North Carolina Teaching Fellows Commission to use funds available in the revolving fund to establish additional teaching fellows scholarships.

NO COST SUMMER SCHOOL OR OTHER REMEDIATION ACTIVITIES

SECTION 7.26.(a) G.S. 115C-105.41 prohibits charging tuition or fees to Students at Risk for Academic Failure. Effective July 1, 2007, local school administrative units shall formally communicate to at-risk students and their parents or guardians that there will be no charge for participation in intervention activities/practices offered by the local school administrative units to at-risk students, or for transportation necessary for participation in the intervention activities.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2008-107
HOUSE BILL 2436**

AN ACT TO MODIFY THE CURRENT OPERATIONS AND CAPITAL APPROPRIATIONS ACT OF 2007, TO AUTHORIZE INDEBTEDNESS FOR CAPITAL PROJECTS, AND TO MAKE VARIOUS TAX LAW AND FEE CHANGES.

The General Assembly of North Carolina enacts:

PART I. INTRODUCTION AND TITLE OF ACT

INTRODUCTION

SECTION 1.1. The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes and, except as allowed by the State Budget Act, or this act, the savings shall revert to the appropriate fund at the end of each fiscal year as provided in G.S. 143C-1-2(b).

TITLE

SECTION 1.2. This act shall be known as "The Current Operations and Capital Improvements Appropriations Act of 2008."

PART II. CURRENT OPERATIONS AND EXPANSION/GENERAL FUND

CURRENT OPERATIONS AND EXPANSION/GENERAL FUND

SECTION 2.1. Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated, are adjusted for the fiscal year ending June 30, 2009, according to the schedule that follows. Amounts set out in brackets are reductions from General Fund appropriations for the 2008-2009 fiscal year.

Current Operations – General Fund

FY 2008-2009

EDUCATION

Community Colleges System Office	\$ 33,639,698
Department of Public Instruction	93,731,253

SECTION 7.15. Local school administrative units may use funds appropriated for Learn and Earn Online for college-level courses taught by university instructors at public schools. Instruction for these courses shall be partially delivered online. Payments related to the textbooks and the prorated cost of the instructor shall be paid to the university supplying the instruction.

The State Board of Education shall adopt policies to establish guidelines and reimbursement procedures.

COMPREHENSIVE SUPPORT FOR SCHOOL SYSTEMS AND SCHOOLS

SECTION 7.16. If a local school administrative unit is designated by the State Board of Education as a targeted school district for comprehensive support, the State Board may:

- (1) Authorize additional flexibility with regard to State allotments to allow the State Board's assigned support team and the local school administrative unit's leadership to redirect State funding to address the identified reform requirements. This additional flexibility shall not increase overall State funding available to the unit.
- (2) Use funds already appropriated to the State Board of Education to allocate time-limited funds to implement strategies identified by the State Board's assigned support team and the school unit's leadership. The State Board shall adopt policies regarding (i) the strategies for which these time-limited funds may be used and (ii) the maximum time a unit may receive these funds. This funding shall not be allotted for more than one fiscal year. This funding is intended to allow the implementation of necessary reform initiatives while the unit obtains local funding or identifies other State or federal funding to cover the initiatives.

MORE AT FOUR PROGRAM

SECTION 7.17.(a) Section 7.24(f) of S.L. 2007-323 reads as rewritten:

"SECTION 7.24.(f) If a county is unable to increase "More at Four" slots because of a documented lack of available resources necessary to provide the required local contribution for the additional slots allocated to the county for the 2007-2008 fiscal year, ~~year, year or the 2008-2009 fiscal year,~~ the contract agency for that county may appeal to the Office of School Readiness for an exception to the required local amount for those additional slots. The Office of School Readiness may grant an exception and allot funds to pay up to ninety percent (90%) of the full cost of the additional slots for that county if it finds that (i) there is in fact a documented lack of available resources in the county and (ii) granting the exception will not reduce access statewide to "More at Four" slots."

SECTION 7.17.(b) The Office of School Readiness shall develop a plan to tier the local More at Four slots that are in child care facilities, based on child care subsidy market rates. The Office of School Readiness shall report the plan to the House of Representatives Appropriations Subcommittee on Education, the Senate

Appropriations Committee on Education, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Education Oversight Committee, and the Fiscal Research Division by January 1, 2009.

SECTION 7.17.(c) Section 7.24.(a)(11) of S.L. 2007-323 reads as rewritten:

"SECTION 7.24.(a) The Department of Public Instruction shall continue the implementation of the "More at Four" prekindergarten program for at-risk four-year-olds who are at risk of failure in kindergarten. The program is available statewide to all counties that choose to participate, including underserved areas. The goal of the program is to provide quality prekindergarten services to a greater number of at-risk children in order to enhance kindergarten readiness for these children. The program shall be consistent with standards and assessments established jointly by the Department of Health and Human Services and the Department of Public Instruction. The program shall include:

- ...
- (11) A system of ~~accountability~~ accountability to include a yearly review. The Department shall contract with an independent research organization to produce an annual report to include longitudinal review of the program and academic, behavioral, and other child-specific outcomes. The review shall include a quasi experimental research design of a representative sample of children who complete the More at Four program every year and shall report on their sustained progress until the end of grade 9. The review shall also study a representative sample of children who do not enter the More at Four program but who are of the same grade level and demographic as those who complete the program and their sustained progress shall also be reviewed until the end of grade 9. The review shall be presented to the Joint Legislative Oversight Committee on Education by January 31 of every year."

PLANT OPERATION FUNDING

SECTION 7.18.(a) G.S. 115C-546.2(a) reads as rewritten:

"(a) ~~Monies~~ Of the monies credited to the Fund by the Secretary of Revenue pursuant to G.S. 115C-546.1(b), the State Board of Education may allocate up to one million dollars (\$1,000,000) each year to the Department of Public Instruction. These funds shall be used by the Plant Operation Section of the School Support Division to assist each local school administrative unit with effective energy and environmental management, effective water management, hazardous material management, clean air quality, and engineering support for safe, effective environmental practices. The remainder of the monies in the Fund shall be allocated to the counties on a per average daily membership basis according to the average daily membership for the budget year as determined and certified by the State Board of Education. Interest earned on funds allocated to each county shall be allocated to that county."

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

SESSION LAW 2008-181
HOUSE BILL 2431

AN ACT TO PROVIDE FOR STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, STATUTORY OVERSIGHT COMMITTEES AND COMMISSIONS, AND OTHER AGENCIES, COMMITTEES, AND COMMISSIONS.

The General Assembly of North Carolina enacts:

PART I. TITLE

SECTION 1. This act shall be known as "The Studies Act of 2008."

PART II. LEGISLATIVE RESEARCH COMMISSION

SECTION 2.1. The Legislative Research Commission may study the topics listed below. When applicable, the bill or resolution that originally proposed the issue or study and the name of the sponsor are listed. Unless otherwise specified, the listed bill or resolution refers to the measure introduced in the 2007 General Assembly. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The following groupings are for reference only:

- (1) Criminal Law Issues:
 - a. Prohibit Execution/Severe Mental Disability (H.B. 553 – Insko, Harrison)
 - b. Felony Murder Rule (H.B. 787 – Earle, Harrison)
 - c. Report Denial of Some Pistol Permits (H.B. 1287 – Sutton, Jeffus, Harrison)
- (2) Other:
 - a. Energy-Efficient State Motor Vehicle Fleet (H.B. 2720 – Thomas, Harrison, Martin)
 - b. Permit/Motor Coach Companies (S.B. 285 – Swindell)
 - c. State Agency Related 501(c)(3) Corporations (McComas)
 - d. Educational Assistance For Minimum Wage Workers (H.B. 1550 – Blackwood, Wilkins, Johnson, Pierce)
 - e. Increase Small Brewery Limits (H.B. 1630 – Harrison, Fisher, Jones, Crawford)
 - f. Television Access to State Government (H.B. 2647 – Goodwin)

SECTION 48.5. The Commission shall make a final report, including any proposed legislation, to the 2009 General Assembly upon its convening. The Commission shall terminate upon filing its final report or upon the convening of the 2009 General Assembly, whichever occurs first.

PART XLIX. MORE AT FOUR YEARLY REVIEW

SECTION 49.1. Section 7.24(a)(11) of S.L. 2007-323, as amended by Section 7.17(c) of S.L. 2008-107, reads as rewritten:

"**SECTION 7.24.(a)** The Department of Public Instruction shall continue the implementation of the "More at Four" prekindergarten program for at-risk four-year-olds who are at risk of failure in kindergarten. The program is available statewide to all counties that choose to participate, including underserved areas. The goal of the program is to provide quality prekindergarten services to a greater number of at-risk children in order to enhance kindergarten readiness for these children. The program shall be consistent with standards and assessments established jointly by the Department of Health and Human Services and the Department of Public Instruction. The program shall include:

- ...
- (11) A system of accountability to include a yearly review. The Department shall contract with an independent research organization to produce an annual report to include longitudinal review of the program and academic, behavioral, and other child-specific outcomes. The review shall also include a test of the feasibility of conducting a quasi experimental research design of-with a representative sample or samples of children who complete the More at Four program every year and children of comparable demographics and grade levels that do not participate in a More at Four program. shall report on their sustained progress until the end of grade 9. The review shall also study a representative sample of children who do not enter the More at Four program but who are of the same grade level and demographic as those who complete the program and their sustained progress shall also be reviewed until the end of grade 9. The review shall be presented to the Joint Legislative Oversight Committee on Education by January 31 of every year."

PART L. OUT-OF-STATE TRAVEL

SECTION 50.1. For legislative studies authorized by this act, out-of-state travel must be authorized by the President Pro Tempore of the Senate or the Speaker of the House of Representatives, as appropriate.

PART LI. BILL AND RESOLUTION REFERENCES

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SESSION LAW 2010-31
SENATE BILL 897

AN ACT TO MODIFY THE CURRENT OPERATIONS AND CAPITAL IMPROVEMENTS
APPROPRIATIONS ACT OF 2009 AND FOR OTHER PURPOSES.

The General Assembly of North Carolina enacts:

PART I. INTRODUCTION AND TITLE OF ACT

TITLE OF ACT

SECTION 1.1. This act shall be known as "The Current Operations and Capital Improvements Appropriations Act of 2010."

INTRODUCTION

SECTION 1.2. The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes and, except as allowed by the State Budget Act, or this act, the savings shall revert to the appropriate fund at the end of each fiscal year as provided in G.S. 143C-1-2(b).

PART II. CURRENT OPERATIONS AND EXPANSION GENERAL FUND

CURRENT OPERATIONS AND EXPANSION/GENERAL FUND

SECTION 2.1. Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated, are adjusted for the fiscal year ending June 30, 2011, according to the schedule that follows. Amounts set out in brackets are reductions from General Fund appropriations for the 2010-2011 fiscal year.

Current Operations – General Fund	2010-2011
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EDUCATION

Community Colleges System Office	\$ 42,668,183
Department of Public Instruction	(275,244,311)
University of North Carolina – Board of Governors	
Appalachian State University	1,998,580
East Carolina University	
Academic Affairs	5,851,230
Elizabeth City State University	750,308



- (1) Course quality standards are established and met.
- (2) All e-learning opportunities offered by State-funded entities to public school students are consolidated under the North Carolina Virtual Public School program, eliminating course duplication.
- (3) All courses offered through NCVPS are aligned to the North Carolina Standard Course of Study.

SECTION 7.4.(f) Funds for the administration of NCVPS shall be capped at a maximum of fifteen percent (15%) per year of the funds transferred to NCVPS.

