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April 29, 2014

VIA ELECTRONIC MAIL AND VIA HAND DELIVERY

The Honorable Howard E. Manning, Jr.
Superior Court Judge
Wake County Superior Court
Wake County Justice Center
300 S. Salisbury Street, 10th Floor
Raleigh, North Carolina 27602

Re: Hoke County Board of Education, et al. and Asheville City Board of Education, et al v. State of North Carolina, State Board of Education, Wake County, 95 CVS 1158

Dear Judge Manning:

Enclosed please find a copy of Plaintiffs' Motion in the Cause, which was filed earlier today. As set forth in the Motion, Plaintiffs' request that the Court set a hearing in or around August, 2014, and at that time require Defendants to: 1) show cause why the Court should not find that Defendants had failed to comply with this Court's prior orders and the Ruling of the North Carolina Supreme Court as set forth in *Hoke County Board of Education v. State*, 358 N.C. 605, 599 S.E.2d 365 (2004); 2) present Defendants' specific written plan for compliance, including details as to how Defendants will carry out their constitutional duties to provide competent, certified teachers, well-trained, competent principals, and the resources necessary to provide all children, including those at risk, an equal opportunity to obtain a sound basic education; and 3) present evidence regarding Defendants' ability to implement the plan, including, but not limited to, evidence that Defendants' Level III proficiency standard is *Leandro* compliant.

While Plaintiffs are happy to discuss these matters with the Court at any time, Plaintiffs submit that an August hearing will allow the State Board of Education and the State, acting through its executive and legislative branches, sufficient time to develop their plan and to obtain any necessary executive or legislative action required for the plan's implementation.

Please feel free to call me if you have any questions.

With best wishes, I am

Sincerely,

Melanie Black Dubis

MBD/lh

Enclosure

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cc: Lauren Clemmons, Esq. (w/enc.)
Deborah R. Stagner, Esq. (w/enc.)
Mark Dorosin, Esq. (w/enc.)

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bcc: *Via Electronic Mail Only*
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STATE OF NORTH CAROLINA **FILED**

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
95-CVS-1158

COUNTY OF WAKE

2014 APR 29 A 11:35

HOKE COUNTY BOARD OF)
EDUCATION, et al.,)
WAKE COUNTY, N.C.)

Plaintiffs,)

and)

ASHEVILLE CITY BOARD OF)
EDUCATION, et al.,)

Plaintiff-Intervenors,)

v.)

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

Defendants.)

MOTION IN THE CAUSE

NOW COME Plaintiffs Hoke County Board of Education, *et al.*, (collectively, “Plaintiffs”) and move this Court to direct the State of North Carolina and State Board of Education (collectively, “Defendants”) to appear and show cause why this Court should not find that Defendants have failed to comply with this Court’s prior orders and the ruling of the North Carolina Supreme Court as set forth in *Hoke County Bd. of Educ. v. State*, 358 N.C. 605, 599 S.E.2d 365 (2004) (“*Leandro II*”) and enter a writ of mandamus compelling Defendants’ compliance.¹ Today, almost 800,000 school children – 56% of all public school children – are at

¹ In *Leandro II*, 358 N.C. at 642, 599 S.E.2d at 393, the Supreme Court, while upholding most of this Court’s final judgment, held:

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.

A writ of mandamus is an order from a court of competent jurisdiction commanding performance of a duty imposed by law. *Sutton v. Figgatt*, 280 N.C. 89, 93, 185 S.E.2d 97, 99 (1971). Five elements must be present before a writ PPAB 2413636v1

risk of academic failure. *Free and Reduced Application Data by Site – Year-to-Date Data 2011-12*, N.C. DEP’T OF PUB. INSTRUCTION (Nov. 12, 2013). Indeed, as of June 2011 – prior to the implementation and testing of the Common Core State Standards – approximately 200,000 North Carolina students in grades 3 through 8 were not proficient in reading and math and therefore not receiving the opportunity for a sound basic education as required by the State Constitution. Today, approximately 483,000 students are not proficient and, thus, not being afforded a *Leandro*-conforming education. *Highlights of the North Carolina Public School Budget, February 2013*, N.C. DEP’T OF PUB. INSTRUCTION (2013) (“2013 Budget Highlights”); Nov. 13, 2013 Hearing, Defendants’ Ex. 1, Accountability (*The READY Accountability Report: 2012-13 Growth and Performance of North Carolina Public Schools*, N.C. DEP’T OF PUB. INSTRUCTION (Nov. 7, 2013)).