MORE AT FOUR PROGRAM

SECTION 7.5.(a) The Department of Public Instruction shall continue the implementation of the More at Four prekindergarten program for four-year-olds who are at risk for school failure in all counties. The State prekindergarten program shall serve children who reach the age of four on or before August 31 of that school year and who meet eligibility criteria that indicate a child's risk for school failure. Prekindergarten classrooms shall be operated in public schools, Head Start programs, and licensed child care facilities that choose to participate under procedures defined by the Office of Early Learning within the Department of Public Instruction. All such classrooms shall be subject to the supervision of the Office of Early Learning and shall be operated in accordance with standards adopted by the State Board of Education.

SECTION 7.5.(b) The Office of Early Learning shall specify program standards and requirements addressing:

- (1) Early learning standards and curricula;
- (2) Teacher education and specialized training;
- (3) Teacher in-service training and professional development;
- (4) Maximum class size;
- (5) Staff-child ratio;
- (6) Screenings, referrals, and support services;
- (7) Meals; and
- (8) Monitoring of sites to demonstrate adherence to State programs standards.

SECTION 7.5.(c) The State Board of Education shall submit an annual report no later than March 15 of each year to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Education Oversight Committee, the Senate Appropriations Committee on Education, the House of Representatives Appropriations Subcommittee on Education, the Office of State Budget and Management, and the Fiscal Research Division. The report shall include the following:

- (1) The number of children participating in State prekindergarten.
- (2) The number of children participating in State prekindergarten who have never been served in other early education programs, such as child care, public or private preschool, Head Start, Early Head Start, or early intervention programs.
- (3) The expected State prekindergarten expenditures for the programs and the source of the local contributions.
- (4) The results of an annual evaluation of the program.

SECTION 7.5.(d) The Office of Early Learning 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 of (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 is ordered to active duty by the proper authority within the

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 I. INTRODUCTION AND TITLE OF ACT

TITLE

SECTION 1.1. This act shall be known as the "Current Operations and Capital Improvements Appropriations Act of 2011."

INTRODUCTION

SECTION 1.2. The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes and, except as allowed by the State Budget Act, or this act, the savings shall revert to the appropriate fund at the end of each fiscal year.

PART II. CURRENT OPERATIONS AND EXPANSION GENERAL FUND

CURRENT OPERATIONS AND EXPANSION/GENERAL FUND

SECTION 2.1. Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated, are made for the fiscal biennium ending June 30, 2013, according to the following schedule:

Current Operations – General Fund	2011-2012	2012-2013
EDUCATION		
Community Colleges System Office	\$ 985,000,000	\$ 985,000,000
Department of Public Instruction	7,464,492,057	7,450,000,000
University of North Carolina – Board of Governors		
Appalachian State University	145,563,319	145,680,676
East Carolina University		
Academic Affairs	247,397,807	247,397,807
Health Affairs	65,196,439	65,196,439
Elizabeth City State University	38,226,042	38,398,361
Fayetteville State University	56,925,951	56,925,951
NC A&T State University	105,355,805	105,794,754
NC Central University	94,342,683	94,342,683
NC State University		
Academic Affairs	434,563,241	434,677,423
Agricultural Research	59,239,461	59,239,461
Agricultural Extension	43,539,609	43,539,609



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

CONSOLIDATE MORE AT FOUR PROGRAM INTO DIVISION OF CHILD DEVELOPMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MENTAL HEALTH CHANGES

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

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

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

IN THE GENERAL COURT OF JUSTICE

NORTH CAROLINA

WAKE COUNTY

SUPERIOR COURT DIVISION
95 CVS 1158

HOKE COUNTY BOARD OF EDUCATION,
et al.,

PLAINTIFFS,

and

ASHEVILLE CITY BOARD OF EDUCATION,
et al.,

PLAINTIFF-INTERVENORS

v.

STATE OF NORTH CAROLINA, et al.,

DEFENDANTS.

TRANSCRIPT

The above-captioned case coming on for hearing at on June 22 and 23, 2011, in the Superior Court of Wake County, Raleigh, North Carolina, before the Honorable Howard E. Manning, Jr., Judge Presiding, the following proceedings were had, to wit:

DATE REQUEST RECEIVED: 6/23/2011 DATE DELIVERED: 6/28/2011

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1 WITNESS: There are two opportunities, and let me
2 speak to it in this way. In private child care, there are
3 four and five star centers that would be considered high
4 quality centers. Four and five star centers in and of
5 themselves don't meet the standard that More at Four has set
6 for Pre-Kindergarten, but that's a setting that definitely
7 serves a number of four-year-old children across the state.

8 We build our program, the More at Four program, on
9 a reverse delivery system. So we are serving children not
10 only in public school settings, in the Head Start settings
11 that we discussed, but we're serving them in private settings
12 as well. But, in private settings, we have required those
13 classrooms that serve four-year-old children that receive
14 state dollars, state More at Four dollars, to raise the bar
15 and meet the standard that we have set.

16 So, in other words, they have to have that four-
17 year-degree teacher with a birth through kindergarten
18 license. They have to implement a research-based curriculum.
19 Their class size is significantly reduced. Their adult to
20 child ratio is smaller. We require health assessments at the
21 entry into Pre-Kindergarten, our developmental assessments,
22 at entry into Pre-Kindergarten. So they're really standards
23 that those classrooms in the private sector had to rise to
24 meet to participate in More at Four.

25 As the program grew, the capacity of the private

1 A. That's correct.

2 Q. Do you have an estimate as to how much that funding
3 will be for this next coming fiscal year, 2011-2012?

4 A. It's -- the Head Start money will exist, but I
5 think one of the things that we need to realize with the
6 budget, and one of the things that is occurring, is a
7 requirement for a co-pay for participation in Pre-
8 Kindergarten. That is something that is included in the
9 provisions around Pre-Kindergarten implementation from this
10 point forward.

11 That co-pay gets in the way in a significant way. Head
12 Start programs, Title I programs, Special Education programs,
13 couple with our state dollars to serve children. So what --
14 I've demonstrated earlier where the Title I and More at Four
15 put resources together to serve a single child. That would
16 be prohibited by the co-pay, because Title I is prohibited
17 from charging a co-pay for participation. Head Start is
18 prohibited. IDEA/Special Ed is prohibited. So it really
19 sort of unravels this fabric of funding support that we've
20 created over a decade to support children in a very
21 significant way, all of those programs meeting one common
22 state standard.

23 Q. And how does that work? There is a co-pay
24 requirement in the new budget for More at Four; is that
25 correct?

1 gains in language/literacy and math skills as a result of
2 participation in More at Four.

3 Children at different levels of English language
4 proficiency showed similar gains in most language/literacy
5 and math skills as a result of their More at Four
6 participation.

7 And, children at different levels of cumulative risk
8 showed similar gains. And this is consistent with 10 years
9 of research on this program. We've -- the program has been
10 scrutinized and evaluated in a way that I would say no other
11 state program has ever been scrutinized or evaluated. And
12 consistently the program has shown that children entering and
13 children exiting the program have significant gains in
14 language, literacy, math, and social skills; that those gains
15 are most profound for the children who are most at risk; that
16 those gains persist through kindergarten. As we have tracked
17 those cohorts of children through kindergarten, we see the
18 trajectory of development being gained continually.

19 And then most importantly, the longitudinal study that
20 looked at More at Four participants specifically as compared
21 to like children who did not have the benefit of the program,
22 and saw significantly higher third grade EOG scores and the
23 academic achievement gap closed by up to 40 percent.

24 The results for this program are profound, and I don't
25 think it's any accident that it's happening. I think it's

1 function. Those people, who have really worked to ensure
2 that teachers aren't in the classroom, but in fact teachers
3 are effective, have a network of mentors who work with these
4 teachers, of evaluators that worked with these teachers. We
5 set up professional growth plans for these teachers.

6 We're doing something very profound, something else that
7 has been featured at Pre-K Now national conference as a model
8 for the nation. Those staff, which I have suggested should
9 fill those eight slots, and being told no, those are not the
10 people that we are going to hire. We are going to hire child
11 care regulatory consultants. People who go in and regulate
12 the health and safety of a classroom, a necessary job, but
13 that's where they want to put their intention because of the
14 provision requirement that these public schools must now be
15 licensed by the Division of Child Development.

16 So you're losing this wealth of institutional knowledge
17 of the program. You're losing the support of the program
18 that has made it effective to hire regulatory agents.

19 Q. And leaving the monitoring of the educational
20 component to the public schools where these children are
21 enrolled in More at Four programs that are in public schools,
22 right? There's gonna continue to be More at Four programs in
23 public schools, but they're gonna have to be regulated
24 facilities, and ---

25 A. Well, the thing ---

1 around that. We've worked closely with Exceptional
2 Children's preschool to focus our resources in those
3 classrooms to improve the inclusive classroom settings, the
4 number. We're hearing pretty loudly from the LEA's, because
5 of the co-pay issue, we're really moving that to these
6 standalone Exceptional Children's classrooms that will not be
7 inclusive in nature, and therefore the state is really in
8 jeopardy of not meeting what their specific federal outcomes
9 are, and it could put federal resources in jeopardy as well.

10 I mean, that's all -- that's -- I mean, that's further
11 evidence of the unraveling of what's occurred over a decade.

12 I would mention too, if we look at -- if we're looking
13 at milestones and where the State Board of Education was
14 going with this program, because they've -- they've been
15 clear to look at what's working here. And we've done
16 multiple -- we've had multiple queries, multiple evaluations,
17 conducted by Frank Porter Graham on the wealth of data they
18 have specific to child outcomes and types of settings and
19 teacher education. And we can do that, or they can do that,
20 because you've got the public sector that by and large is
21 fully licensed, the teachers in the classroom are. And
22 you've got the private sector that are still moving in that
23 direction.

24 But there was a time earlier in the program where a
25 significant number of private sector teachers were at the

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1 rates of LEA's. The statewide average administrative cost
2 for that was gonna be 2.86 percent. The administrative cost
3 associated with the direction with the Division of Child
4 Development is going to be significantly higher than that.

5 Just the savings in that administrative cost and a 20
6 percent cut to the budget would have freed up another \$3.2
7 million to serve additional children. So we were already
8 anticipating a cut by the General Assembly but positioning
9 ourselves to mitigate the damage.

10 Q. And in your meetings with the administrators at the
11 Department -- the Division of Child Development, you've had
12 discussions about these subjects with them?

13 A. Yes.

14 Q. And they're aware of the problems that they will be
15 facing when they assume responsibility for this program?

16 A. I think they're aware of a number of problems.
17 There are so many moving parts here, I'm not sure that
18 they're going to understand that until it is upon them. I'm
19 afraid their role may be to preside over the carcass of Pre-
20 Kindergarten for the state of North Carolina.

21 Q. They do have a mandate to continue the program's
22 high standards. There's no real change in the mandate or the
23 emphasis on literacy or the objective of the program, but
24 you're highlighting the administrative difficulties with the
25 transfer?

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1 A. Yes.

2 Q. And in the interest of full disclosure, the
3 technical amendment bill that I handed up to you as well, I
4 think made a few amendments to this, so I provided that to
5 you as well.

6 MS. DUBIS: And, Your Honor, we'll mark that as
7 Plaintiff's Exhibit 28.

8 THE COURT: As the technical amendments?

9 MS. DUBIS: Yes.

10 Q. Now, Mr. Pruette, you testified on direct about the
11 limitations in the legislation to the provision of Pre-
12 Kindergarten services to at-risk children, and I want to
13 point you to Section 10.7(f), as in Frank, of this
14 legislation.

15 A. I'm there.

16 Q. And would you just read, starting with the second
17 sentence of that section -- it starts with "The Division of
18 Child Development." If you would read those two sentences of
19 the legislation?

20 A. Okay. "The Division of Child Development shall
21 serve at-risk children regardless of income; however, the
22 total number of at-risk children served shall constitute no
23 more than 20 percent of the four-year-olds served within the
24 Pre-Kindergarten program."

25 Q. And is that the provision of the budget legislation

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1 that you were referring to when you testified about the limit
2 of service that you provide to at-risk children?

3 A. It is.

4 Q. Mr. Pruette, is it fair to say under this language
5 that the Pre-Kindergarten program will no longer be a program
6 targeted at at-risk children?

7 A. As I read the eligibility, you would infer that 80
8 percent of the children in the program would not be at-risk.

9 Q. Mr. Pruette, you testified about the apparent co-
10 pay requirement as well on direct. I'm gonna ask you to take
11 a look at Section 10.7(h) of the legislation.

12 A. I'm there.

13 Q. Would you just read the first sentence of Section
14 10.7(h)?

15 A. "The Division of Child Development and Early
16 Education shall implement a parent co-payment requirement for
17 Pre-Kindergarten classrooms, the same as what is required of
18 parents subject to regular childcare subsidy payments."

19 Q. And, Mr. Pruette, you emphasized the word "shall."
20 Do you understand that this language is mandatory, that a co-
21 pay shall be implemented?

22 A. I do. One thing that I have come to understand in
23 my 10 years at the state level is, shall means shall. It
24 doesn't mean may.

25 Q. So your understanding is the Division of Child

1 Office?

2 A. I certainly am. The Head Start State Collaboration
3 Office is part of my office. It is housed under the Office
4 of Early Learning.

5 Q. And according to this brief that was prepared --
6 and I believe this is consistent with your testimony -- about
7 20 percent of the children who participated in the More at
8 Four program participated in a program that was housed in or
9 blended with a Head Start program; is that correct?

10 A. That's correct.

11 Q. And that's about 6,000 students?

12 A. That's correct. And when I mentioned earlier the
13 work that we had done to really solve that question that
14 other states wrestle with, how you collaborate with Head
15 Start, moving that office into the Office of Early Learning
16 and focusing our attention on how to blend those funds to
17 serve children in a better way resulted in Head Start's
18 participation ramping up in a very significant way.

19 So early on, it was a small percentage of More at Four
20 in Head Start. Over time it grew to 20 percent, and 20
21 percent of a much larger number. So that's been significant
22 work.

23 Q. And under the new legislation, because of the co-
24 pay requirement, Head Start can no longer partner with the
25 Pre-Kindergarten partner; is that correct?

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1 Q. And are instructional assessments required in
2 private childcare settings under the star rating system?

3 A. No.

4 Q. And do you know whether ---

5 A. Let me clarify. I mean, they are if you're
6 receiving state More at Four money.

7 Q. Right.

8 A. Then certainly you're required, but in and of
9 itself, that would not be a requirement.

10 Q. Do you know whether DHHS, within the Division of
11 Child Development, has any expertise in aligning curricula
12 and assessments to the public school kindergarten through
13 grade 3 curricula assessments?

14 A. I don't know, you know, all the workings of the
15 Division of Child Development. I know they're staffed with
16 regulatory agents that I mentioned earlier. They're staffed
17 with a -- they fund the Childcare Resource and Referral
18 Network, and there's some professional development related
19 around that, but to the degree they work with childcare
20 centers to implement instructional assessments, I don't know
21 that to be true.

22 Q. You mentioned in your testimony the staff to child
23 ratio and class size requirements at More at Four, and those
24 are on Page 5-3. Is it your understanding that those
25 requirements are more stringent than the requirements of a

1 non-More at Four public -- I'm sorry, I mean private daycare
2 center?

3 A. A five star center, yes, they are more stringent.

4 Q. And you talked about teacher requirements, and are
5 the More at Four requirements, again, more stringent than the
6 requirements of a non-More at Four private five star daycare
7 center?

8 A. Yes.

9 Q. Mr. Pruette, Mr. Ziko asked you some questions
10 about State's Exhibit Number 4, and I just want to be sure to
11 clarify your earlier testimony. You read to the Court
12 information about the effectiveness of More at Four and the
13 results of children who participated in More at Four on
14 language, literacy skills, and math skills.

15 A. Uh-huh.

16 Q. The information that you read -- that you were
17 reading from in State's Exhibit Number 4 ---

18 A. I was. And that was in response to his question
19 about the most recent evaluation from Frank Porter Graham.

20 Q. And, in fact, State's Exhibit Number 4 is the
21 article from Frank Porter Graham from February of this year?

22 A. It is. It's an executive summary of the study that
23 was published in February.

24 Q. Now, Mr. Pruette, when you were here testifying
25 with us in December of last year, I think you testified about

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1 for the Court, please?

2 A. "It is quite likely that many of them also attended
3 Pre-K, so the results represent the effects of the More at
4 Four program above and beyond those of a variety of other
5 types of preschool experiences. In sum, these findings
6 provide evidence that the More at Four program is helping to
7 lessen the achievement gap for poor children in both math and
8 reading performance, and that such early Pre-K experiences
9 can have a lasting effect into the elementary school years."

10 Q. And Mr. Pruette, my question is, is it your
11 understanding that this Frank Porter Graham study looked at
12 children who participated in More at Four, at-risk children,
13 and at-risk children who did not participate in More at Four
14 but who may have participated in some other form of preschool
15 intervention?

16 A. That's exactly what the study did.

17 Q. And the study concludes that the impact of More at
18 Four, therefore, was above and beyond the impact that may
19 have been seen from children who had other types of preschool
20 intervention?

21 A. That is the result of the report.

22 Q. Mr. Pruette, Judge Manning mentioned the Duke
23 study. Let me ask you to turn to Exhibit 25 in the big
24 notebook of exhibits.

25 A. (Witness complies.)

1 Q. Mr. Pruette, are you generally familiar with the
2 research conducted by Professors Ladd and Dodge at Duke
3 regarding the effects of early childhood programs?

4 A. Yes, generally.

5 Q. And can you generally tell the Court what your
6 understanding of the results of their research are?

7 A. Yeah. It looked at the impact of resources put
8 into a county -- it looked at resources put into a county and
9 the impact that that had, those resources had, on third grade
10 EOG scores four years later. Specifically looking at More at
11 Four money and looking at Smart Start money, allocations in a
12 county, and they found positive association with third grade
13 EOG scores and increased amounts of those resources in a
14 county.

15 Q. So, in summary, the more Smart Start and More at
16 Four resources in a county, the better the results on the
17 third grade EOG?

18 A. Right. But let me clarify, those are -- and I
19 think this is an important point. Those are average EOG
20 scores across all sub-groups of children. It doesn't speak
21 specifically to any one type of child.

22 Q. You're absolutely right. In other words, the study
23 did not note those just on the EOG scores of children who had
24 participated in one of those programs.

25 A. That's right. It looked at overall EOG scores for

1 place that are comprehensive; a teacher with a specialized --
2 a teacher with a degree in specialized training; an assistant
3 teacher that meets specific standards; teacher inservice and
4 ongoing professional development; a maximum class size not to
5 exceed 20; staff to child ratio at 1:10 or better; requiring
6 a screening -- the screening and referral services that we
7 require around vision, hearing, health, dental,
8 developmental, and support services; requiring meals; and
9 then having monitoring to ensure the programs are meeting the
10 standards.

11 That's -- it's been a tool that they've utilized to
12 educate states to the degree that they're implementing
13 effective Pre-Kindergarten programs.

14 Q. And in 2010, did North Carolina's program meet all
15 10 standards?

16 A. It did. In fact, it's met all 10 standards for the
17 last five years, and prior to that, met nine. The only
18 missing standard was the early learning standards, which we
19 put in place in 2005-2006. So we have been recognized as the
20 state model, the number one Pre-Kindergarten model in the
21 nation. Steve Barnett, who's the director of NIEER, who is
22 an economist and has worked in early education research for
23 over 40 years, he often speaks of the More at Four program as
24 exactly that, the model for state implemented Pre-
25 Kindergarten for the nation.



PUBLIC SCHOOLS OF NORTH CAROLINA

STATE BOARD OF EDUCATION :: Howard N. Lee, *Chairman*

WWW.NCPUBLICSCHOOLS.ORG

DEPARTMENT OF PUBLIC INSTRUCTION :: Patricia N. Willoughby, *State Superintendent*

October 25, 2004

The Honorable Howard Manning, Jr.
Superior Court Judge
Wake County Courthouse
Post Office Box 351
Raleigh, North Carolina 27602-0351

Dear Judge Manning:

The State of North Carolina is committed to ensuring that all children receive an education that prepares them for the future. Our priority is to make sure that every child, in every community, has access to a quality education with competent teachers, effective principals, and adequate resources.

To that end, it has been a priority of the state to ensure that children begin school ready to learn, that they enter a school that has class sizes low enough to provide individual attention, are taught by qualified teachers, and are expected to meet high standards of excellence. In the last few years, the state has made major gains in each of these areas. However, there is more that can be done to ensure that all students, and in particular, at-risk students, are afforded the educational resources and opportunities for a high quality education.

Over the last few weeks and months the State Board of Education and the Department of Public Instruction have been engaged in a series of discussions with education leaders and interested parties about the development of a long-range plan based on the progress of the Disadvantaged Student Supplemental Fund pilots in sixteen counties. With the Governor's charge and collaboration, we have developed the attached action plan. The components of this plan are grounded in research and proven practices.

Sincerely,

Howard N. Lee

Patricia N. Willoughby

HNL/PNW/gnd

OFFICE OF THE STATE SUPERINTENDENT

6301 Mall Service Center :: Raleigh, North Carolina 27699-6301 :: 919.807.3430 :: Fax 919.807.3446

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EXECUTIVE SUMMARY

The State of North Carolina is committed to ensuring that all children receive the opportunity to obtain an education that prepares them for further education beyond high school, skilled jobs and careers in a changing workforce, and the responsibilities of citizenship in a democratic society. Furthermore, the State is committed to ensuring that all children have (1) a competent teacher, (2) an effective principal, and (3) adequate resources to meet high academic standards.

The State has demonstrated a commitment to target resources to meet the needs of at-risk students. Among other programs, the Governor, the State Board of Education and the General Assembly have recently created and funded the following:

- The More at Four Pre-kindergarten Program for at-risk four-year-olds
- A K-3 class size reduction initiative
- The High Priority Schools Act
- The Local Education Agency Assistance Program to provide assistance to poorly performing districts
- The New Schools Project to reform high schools

Most recently, the Governor identified \$22 million for use by the State Board of Education to implement the Disadvantaged Students Supplemental Fund (DSSF). The DSSF Program provides targeted resources to assist at-risk students in 16 school districts marked by low student performance, low teacher experience, high poverty, high teacher turnover.

The State remains committed to these important efforts. Nevertheless, State education leaders understand that more remains to be done to improve the achievement of at-risk students and ensure that every student has the opportunity to obtain a high quality education. Towards that end, the State is committed to 1) expanding and enhancing existing initiatives and 2) developing select new initiatives targeted to meet the needs of at-risk students.

Consistent with that commitment, the State intends to construct, prior to the start of the 2005 Legislative session, a detailed plan. The State recognizes that legislative appropriations will be needed to implement elements of this plan. The plan includes the following components:

EXPAND EXISTING PROVEN PROGRAMS

- **Ensure every at-risk four-year-old has access to a quality prekindergarten program.** The State intends to continue to expand the More at Four program until at least 40,000 at-risk four-year-olds are assured access to quality pre-kindergarten programs. Expansion will be targeted first to students in school districts with the greatest needs.
- **Evaluate, Refine and Expand the Disadvantaged Students Supplemental Fund to ensure schools and districts implement proven strategies.** Based on an evaluation of the pilot DSSF Programs in the 16 initial pilots, the State will modify and expand this approach. Because it is clear that the current pilot is only the first step in reaching at-risk children, additional investments for the next school year and beyond are needed. The State will closely monitor and evaluate the pilot to measure the effectiveness of this approach and the specific options available to districts and make modifications as appropriate.

- **Strengthen and Expand LEAAP into a new unit under the State Board to improve struggling school districts.** Building on its pilot experience with the Local Education Agency Assistance Program, the State intends to create a full-time unit under the State Board of Education that works with a set of especially needy school districts. This unit will undertake thorough diagnostic analyses of the challenges facing districts and schools and provide intensive support on resource reallocation and policy decision-making with the objective of building local capacity in the districts.
- **Continue the Teacher Working Conditions Survey and provide actionable data for problem schools and districts.** Improved teacher retention and effectiveness are essential to improving educational opportunities for all students. The Teacher Working Conditions Survey has been demonstrated to provide important actionable data to schools and districts to predict teacher turnover and student achievement. The State intends to use the Survey intensively in targeted schools and districts to help districts to attract and retain teachers and principals and increase their effectiveness.
- **Expand the New Schools Project and Learn and Earn.** To improve the preparation of high school students to access further education and compete for skilled jobs, the State intends to expand its development of new schools, schools-within-schools, and Learn and Earn schools to provide access to students in every county. These innovative models will be the cornerstone of the State's approach to lower dropout rates, boost graduation rates, and increase college-going rates.

INVEST IN NEW COMMITMENTS

- **Expand teacher supply for hard-to-staff schools.** The State believes that it is important to boost the supply of qualified teachers in the areas where they are needed most. Increasing partnerships between community colleges and public and private schools of education is an important tool for achieving that objective. Therefore, the State foresees expanding "2+2" partnerships between schools of education at four-year institutions and community colleges located in proximity to hard-to-staff-schools throughout the State. The State is also committed to exploring additional avenues for increasing the supply of qualified teacher candidates for hard-to-staff-schools.
- **Provide high quality professional development for teachers and principals.** The State will develop a comprehensive portfolio of professional development offerings in core areas for principals and teachers to ensure access to high quality professional development in key content areas and skills to improve the achievement of at-risk students. Analyses of student performance data, Teacher Working Conditions data, and the State's work in low-performing schools and districts will be used to determine specific topics.
- **Connect school, social service and delinquency prevention resources.** The State will bring together the agencies responsible for school, social service, and juvenile justice resources to develop strategies for high need schools and counties. Working together and with local governments, these State agencies can coordinate parent support, mental health services, health services, and delinquency prevention and other juvenile justice-related services to support children's health and school performance, and help parents to be actively involved in their children's education.

PLAN FOR IMMEDIATE ACTION

The State is committed to immediate action to develop these initiatives and implement them to improve the educational opportunities available to at-risk students. The State holds that the future growth and prosperity of North Carolina depends upon today's students receiving an education that prepares them for higher education, skilled jobs and careers, and a life of democratic participation.

To that end, the State intends to take a budget and policy package including these programs to the 2005 session of the General Assembly.

Over the course of the last few weeks and months, the Office of the Governor, the State Board of Education and the Department of Public Instruction have been engaged in a series of discussions about the development of a long-range plan to meet the needs of at-risk students. In the coming months before the 2005 Legislative session, the State will develop the detailed plans needed to carry out the commitments it has described. The Office of the Governor and State Board of Education will work with the General Assembly and with education leaders and other interested parties in crafting the details of these plans.

The following steps will take place in the coming weeks and months in anticipation of taking a detailed package to the General Assembly for the 2005 session:

October 26, 2004 – January 26, 2005

- **November 5.** The Office of the Governor, Department of Public Instruction (DPI) and State Board of Education (SBE) representatives will hold initial meeting with Amicus groups and teacher groups.
- **November 19.** The Office of the Governor, DPI and SBE representatives will reconvene a group of superintendents and other representatives, including individuals from plaintiff and plaintiff-intervenor districts.
- **November 30.** The Governor will convene the Education Cabinet to meet and take up relevant items from this plan. The Education Cabinet will determine those items needing action by education governing boards.
- **December 1-2.** The State Board of Education will evaluate and approve plans for the five remaining districts under the Disadvantaged Students Supplemental Fund at its monthly meeting in December.
- Representatives from the Governor's Office, DPI, SBE, the Legislature, the Education Cabinet, K-12 school leaders, and other key stakeholders will continue meetings to construct the details of the plan.
- The Office of the Governor, DPI, and SBE will work with legislative representatives on development of a legislative package for the 2005 session of the General Assembly, which opens on Wednesday, January 26, 2005.

Beyond the 2005 Legislative session, the State is committed to continuing the development and implementation of proven strategies for meeting the needs of at-risk students.

BACKGROUND

Over the past two decades, the State has put into place a series of policies that have helped North Carolina make especially significant progress in the academic achievement of its young people.

In the late 1980s, the state began a focus on testing and accountability with the introduction of statewide curriculum standards, testing and public accountability. In the 1990s, the State refined its accountability system and placed a major emphasis on teacher quality. In the mid-nineties, the State implemented the ABCs of Public Education and school level testing and accountability. The testing and accountability system helped to focus attention and resources on the needs of students and schools throughout the state, especially those students not performing at or above grade level on state assessments. In addition to providing information on the achievement of schools and students, the ABCs program also assigned assistance teams to low-performing schools and instituted Gateways in grades three, five and eight to stem social promotion. The ABCs Program has allowed the state to understand which students and which schools are most in need of additional assistance and support.

Also in the 1990s, the State made significant investments in its teaching workforce, including raising teacher pay to near the national average and in the top half of the nation—where it remains today. The Excellent Schools Act of 1997 raised teacher pay, increased teacher standards, created accountability measures for schools of education, and improved the support of new teachers in the profession.

Improvement on national assessments, including the National Assessment of Educational Progress in reading, writing and mathematics and the SAT, demonstrates that North Carolina's approach is yielding results. In addition, reports from the RAND Corporation and the National Education Goals Panel and, most recently, from the Education Trust in October 2004, found that the steps that the state had been taking were increasing achievement scores and reducing achievement gaps on national assessments in reading and math.

The 2000 RAND report, *Improving Student Achievement: What NAEP Test Scores Tell Us* laid out a clear path for moving forward to improve achievement, especially among its at-risk students. The RAND report found that the most cost-effective approach to improving reading and math achievement on the National Assessment of Educational Progress was to lower teacher-student ratios in the early grades, expand public Prekindergarten, and provide additional resources to teachers. The report found that "investing in better working conditions for teachers to make them more productive (lower pupil-teacher ratios, more discretionary resources, and improved readiness for school from Prekindergarten) could produce significant gains in achievement scores" (pp. xxvii-xxviii).

In accordance with that report and other significant education research, Governor Mike Easley, the State Board of Education and the Legislature have worked together to ground the state's school improvement efforts in a research-backed approach for raising achievement of all students, with a particular focus on improving achievement for at-risk students. The State has focused on pre-kindergarten programs, smaller classes in the early grades, and supporting the needs of teachers.

Beginning in 2001, the State began to put these research-backed policies into place:

- The More at Four Prekindergarten Program was implemented in 2001 and served 1,500 at-risk four-year-olds in 34 counties. In 2004, it is reaching 12,000 at-risk four-

year-olds in all 100 counties. Research has documented that bringing students to school ready to learn increases academic achievement and educational attainment over time.

- **K-3 Class Size Reduction** that reduced the teacher-student ratio to 1:18 in grades K-3 between 2001 and 2004, funding the reductions one grade level at a time over the past four years. Research shows that smaller classes in grades K-3 leads to increased student achievement, decreased behavioral problems, and increased high school graduation rates. Smaller classes are a particularly powerful strategy for raising the achievement of at-risk students. Class size reduction has also been shown to be an important tool in attracting and retaining teachers in the early grades.
- **The High Priority Schools Initiative** reduced class size to 15 in the 36 highest-poverty and lowest-performing elementary schools in grades K-3 and added five additional days for teacher professional development and five additional days schools days for students

The State also implemented a number of other important initiatives since 2001 to improve educational opportunities and achievement across the state:

- **The Local Educational Agency Assistance Program**, which provided school district-level assistance teams to work with low-performing districts. The teams work with the school district to review data, resource allocation, strategies, and challenges. The first effort began in Hoke County and has expanded to additional school districts.
- **The Teacher Working Conditions Initiative**, which launched in 2002 a statewide survey of teachers and administrators on working conditions in the schools. The survey was repeated in 2004. In 2004, the survey generated detailed reports on teacher working conditions for 90% of all schools and each of the 115 school districts. Research has been completed recently on this data which shows that the working conditions data is predictive of teacher turnover and student performance outcomes, making this data extremely valuable as a tool for improvement at schools.
- **The New Schools Project to reform high school**. Supported initially by an \$11 million grant from the Bill and Melinda Gates Foundation, the New Schools Project is focused on improving high schools in order to dramatically improve the dropout, high school graduation, and college-going rates in North Carolina. Based on research that shows that smaller schools lead to higher graduation rates and better preparation for college and jobs, the initiative is focused on creating smaller high schools with deeper connections to higher education and workplace skills. The project focuses on students whom traditional high schools are not serving well.

The Project has begun by investing in the creation of 8 health science-themed smaller schools and schools-within-schools, and 15 Learn and Earn high schools where students graduate from high school and earn both a high school diploma and an associate's degree or two years of university credit. Learn and Earn high schools are done in conjunction with local community colleges and four-year institutions. The next phase of the New Schools Project is the implementation of proven small school models in districts in northeastern North Carolina.

In addition to the \$11 million granted by the Gates Foundation, the state is investing \$2.2 million on a recurring basis to begin the Learn and Earn high schools.

These investments and approaches represent research-backed practices to improve teacher retention and effectiveness and boost student achievement. The State believes they represent an important set of building blocks for addressing the needs of at-risk students. Nevertheless, the State believes that more must be done for at-risk students in North Carolina.

ADDITIONAL FUNDING TARGETED TO MEET THE NEEDS OF AT-RISK STUDENTS

In July of this past year, the State began its most recent effort to address the needs of at-risk students with the creation of the Disadvantaged Students Supplemental Fund (DSSF) pilot program. The DSSF pilot is now working in select districts to allocate additional resources for proven strategies to boost the achievement of at-risk students. Governor Basley has identified and made available up to \$22 million for use by the State Board of Education to support 16 school districts. The pilot is operating as follows:

- Districts were identified based on levels of student achievement, student poverty, and teacher attrition. Based on a formula, specific funding levels were set for each district.
- The State Board assigned assistance teams to each district to help in the creation of their plans for using the DSSF resources.
- Plans from local districts are based on a "menu of proven strategies" developed by the State Board of Education. Districts have the flexibility to decide which options best meet their needs, but they must use the options provided by the State Board. The options include bonuses for recruiting and retaining teachers; additional personnel for such strategies as reducing class size, hiring reading coaches, and supporting new teachers; professional development for teachers and principals; supporting afterschool and other extended day programs; and implementing personal education plans.
- Funding for districts is contingent upon the approval of the State Board of Education.
- The Board will evaluate the results from the DSSF pilot, including the effectiveness of additional resources, the targeted options, and the DPI assistance on improving student achievement and teacher attrition.

MOVING FORWARD: BUILDING ON THE STATE'S COMMITMENT TO ADDRESS THE NEEDS OF AT-RISK STUDENTS

The aforementioned strategies for improving student achievement—especially the achievement for students below grade level—are yielding results. The State intends for these strategies to serve as the foundation of its continuing effort to construct a system of K-12 public education that provides superior education for all students and, more specifically, meets the needs of at-risk students.

In order to ensure that all students are receiving a high quality education and that they have access to caring, competent teachers in their classrooms, effective principals in their schools, and the instruction they need to meet high standards, the State is committed to taking the following steps to maintain and expand proven strategies for school improvement. Additionally, it is

recognized that the Legislature will need to appropriate additional resources to allow the State to expand a number of these proven strategies for increasing the achievement of at-risk students.

1. **Ensure that every at-risk four-year-old has access to a quality prekindergarten program.**

Recognizing that students who do not start school ready to learn remain at-risk of school failure and dropping out throughout their career, 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. Quality pre-kindergarten programs are the fundamental building block for the State's effort to meet the needs of at-risk students across the state. Without access to quality pre-kindergarten programs, at-risk students start school behind and remain at-risk of school failure throughout their school careers.

In expanding More at Four, the State will identify high-need areas with respect to educational performance, families in poverty, and other key indicators to determine priority sites for funding expansion.

2. **Evaluate, refine and expand the Disadvantaged Students Supplemental Fund pilot approach to ensure that districts and schools implement proven strategies for meeting the needs of at-risk students**

The Governor and State Board of Education have implemented the Disadvantaged Students Supplemental Fund in 16 school districts for the 2004-05 school year. The pilot requires that assistance teams, assembled by the Department of Public Instruction, work with eligible districts to determine plans for using additional resources based on a menu of proven strategies. The Governor, State Board and General Assembly will carefully analyze the success of the different strategies chosen by the 16 districts in order to determine which approaches best met the goals of attracting and retaining teachers, ensuring an effective principal, and providing individualized instruction that increases the achievement of students at-risk of school failure.

As part of this critical effort, the State Board of Education will evaluate the performance of students, the supply and retention of teachers, the appropriateness of the current menu of options provided, and the efficacy of DPI assistance. In addition, the State will examine the appropriate state and local fiscal responsibilities for additional investments, and the differences in working with urban versus rural school districts.

Based on evaluation findings, the State will modify the menu of options and expand this effort to additional schools and school districts. The current pilot is a first step and the State recognizes that additional investments are needed for the next school year and beyond.

3. **Strengthen and expand LEAAP into a new unit under the State Board to improve struggling school districts**

Building on its experience with the Local Education Agency Assistance Program, the State is committed to create a unit under the State Board of Education that works with a set of school districts most in need to analyze the challenges, provide intensive support on resource and policy decision-making, and build the capacity of these districts.

-R S 585-

This new unit would work with districts that need immediate and intensive support to improve education for its students. The State will develop criteria to determine which districts are most in need of assistance from this unit.

The unit would provide the following types of assistance: 1) a detailed diagnostic analysis and audit of student performance trends, teacher working conditions, and resource allocation; 2) work with the district to develop a plan for resource reallocation and strategies for deploying additional funding; and 3) brokering relationships/assistance for the districts with higher education partners, the programs of the UNC Center for School Leadership Development, and other appropriate entities. This effort would provide intensive and targeted assistance and guidance on resource allocation and the use of strategies to guide improvement.

The State Board of Education would approve plans for the district's use of state funds based on the unit's work with the district. The unit would be comprised of new personnel assigned solely to this function.

4. Improve teacher retention and effectiveness by using the Teacher Working Conditions Survey to provide actionable data to schools and districts

With data that demonstrates a correlation between working conditions and teacher turnover rates and student achievement, the Teacher Working Conditions survey is an important tool for assisting school and district efforts to attract and retain caring, competent teachers and to develop effective principals. In addition to the statewide administration of the data, the State will look to require administration of the survey in targeted schools and districts. This will ensure a full set of data to use as an assessment tool to determine needed strategies in those locations.

The survey data has found that improving working conditions is critical particularly to attracting and retaining high quality teachers for at-risk students. Targeted use of additional resources for this purpose will be considered as a part of state assistance for at-risk students.

5. Expand the New Schools Project and Learn and Earn Schools to improve the preparation of high school students to access further education and compete for skilled jobs

The State is committed to an ambitious effort to improve high schools, especially for those students whom the traditional high school model does not serve well and who are at-risk of dropping out. The State intends to expand its development of new schools, schools-within-schools, and Learn and Earn schools to provide access to students in every county. The State Board of Education, working with the New Schools Project, will create a priority list of districts to receive funding and assistance under this project based largely on the needs of at-risk students. All new schools have goals and outcome measures that include improving student achievement, graduation rates and the college-going rates of their students.

The State believes that these efforts will target resources and assistance effectively to provide caring, competent teachers, effective principals, and the individualized instruction needed to help

students at-risk of school failure meet high standards and be well prepared for further education and a skilled workforce.

The State will develop an accountability mechanism to evaluate the impact of these investments to improve the achievement of at-risk students. The mechanism will, at a minimum, use student performance from the ABCs program and the teacher working conditions data. The accountability mechanism should also hold the State accountable for its assistance to districts and schools.

ADDITIONAL EFFORTS TO SUPPORT THE STATE'S COMMITMENT TO AT-RISK STUDENTS

In addition to its commitment to expand and maintain existing initiatives to meet the needs of at-risk students, the State also believes that there are additional efforts needed to support schools and districts to help all students achieve.

Expand teacher supply by increasing partnerships between community colleges and schools of education

The State understands that there is a critical need to boost both the supply and retention of teachers in hard-to-staff schools. The shortage of qualified teachers for hard-to-staff schools is a problem that afflicts every state in the nation. While North Carolina has been recognized for its leadership in this area nationally, the State realizes that more remains to be done.

Hard-to-staff schools in the state have a significant number of lateral entry and first-year teachers. While more needs to be done to induct, support and retain these individuals, the fact remains that there is a shortage in the supply of highly qualified teachers for hard-to-staff schools.

This, however, will not be accomplished by merely increasing the supply at schools of education. Existing patterns show that preparation in the state's schools of education generally leads to employment in the surrounding environs of those universities. Unfortunately, many of the schools and districts with the greatest need for qualified teachers are not in close proximity to school of education. In addition to providing targeted incentives to bring teachers to hard-to-staff schools, the State believes that it must look to boost the supply of qualified teachers in the areas where they are needed most.

To do so, the State sees an expansion of "2+2" partnerships between schools of education at four-year institutions and community colleges, which are located in critical regions throughout the state. Existing "2+2" programs have shown great promise in increasing the supply of qualified teachers prepared to teach and remain in areas where teachers are needed. In examining the prospects for expanding this approach, the State will identify regions of the state with high teacher attrition, low levels of teacher candidate supply, and underperforming schools as priorities for "2+2" program expansion.

The state is also committed to examining additional avenues for increasing the supply of teacher candidates from schools of education, resources and approaches to prepare qualified lateral entry candidates, and other strategies to increase the availability of qualified teachers in hard-to-staff schools.

The State recognizes that in working to increase the supply of qualified teachers for hard-to-staff schools it must also remain vigilant to improve the retention of qualified teachers in these schools.

Provide high quality professional development for teachers and principals

Any effort to ensure effective teachers and principals in classrooms and schools must include providing them with high quality professional development that supports their ability to help students reach high standards. The State has invested in a number of important and effective professional development efforts such as the Teacher Academy, the NC Center for the Advancement of Teaching, and the Principals Executive Program. The State has also vested the lion's share of responsibility for providing professional development in schools and school districts. Unfortunately, many teachers and principals report that they lack access to high quality professional development.

The State will explore the development of a comprehensive portfolio of professional development offerings in core areas for principals and teachers. This includes identifying the content areas and skills where teachers and principals need the greatest support, the development of these professional development models, and the deployment of them (including on-line instruction) to teachers and principals.

Connect School, Social Service and Juvenile Justice Resources

The State recognizes that schools and schools systems alone cannot meet the challenges of educating all students for the challenges of higher education, the workplace, and participating in the democratic life of their communities. It is critical that children and families receive the support they need to be healthy and actively involved in their children's education.

The State intends to bring together the State Board of Education and the Departments of Public Instruction, Health and Human Services, and Juvenile Justice and Delinquency Prevention to jointly develop strategies for connecting school, social service, and juvenile justice resources.

Efforts would aim to target schools and counties with high need of support across the state. Such efforts might provide for the coordination of parent involvement, mental health services, health services, and delinquency prevention and other juvenile justice-related services for youth and families in participating schools.

PLAN FOR IMMEDIATE ACTION

The State has already demonstrated its commitment to pre-kindergarten for at-risk four-year-olds, class size reduction, additional resources to support at-risk students in targeted school, district assistance, high school reform and improving teacher working conditions has been demonstrated. That commitment will continue.

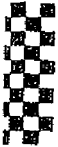
In addition, the State is committed to expanding a number of these proven strategies, targeting them to meet the needs of at-risk students and finding solutions for other important educational problems, such as increasing the supply of teachers and connecting social services with schools and other areas.

To that end, the State intends to take a budget and policy package including these programs to the 2005 session of the General Assembly.

-R S 588-

In the coming months before the 2005 Legislative session, the State will develop the detailed plans needed to carry out the commitments it has described. The Office of the Governor and State Board of Education will work with the General Assembly and with education leaders and other interested parties in crafting the details of these plans.

The State holds that the future growth and prosperity of North Carolina depends upon today's students receiving an education that prepares them for higher education, skilled jobs and careers, and a life of democratic participation.



Nov-23-2004 13:26

From-

- App. 63 -

-R S 589-

T-071 P.001/001 F-627

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE
WAKE COUNTY COURTHOUSE
RALEIGH, N.C. 27602

FAX ONLY MEMO

November 23, 2004

FROM: HOWARD E. MANNING, JR. *HEM*

TO: ROBERT W. SPEARMAN, (919-834-4564)
TOM ZIKO (919-716-6764)
ANN MAJESTIC (919-546-0499)

SUBJ: Hoke County Board of Education v. N.C. ("LEANDRO")

Lady and Gentlemen:

This fax is to confirm the time and place for the hearing scheduled for Tuesday, December 7, 2004, in this matter. The hearing will be in Courtroom 10-C (where the previous hearings have been) at 2:30 P.M. on Tuesday, December 7. I hope that everyone has a safe and pleasant Thanksgiving this year.

Cc: Governor Michael F. Easley c/o Franklin Freeman
(919-715-4239)
Senator Marc Basnight, et al. c/o Tonya Williams
(919-733-8740)

11-23-04 P12:45 OUT

Jan-06-2005 14:88 From-



HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE
WAKE COUNTY COURTHOUSE.
RALEIGH, N.C. 27602

FAX ONLY MEMO

January 6, 2005

FROM: HOWARD E. MANNING, JR.

TO: ROBERT W. SPEARMAN, (919-834-4864)
TOM ZIKO (919-716-6764)
ANN MAJESTIC (919-546-0489)

SUBJ: Hoke County Board of Education v. N.C. ("LEANDRO")

Lady and Gentlemen:

This fax is to confirm the time and place for the hearing scheduled for Tuesday, January 11, 2005, in this matter. The hearing will be in Courtroom 10-B (same floor but not where the previous hearings have been) at 2:30 P.M. on Tuesday, January 11, 2005. I hope that all of you had a pleasant holiday season and that the "wrinkles" will have been worked out of the Disadvantaged Student Supplemental Fund Formula by Tuesday so we can proceed on other fronts, including, but not limited to, the pressing problem with regard high school student performance referred to in my November 10, 2004 memo, and solutions for that problem. With regard to the DSSF Formula issue, I am in receipt of the N.C. School Superintendents' Association Response to the DSSF Formula which was issued in mid-December, 2004.

Cc: Governor Michael F. Easley c/o Franklin Freeman
(919-715-4239)
Senator Max Baasnight, et al. c/o Tonya Williams
(919-733-8740)
Chairman Lee and Superintendent Willoughby
(919-807-3445)

01-06-04-06-05-POL:35 OUT

- App. 65 -

- R S 591 -

Feb-J0-2005 11:10 From-


T-518 P.001/002 F-020

02-10-05 A10:19 OUT

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE
WAKE COUNTY COURTHOUSE
RALEIGH, N.C. 27602

FAX ONLY MEMO

February 10, 2005

FROM: HOWARD E. MANNING, JR. 

TO: ROBERT W. SPEARMAN, (919-834-4564)
TOM ZIKO (919-716-6764)
ANN MAJESTIC (919-546-0489)

SUBJ: HOKE COUNTY BOARD OF EDUCATION V. N.C. ("LEANDRO")

Lady and Gentlemen:

This fax is to confirm the time and place for the hearing scheduled for Tuesday, February 15, 2005, in this matter. The hearing will be in Courtroom 10-C at 2:30 P.M. on Tuesday, February 15, 2005. While I requested a report from the State on the progress made on the "plan" at this meeting, I have learned that Governor Easley has not put the final touches on the budget and that his budget will not be ready to go to the General Assembly until after the Governor's "State of the State" address several days after next week's hearing. Accordingly, I will not expect any progress report from the State at next week's hearing. However, there are several items that we will need to take up.

First, there is a motion to intervene which has been filed and we will take that matter up.

Second, in anticipation of the March 7 special session regarding the high school problem, I have asked Susan R. Lamar, NC AVID Director, to make a presentation to the Court and the parties about the AVID program, its purpose, and the progress AVID is making in helping North Carolina children realize their Leandro opportunity. The AVID program assists middle and high schools prepare children who are underachievers, with the potential to do college level work, to have the opportunity to become academically prepared and eligible for college work. It is my

- App. 66 -

Feb-10-2008 11:18

From-

-R S 592-

T-518 P.002/002 F-620

2

understanding that AVID is now present, in one or more schools, in Durham, Nash-Rocky Mount, New Hanover, Onslow, Pitt, Wilson, Cumberland, Catawba, Charlotte-Mecklenburg as well as starting in Wake, among others.

Third, discussion of schedule and presentation for March 7 hearings and any other matters that the parties have been working on with respect to DSSF, etc.

Cc: Governor Michael F. Easley c/o Franklin Freeman
(919-715-4239)

Senator Marc Basnight, et al. c/o Tonya Williams
(919-733-8740)

Chairman Lee and Superintendent Willoughby
(919-807-3445)

Handwritten:
Hew
2/10/05

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

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

And

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

Vs.

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

FILED
2005-03-03 PM 11:57
WAKE COUNTY CLERK

ORDER RE: HEARING SCHEDULED FOR WEEK OF MARCH 7, 2005 TO
INITIALLY ADDRESS THE PROBLEM OF POOR ACADEMIC PERFORMANCE
IN HIGH SCHOOLS THROUGHOUT NORTH CAROLINA AND TO RECEIVE
EVIDENCE ABOUT POLICIES, PRACTICES AND PROGRAMS THAT WORK
IN HIGH SCHOOLS THAT CAN BE USED AS SOLUTIONS FOR THE POOR
ACADEMIC PERFORMANCE IN HIGH SCHOOLS THROUGHOUT NORTH
CAROLINA and ORDER RE: MOTION
EXPEDITED DISCOVERY BY UNC CENTER FOR EDUCATIONAL RESEARCH.

THIS MATTER is before the Court with regard to the
evidentiary hearing scheduled for the week of March 7,
2005, for the Court to hear evidence relating to the "high
school problem" which exists in a great number of high
schools throughout North Carolina relating to poor academic
performance in those schools.

The driving force behind the Court scheduling a hearing on
the "high school problem" is that way too many of North
Carolina's high schools had composite scores below 80 for
2003-2004. Only 117 out of 326 (36%) were at 80 or above.

107 high schools had composites between 70 and 79.
(107/326) = 33%

Even more troubling were the number of high schools with
composite scores that were below 70% for the past year
(102/326) or 32%. Included in that number are 10 high

schools in CMS which make up 10 out of 15 CMS high schools. Nevertheless, the poor performance composites of high schools are scattered literally throughout North Carolina's LEAs.

As a result, the Court determined that it was necessary to hold an evidentiary hearing to learn more about the causes of such poor performance in the high schools in general and to learn about programs and policies and procedures which exist that can be used to create better performance for high school students throughout North Carolina, including CMS and other urban and rural districts where the high schools are struggling with poor academic performance.

The March 7, 2005 hearing was noticed on January 19, 2005. The Court and parties were to discuss an outline of the agenda for March 7 at the hearing on February 15, 2005.

On February 9, 2005, the UNC School of Law Center for Civil Rights, on behalf of four students presently in the CMS system, filed a Motion to Intervene in this case in a limited basis with the focus being the CMS student assignment policies and plans. The Motion to Intervene was opposed by the Urban School District Plaintiff-Intervenors Urban School Districts, which includes CMS.

At the regularly schedule hearing on February 15, 2005, this Court announced that it was not going to calendar a hearing on the motion to intervene before or during the March 7 hearing week and that Julius Chambers and UNC Center counsel could participate at the March 7, 2005 hearing and "sit at counsel table." The purpose of the March 7 week was to hear evidence on the high school problem and best practices and procedures to achieve better high school performance for students throughout the State as well as to hear from CMS and other large urban districts about the good and bad in high school performance. A battle royal over CMS's attendance plan or CMS's low performing high schools was not, and will not be on the agenda during the week of March 7, 2005.

There was no objection raised by any party to the Court's announcement on February 15, 2005. The Court and counsel for the parties met in chambers to discuss a tentative schedule for the hearings starting March 7, 2005.

The hearing schedule's format presently stands as follows:

Monday, March 7, 2005 at 10:00 a.m. - The Court will conduct a hearing on plaintiffs' motion to show cause filed on February 10, 2005.

Monday, March 7, 2005 at 2:30 p.m. - Tony Habit will provide information about the positive aspects and work of the NewSchoolsProject that is working to create better and more academically productive high schools.

Monday, March 7, 2005 at 3:30 p.m. - Urban Districts will provide information from Ann Denlinger, Superintendent of the Durham County Schools concerning the high school challenges and programs in Durham.

Tuesday, March 8, 2005 at 9:40 a.m. - Urban Districts will provide information from witnesses from CMS relative to CMS's challenges in its high schools, the bulk of which are performing well below par. This information is expected to take the day on Tuesday and perhaps into Wednesday morning.

Wednesday, March 9, 2005, - At the conclusion of CMS presentation, Superintendents, or their designees, from Craven and Onslow Counties will provide information on the high school programs in those counties and why they are succeeding academically. Craven has three high schools. The three high schools composite scores for 2003-2004 were 84, 89 and 85, respectively. Onslow has seven high schools. The seven high schools composite scores for 2003-2004 were 84, 83, 88, 83, 82, 83 & 84, respectively.

Thursday, March 10, 2005, at 9:40 or as reached, Urban Districts will provide information from Wake County Schools relating to the challenges and success of the high schools in Wake County, which has 2 of 10 statewide with performance composites above 90.

Friday, March 11, 2005 - Reserved for any overflow and to be determined.

On February 23, 2005, Julius Chambers and counsel for the UNC Center for Civil Rights ("UNC Center") filed a motion for clarification seeking to have this Court clarify their role as counsel for the hearing scheduled March 7, 2005. In that motion they sought an order authorizing them to participate fully, including, but not limited to: examination of witnesses, cross examination of witnesses, objections to evidence and testimony, introduction of documentary evidence and testimony through witnesses and to

finally, conduct limited, expedited discovery of CMS with responses from CMS by March 4.

On Monday, February 28, 2005, the Plaintiff-Intervenors ("Urban Districts") filed a Response in opposition to the motion for clarification. On March 2, 2005, Julius Chambers and the UNC Center served a response to the opposition raised by the Urban Districts.

Having considered the Motion for Clarification, Expedited Discovery and the Responses and Replies that are filed, it is apparent to the Court that there is a misunderstanding about the purpose and scope of the March 7 hearings. The hearings are for the benefit of the Court and to put on the record the information cleaned therefrom. The hearings are not for the purpose of litigating the issues relating to CMS's poor performing high schools, or for that matter, any other of the LEAs poor performing high schools scattered throughout North Carolina.

The hearings are to provide the Court and the record with information concerning the "high school problem" in performance, and with information about existing programs, policies and planned programs that can be utilized to correct the poor performance of high school students.

Until the Court hears and reviews this basic information, including CMS's stated explanations, as a large urban district party, as to the cause of poor performance and plans to correct the educational deficiencies suffered by too many of its high school students, the Court will not be in a position to decide on how best to proceed in this troubled area of high school performance.

The bottom line is that the hearing starting March 7 relating to high school performance problems and solutions is informational, not adversarial in nature.

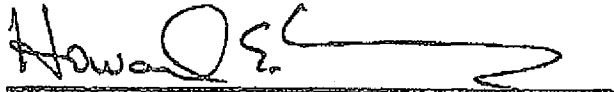
Having said that, the Court is not going to vary from its intended mission for the week of March 7, 2005 and preside, during that week, over an adversarial contest focusing on CMS. Next week is not the time, nor the place, for such proceedings and that will simply not happen.

As a result, the UNC Center and its counsel, will not participate in this hearing as counsel for a litigant and the motion for expedited discovery will be denied.

IT IS, THEREFORE, ORDERED:

1. That the hearing to begin on March 7, 2005, will be conducted according for the purposes set forth in this order and will address and follow the agenda items and schedule set forth above. The schedule and agenda items may be changed only with the permission of the Court, depending on time and scheduling conflicts.
2. That counsel for UNC Center are ~~not~~, for purposes of the hearing on March 7, 2005, authorized to participate as counsel for a litigant with full rights to examine, cross examine, put on evidence, or any other of those acts sought in the motion for clarification.
3. That the Motion for Expedited Discovery by counsel for UNC Center is denied.
4. That Counsel for UNC Center are welcome at the hearing, and in the Court's discretion, are permitted to sit at a counsel table during said hearing so that they can listen and learn from the various witnesses the same information that the Court seeks to learn. In addition, at the close of the hearing, counsel for UNC Center may have the opportunity to address the Court concerning the matters presented during the hearing together with counsel for other parties.
5. That in the event there is more evidence required as a result of the matters presented, the March 7 hearing may be continued so as to permit the Court to hear additional evidence and other matters related to the issue of poor high school performance.

This the 3rd day of March, 2005


Howard E. Manning, Jr.
Superior Court Judge

- App. 72 -



Jul-11-2005 13:36

From-

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T-184 P.001/004 F-278



General Court of Justice

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE

WAKE COUNTY COURTHOUSE
P. O. BOX 351
RALEIGH, NC 27602

TELEPHONE: (919) 755-4100
FAX: (919) 715-4054

FAX ONLY MEMO

July 11, 2005

FROM: HOWARD E. MANNING, JR. *HE*

TO: ROBERT W. SPEARMAN, (919-834-4564)
TOM ZIKO (919-716-6764)
ANN MAJESTIC (919-546-0489)

SUBJ: Hoke County Board of Education v. N.C. ("LEANDRO")

Re: Notice of August 9, 2005 special civil session re: hearing on the "high school problem (with emphasis on CMS) and other matters"

Lady and Gentlemen:

On May 24, 2005, this Court filed "Report from the Court: The High School Problem."

Last Friday, I reviewed the N&O's article on the Wake County Public Schools 2004-2005 Composite Scores. I subsequently went on line and took a look at CMS's High School 2004-2005 Composite Scores and their disaggregated data. A copy of the composite scores for CMS for 2002, 2003, 2004 & 2005 by school is attached.

The CMS results remain dismal. Out of 17 high schools, 10 remain with composite scores below 60 and 5 out of those 10 continue to have composites below 50. While there was some improvement in the scores of the bottom 10, 5 of the CMS high schools, East Mecklenburg, Garinger, Harding, Hopewell and West Mecklenburg went backwards. Olympic made a .01 gain from 53.5 to 53.6. South Mecklenburg made a .01 gain from 71.9 to 72.0, which is basically no gain at all.

The bottom line is that despite the so-called internal plans and improvements and programs for improving CMS's high schools'

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academic performance that we heard about at the hearing in March, it appears that the poor academic performance remains business as usual in the majority of those high schools, despite being placed on notice that the poor academic performance cannot be permitted to continue. This sorry state of affairs cannot be permitted to continue.

On the more affluent side of the ledger, Myers Park scored a composite of 81.2% up from 73.4% and Providence increased to 86.0% from 83.5%.

Accordingly, I have made the necessary arrangements to schedule a special civil session beginning Tuesday, August 9, 2005 at 10:00 in Courtroom 10-C (the usual courtroom). At that time, the Court will expect to hear a report from CMS as to what, if anything, CMS is doing with regards to the specific substantive, effective, and academically proven corrective measures CMS will be in place in its bottom 10 high schools as of the start of the 2005-2006 school year to ensure those schools are Leandro compliant in terms of qualified, competent principals, qualified, competent teachers and resources so that the constitutionally required educational opportunity is provided to in those schools and each and every child.

The Court will also expect a report from the State of North Carolina on the issue of the overall Leandro compliance statewide at that time.

In connection with the "high school problem" and the high schools, including CMS' high schools, that have composites below 60, the Court will expect a report from the State of North Carolina as to what action it is taking to provide these high schools with substantive, effective and academically proven corrective measures to be in place as of the start of the 2005-2006 school year so as to ensure that these bottom high schools are providing their students with a Leandro compliant learning environment as required by the Constitution of this State.

The Court will also hear the CMS students' motion to intervene relative to the CMS assignment plan during this session of Court.

The Court would also like to hear from the plaintiffs' counsel on the progress, or lack thereof, being made with respect to the ensuring that the schools in these districts, including the high schools, are meeting the constitutional requirement of being Leandro compliant.

Her
7/11/05

In the event there are other relevant matters that the parties believe should be on the agenda for the hearing, please write and let me know and I will consider putting them on the agenda. Thank you.

Cc: Governor Michael F. Easley c/o Franklin Freeman
(919-715-4239)
Senator Marc Basnight and Speaker Jim Black, et al. c/o Tonya Williams
(919-733-8740)
Chairman Howard Lee, State Board of Education and DPI
(919-807-3445)

Attached: CMS HIGH SCHOOLS-COMPOSITE SCORES-2002,2003,2004 & 2005 (ONE PAGE)

HEY
7/11/05



PUBLIC SCHOOLS OF NORTH CAROLINA

STATE BOARD OF EDUCATION :: Howard N. Lee, Chairman
DEPARTMENT OF PUBLIC INSTRUCTION :: Janice O. Davis, Interim Officer

WWW.NCPUBLICSCHOOLS.ORG

August 9, 2005

The Honorable Howard Manning, Jr.
Superior Court Judge
Wake County Courthouse
Post Office Box 351
Raleigh, North Carolina 27602-0351
Hand Delivery

Re: *Hoke Co. et al. v. State*

Dear Judge Manning:

On July 11, 2005, you sent a Notice to the parties to this action that you would hold a hearing on specified subjects in the Wake County Courthouse on August 9, 2005. Among other things, your Notice stated that you expected a report from the State on "the issue of overall Leandro compliance."

In response to that request, and on behalf of the Governor, the State Board of Education, and the Department of Public Instruction, I am submitting two documents. The first describes the Governor's and the State Board of Education's strategic focus for Leandro compliance. The second documents some of the actions we have recently taken to implement the Plan which we submitted to the Court on October 25, 2004, along with some additional commitments and actions that were not included in the Plan.

I trust that you will agree that the actions described in these documents prove that the State is making substantial and steady progress toward improving educational opportunities for all its students. The Governor and the State Board of Education intend to continue to aggressively implement the Plan to assure all North Carolina children have the educational opportunity to reach their full potential.

With kindest regards and best wishes, I am

Respectfully,

Howard N. Lee

cc: The Honorable Michael F. Easley, Governor of North Carolina
State Board of Education Members

STATE BOARD OF EDUCATION
6302 Mail Service Center :: Raleigh, North Carolina 27699-6302 :: 919.807.3430 :: Fax 919.807.3198
An Equal Opportunity/Affirmative Action Employer

**GOVERNOR EASLEY AND THE STATE BOARD OF EDUCATION'S
STRATEGIC FOCUS ON LEANDRO**

The State of North Carolina is committed to ensuring that all children receive the opportunity to obtain an education that prepares them for further education beyond high school, skilled jobs and careers in a changing workforce, and the responsibilities of citizenship in a democratic society. Furthermore, the State is committed to ensuring that all children have (1) a competent teacher, (2) an effective principal, and (3) adequate resources to meet high academic standards.

Governor Mike Easley and the State Board of Education have put in place a comprehensive strategy to achieve these ends. This plan is built on the following strategic objectives:

1. **Provide significant new resources to low wealth districts and schools by fully funding the Low Wealth Supplemental Funding formula in order to attract and retain quality teachers and principals and improve educational opportunities for all students.**
2. **Make the Disadvantaged Students Supplemental Fund (DSSF) permanent, implement a rigorous evaluation of the DSSF program in the 16 pilot districts, and identify the appropriate funding levels for the DSSF formula.**
3. **Provide new, targeted investments in education including funding for the More at Four Pre-Kindergarten Program; high school reform (New Schools Project and Learn and Earn); teacher recruitment scholarship programs; teacher production in high need areas; teacher retention; principal effectiveness; and connecting schools and social services to support the achievement of at-risk students.**
4. **Institute greater accountability for existing funds targeted to at-risk students and ensure greater financial accountability for the use of state and local resources to increase student performance in districts across the state.**
5. **Strengthen the State's assistance to low-performing schools and their districts, beginning with high schools. The State needs to assist districts and schools to examine spending patterns, reallocate existing resources, effectively target new resources, and implement proven strategies to increase student performance.**

In October 2004, Governor Easley and the State Board of Education submitted a comprehensive Plan to meet these objectives and improve educational opportunities in North Carolina public schools. Since that time, the Governor, the

General Assembly and the State Board of Education have taken substantial action to implement each of the components of that Plan. They have also taken many additional steps toward addressing the need for qualified teachers and principals and the resources needed to help students meet high academic standards and be prepared for higher education, work and citizenship in the 21st Century.

**GOVERNOR EASLEY AND THE STATE BOARD OF EDUCATION HAVE
TAKEN ACTION TO IMPLEMENT THE STATE'S PLAN FOR LEANDRO**

The October 2004 Plan submitted to the Court outlined efforts the State would take to:

- (1) Expand Existing Proven Programs and
- (2) Invest in New Commitments.

The State's efforts in each of these areas are detailed below. Some of the additional commitments and action the State has taken since the Plan was submitted are also noted.

I. EXPAND EXISTING PROVEN PROGRAMS

- **Ensure Every At-Risk Four-Year-Old Has Access to a Quality Pre-Kindergarten Program.**
 - The State intends to continue to expand the More-at-Four Pre-Kindergarten Program until at least 40,000 at-risk four-year-olds are assured access to quality pre-kindergarten programs. Expansion will be targeted first to students in school districts with the greatest needs.
 - 1 The Governor's budget proposed \$16.6 million in the first year and \$29.1 million over the biennium to fund an additional 6,400 at-risk four-year-olds across the state.
 - 2 Governor Easley's July 20, 2005 Executive Order No. 80 set aside \$16.6 million for the 2005-06 school year to support an additional 3,200 slots, which will bring the total of at-risk four-year-olds served to 15,200.
 - 3 The Office of School Readiness was created on July 1, 2005, through an Interagency Agreement signed by the Office of the Governor and Departments of Public Instruction and Health and Human Services. The Office will allow the state to align, coordinate and leverage the multiple public pre-kindergarten programs and resources in these districts to improve services to programs serving at-risk four-year-olds.

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

**EXECUTIVE ORDER NO. 80
ACCELERATING TEACHER AND OTHER PERSONNEL RECRUITMENT
AND THE IMPLEMENTATION OF NEEDED ACADEMIC SUPPORT PROGRAMS
FOR AT-RISK CHILDREN IN LIGHT OF JUDICIAL MANDATES,
BUDGET DEVELOPMENTS, AND IMPENDING SCHOOL OPENINGS**

WHEREAS, the 2004 General Assembly enacted S.L. 124, "The Current Operations and Capital Improvements Appropriations Act of 2004" (hereinafter the Act), which was signed into law on July 20, 2004; and

WHEREAS, the 2005 General Assembly enacted H.B. 1631, which keeps state government operating through August 3, 2005, and which provides additional funding for enrollment increases and which was signed into law on July 19, 2005; and

WHEREAS, in the budget adjustments submitted to the General Assembly for the 2005-06 fiscal year, I recommended funding to meet the increased operation costs of our public schools while providing for the needs of disadvantaged students; and

WHEREAS, public schools across the state must plan now for their opening in a few weeks, and the state court monitoring of North Carolina's effort to ensure a sound, basic education for every student continues; and

WHEREAS, in the school funding lawsuit, known as *Leandro*, the Court stated that at a minimum every school must be provided the resources necessary to support an effective instructional program within that school so that the educational needs of all children, including at-risk children, can be met; and

WHEREAS, on May 24, 2005, the Court isolated the particular problems of meeting the needs of at-risk students in North Carolina's high schools and outlined the need for the state to bring together the "combined expertise, educators, resources, and money to fix the 'high school problem' so that the children attending those schools will be provided with the opportunity to obtain a sound, basic education;" and

WHEREAS, on July 11, 2005, the Court scheduled a hearing for August 9, 2005, for the state to show how in the upcoming school year it will address the problems associated with the "poor academic performance" of North Carolina high schools and an update on statewide *Leandro* compliance; and

WHEREAS, Senate Bill 622, "The Current Operations and Capital Improvements Appropriations Act of 2005," under consideration by the House and Senate has not been passed; and

WHEREAS, the Act allocated funds to support the More at Four Pre-Kindergarten program for at-risk children, the Learn and Earn program, and supplemental funding for LEAs in low-wealth counties; and these programs are necessary for improving educational opportunity and outcomes for children across North Carolina; and these programs are fundamental to addressing the needs of at-risk students, eliminating the achievement gap, reducing the state's persistently high dropout rate, increasing college enrollments, and meeting other education challenges; and

WHEREAS, the current proposed budget includes expanded funding for the Disadvantaged Student Supplemental Fund, Learn and Earn program, Specialty Schools Pilot program, supplemental funding for LEAs in low-wealth counties, teacher training, and child and family support teams; and

WHEREAS, while the General Assembly continues working to ratify a final budget I can approve, the school year for the majority of North Carolina's children is about to begin and preplanning, hiring, and facilities preparation must take place; and

WHEREAS, it is the intent that additional funds be used for low-wealth supplemental funding to recruit and retain high quality teachers; and

WHEREAS, by better connecting public schools with health, mental health, and social services the capacity for multi-disciplinary assessments, referral, and coordination of care for at-risk students and their families will be enhanced through the use of School-Based Child and Family Support Teams utilizing school-based nurses and social worker teams, Local Management Entities' Care Coordinators, and Child and Family Teams Facilitators.

NOW THEREFORE, in light of the factual circumstances set forth above, including the decision in *Leandro*, and under the legal authority vested in me as Governor by Article I, Section 15 of the Constitution of North Carolina (which states that "The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right."), Article III of the Constitution of North Carolina, and N.C.G.S. §143-23, I hereby AUTHORIZE AND INSTRUCT:

Section 1. The Director of the More at Four Pre-Kindergarten Program to recruit the teachers necessary to expand the program; and,

Section 2. The Superintendent of Public Instruction, working with and through local school system superintendents, to recruit and hire the staff necessary to

operate Learn and Earn high schools and economic development-themed high schools; and

Section 3. The Superintendent of Public Instruction, working with and through local school system superintendents, and the Secretary of the Department of Health and Human Services, working through local agencies, to recruit and hire the nurses and social workers necessary to operate child and family support teams in our public schools; and

Section 4. The Superintendent of Public Instruction, working with and through local school system superintendents, to put into place the additional teachers and academic support programs needed to support the achievement of at-risk students in districts eligible for Low Wealth Supplemental Funding and Disadvantaged Student Supplemental Funding; and

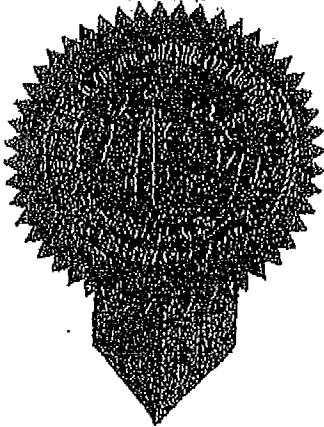
Section 5. The Presidents of the University of North Carolina and North Carolina Community College System to implement the 3+2 Teacher Education Initiative; and

Section 6. The President of the University of North Carolina to implement the program to improve the effectiveness of new principals; and

Section 7. The State Board of Education and Superintendent of Public Instruction to place accountability on existing funding for at-risk students from the At-Risk Student Services and Improving Student Accountability allotments to ensure these funds are invested in proven strategies for improving student achievement in the most cost effective manner.

This Executive Order is effective July 20, 2005.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh this the 20th day of July, 2005.




Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall
Secretary of State



State of North Carolina

Department of Justice

PO Box 629

Raleigh, North Carolina

27602

ROY COOPER
ATTORNEY GENERAL

REPLY TO Thomas J. Zilko
Education
(919) 716-6320
FAX: (919) 716-6764

November 19, 2010

VIA HAND DELIVERY

The Honorable Howard B. Manning, Jr.
Wake County Superior Court
Wake County Courthouse
316 Fayetteville Street
Raleigh, NC 27602-0351

Re: *Hoke County Board of Education, et al. v. State*, 95 CVS 1158

Dear Judge Manning:

Pursuant to your November 9, 2010 Notice of Hearing, attached are the following reports for the December 17, 2010 hearing in the above-referenced matter:

Report on More at Four Pre-Kindergarten Program

Summary of Key Findings, October 2010;

Evaluation of More at Four State Pre-Kindergarten, The First Ten Years; and

Long-term Effects of the North Carolina More at Four Pre-kindergarten Program,
October 2010.

Report on DIBELS system

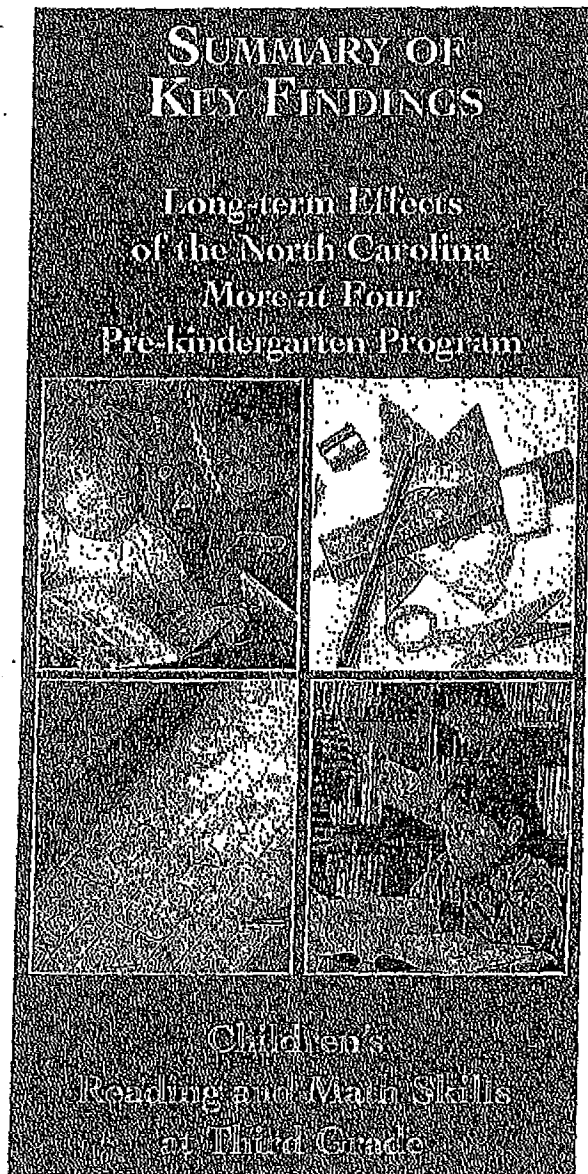
Executive Summary, SBE Meeting 11/2010 (Attachment GCS8 to SBE Mtg.); and
Draft Report to the North Carolina General Assembly, "Evaluation of the Math and
Reading Diagnostic Pilots", Date Due December 01, 2010.

Reports on Ineffective Teacher and Educational Challenges re: Not Reading on Grade

Teacher Effectiveness: Improving Schools One Classroom at a Time

What Matters Most, October 21, 2010; and

Public Schools of North Carolina, DPI, November 9, 2010 Letter and Differences
in Learning to Read, Unit 2.



Ellen S. Peisner-Feinberg, Ph.D.
Jennifer M. Schaaf, Ph.D.

October 2010



UNC

CENTER FOR CHILD DEVELOPMENT INSTITUTE

The North Carolina More at Four Pre-kindergarten Program is a state-funded initiative for at-risk 4-year-olds, designed to help them be more successful when they enter elementary school. The purpose of More at Four is to provide a high quality, classroom-based educational program during the year prior to kindergarten entry. Over the years, 90% of the children served in More at Four have qualified for free or reduced-price lunch; eligibility for the program is also determined by other risk factors, such as low English proficiency, identified disability, chronic health condition, and/or developmental delay. More at Four has been providing a full school year pre-k program since 2002-2003, and has served over 160,000 children during the first nine program years (2002-2010).

Study Design

Key findings on the long-term effects of participation in More at Four on children's third-grade End of Grade (EOG) math and reading scores are presented below. Statewide data from the NC Department of Public Instruction was used for all third-graders in the 2006-2007 and 2007-2008 school years. Of these, the More at Four sample included children who attended the pre-k program for at least 70% of the school year (in 2002-2003 and 2003-2004). The total sample consisted of 5,554 children who attended More at Four and 200,062 comparison children. The analyses also examined results by poverty status in third grade, comparing poor children (eligible for free or reduced-price lunch) and non-poor children (not eligible). In addition, the analyses adjusted for children's demographic characteristics of gender and race/ethnicity, as well as for state and local per pupil expenditures, which represented variations in the quality and resources provided by the school districts attended by different groups of children.

Two primary research questions were addressed by this study: 1) Are there any long-term benefits of participation in the More at Four Pre-k Program on children's math and reading skills in third grade?, and 2) Do the effects of More at Four participation on children's third-grade math and reading skills vary by children's poverty status?

Major Results

- For all third-grade EOG outcomes—math and reading scale scores and achievement levels—poor children who attended More at Four performed better than their peers who did not attend More at Four. These results are of key importance, given that 90% of the children who attended More at Four were poor at that time.
- For non-poor children, those in the comparison group generally performed better than those who attended More at Four. However, the non-poor comparison group was likely more advantaged and included children who would not have been eligible for the More at Four Program during pre-k. In contrast, many of the MAF children were poor and had other risk factors at the time of pre-k.
- As expected, a consistent pattern was found where non-poor children performed better than poor children across all outcomes measured by the third-grade EOGs. However, these differences related to poverty were much stronger within the comparison group than within the MAF group.

Summary and Conclusions

These findings suggest that for poor children (those who qualified for free or reduced-price lunch), participating in the More at Four Program during pre-k had longer-term benefits in terms of math and reading skills at the end of third grade. These findings were consistent across all EOG outcomes, indicating a broad positive effect of participation in the More at Four Program. These findings are of note, given that poor children represent the majority (90%) served by the More at Four Program.

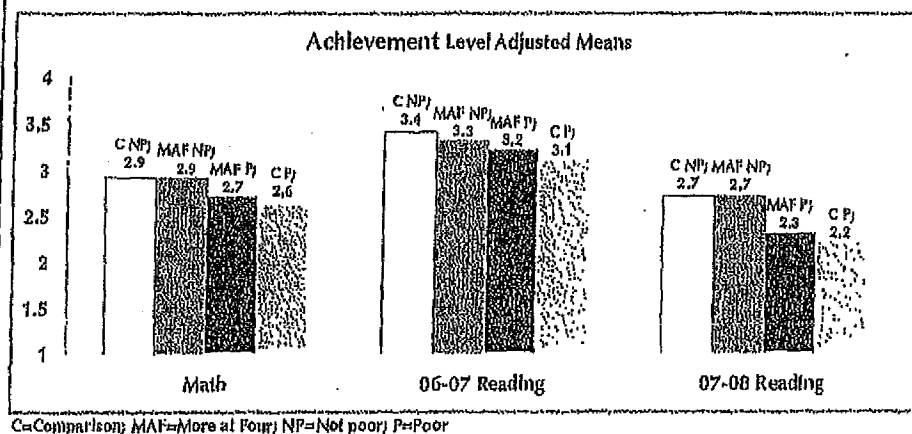
Not surprisingly, non-poor children performed better than poor children. This achievement gap in academic skills related to poverty is something that is widespread in our country. However, these effects were greater for the comparison group and substantially reduced for the MAF group. This may indicate that participation in More at Four has an ameliorating effect on the negative effects of poverty related to children's academic achievement.

In sum, these findings provide evidence that the More at Four Program is helping to lessen the achievement gap for poor children in both math and reading performance, and that such early pre-k experiences can have a lasting effect into the elementary school years.

© 2010 by
Ellen S. Palsau-Felberg,
FPG Child Development Institute,
The University of
North Carolina at Chapel Hill.

This research was funded by
the North Carolina More at Four
Pre-kindergarten Program,
NC Office of Early Learning,
NC Department of Public
Instruction, as part of the state-
wide evaluation of the North
Carolina More at Four
Pre-kindergarten Program.

For more information,
visit the evaluation website at
www.fpg.unc.edu/~mafeval



Evaluation of More at Four State Pre-Kindergarten THE FIRST TEN YEARS

SUMMARY

- Ten years of evaluations have shown More at Four to be a highly rigorous pre-kindergarten program that successfully targets low-income household children and those at-risk of later academic failure.
- Quality in the classroom is high. The percentage of teachers with a BA degree and a Birth-Kindergarten license is above 80% in public school settings, and has doubled to around 30% in community settings.
- Learning growth for all students is significant and above expectations for those children starting with the lowest knowledge base. Rates of learning growth in pre-K are generally sustained through the end of kindergarten.
- The most recent evaluation shows that on third grade reading and math tests, ex-More at Four children who received a free or reduced lunch in third grade some four years after leaving a More at Four classroom, performed significantly better than children who received a free or reduced lunch but who didn't attend More at Four.
- These 3rd grade EOG results show that More at Four narrowed the achievement gap by up to 40% at third grade.

A CLOSELY EVALUATED EDUCATION INITIATIVE

Since its first full year in 2002-03, More at Four has been closely scrutinized by independent researchers at the Frank Porter Graham Child Development Institute at UNC-Chapel Hill. These evaluations show that quality in the More at Four classroom is high, that this classroom quality is associated with high rates of learning growth, that children at most-risk of academic failure exhibit the highest rates of learning growth in More at Four, and, that four years later, children who were in More at Four and who receive a free or reduced lunch in third grade, did significantly better in EOG reading and math tests than free or reduced price lunch children who did not attend More at Four.

SERVING CHILDREN IN NEED

More at Four has maintained a consistent focus on serving the needs of disadvantaged children since its inception. Since year one, three-quarters of the children served in More at Four have come from households below 130% of the federal poverty level (i.e. eligible for a free lunch) and the majority have never been previously served by an early education or care provider (figure 1). Around 9 in 10 children in any one year are eligible for a free or reduced price lunch. The share of children with a chronic health problem or identified disability has held steady at around 6% or 8% while those with a developmental need has increased over the decade, from around 10% in 2001-02 to over 30% in 2009-2010 (figure 2).