Almost ten years have passed since the Supreme Court’s decision in *Leandro II*. This Court has held approximately twenty (20) compliance hearings to afford Defendants an opportunity to present a remedial plan to address and correct their constitutional failings to the at-risk children of North Carolina. Many of the *Leandro II* remedial commitments made by Defendants to this Court have now been abandoned by Defendants and/or have never come to fruition.

of mandamus may be granted: (1) “the party seeking relief must demonstrate a clear legal right to the act requested”; (2) “the defendant must have a legal duty to perform the act requested” and that duty must be “clear and not reasonably debatable”; (3) “performance of the duty-bound act must be ministerial in nature and not involve the exercise of discretion”; however, “a court may issue a writ of mandamus to a public official compelling the official to make a discretionary decision, as long as the court does not require a particular result”; (4) “the defendant must have ‘neglected or refused to perform’ the act requested, and the time for performance of the act must have expired”; and (5) “the court may only issue a writ of mandamus in the absence of an alternative, legally adequate remedy.” *In re T.H.T.*, 362 N.C. 446, 454, 665 S.E.2d 54, 59 (2008). The North Carolina Supreme Court has stated that a board of education or county may be compelled to perform by a writ of mandamus. *Mebane Graded Sch. Dist. v. Alamance Cnty.*, 211 N.C. 213, 189 S.E. 873, 880 (1937) (“The defendants are public agencies charged with the performance of duties imposed by the Constitution and by statutes and upon their failure or refusal to discharge the required duties resort may be had to the courts to compel performance by the writ of mandamus.”).

Plaintiffs respectfully submit that probable cause exists to find that Defendants are not in compliance with prior orders of this Court, and the mandates of the Supreme Court, and request that the Court set a hearing in or about August 2014 for the State Board of Education and the State, acting through its executive and legislative branches, to present (i) a specific written plan, with timetables, setting forth how they will fulfill their Constitutional obligation to provide all children in North Carolina the opportunity for a sound basic education and (ii) evidence regarding their ability to fulfill such plan, including, without limitation, evidence that the Defendants' Level III proficiency standard is *Leandro* compliant. An August hearing date will provide Defendants with sufficient time to develop their plan and to obtain any necessary executive or legislative action required for the plan's implementation. In support of this Motion, Plaintiffs show the Court as follows:

THE COURTS' RULINGS

1. Article I, Section 15 and Article IV, Section 2 of the North Carolina Constitution, as applied by *Leandro*, guarantee to each and every child the right to an equal opportunity to obtain a sound and basic education. This requires that each child be afforded the opportunity to attend a public school which, at a minimum, has the following educational resources:

First, that every classroom be staffed with a competent, certified, well-trained teacher who is teaching the standard course of study by implementing effective educational methods that provide differentiated, individualized instruction, assessment and remediation to the students in that classroom.

Second, that every school be led by a well-trained competent Principal with the leadership skills and the ability to hire and retain competent, certified and well-trained teachers who can implement an effective and cost-effective instructional program that meets the needs of at-risk children so that they can have the opportunity to obtain a sound basic education by achieving grade level or above academic performance.

Third, that every school be provided, in the most cost effective manner, the resources necessary to support the effective instructional program within

that school so that the educational needs of all children, including at-risk children, to have the equal opportunity to obtain a sound basic education, can be met.

This is the law of the case. See Final Judgment dated April 4, 2002 (“Final Judgment”), pp. 109-110; *Leandro II*, 358 N.C. at 637, 599 S.E.2d at 390.

2. In its first Memorandum of Decision, this Court undertook an examination of the “core of the North Carolina Educational Delivery System” and determined that it was sound. Memorandum of Decision, Section One, p. 192. This Court ultimately concluded, however, and the Supreme Court affirmed, that children in Hoke County and in local education agencies (“LEAs”) throughout North Carolina had been denied the opportunity for a sound basic education and that Defendants were responsible for this constitutional violation. See Final Judgment at p. 104; *Leandro II*, 358 N.C. at 647-48, 599 S.E.2d at 396. With respect to each of the three fundamental components of a sound basic education, this Court made the following findings:

Teachers

- “To attract and retain a quality teacher force in North Carolina’s public schools, the State has set an ambitious goal to raise the average teacher salary to the national average. . . . The State of North Carolina, by taking this step, acknowledged that teaching is a profession, not just a job. . . . As a result of increasing teachers’ salaries, North Carolina’s national ranking has increased to twenty-seventh (27th) in terms of average teacher salary.” Memorandum of Decision, Section One, pp. 75-76.
- “Staff development and on-going [t]raining for teachers is essential and necessary.” Final Judgment at p. 39.
- “The enactment of the legislation to assist ‘high priority’ elementary schools by funding staff development for teachers. . . constitutes an irrefutable admission by the State of North Carolina” *Id.* at p. 45.
- “It logically follows that if staff development is a State recognized requirement for the ‘bottom of the barrel’ schools, staff development for individual teachers who are teaching groups of at-risk children performing below grade level in large numbers, is just as important a requirement. . . .” *Id.*

Principals

- “It is undisputed that an effective, energetic, motivated Principal is the key to the success of any school, especially one with a high percentage of at-risk children.” *Id.* at p. 33.
- “An effective Principal can improve the performance of at-risk students by using a variety of policies, educational practices and programs in combination with high expectations, dedication, commitment, *proper staff development with proper funding*, strong leadership and competent teachers who effectively teach the Standard Course of Study to all their students using individualized and differentiated instruction.” *Id.* at p. 64 (emphasis added).
- “Principals, not just Teachers need to receive regular, high-quality professional staff development.” *Id.* at p. 46.

Resources

- “It does not matter whether the lack of an equal opportunity to a sound basic education is caused by teachers, principals, lack of instructional materials or other resources, or lack of leadership and effort. . . . The State of North Carolina cannot shirk or delegate its ultimate responsibility to provide each and every child in the State with the equal opportunity to obtain a sound basic education, *even if it requires the State to spend additional monies to do so.*” *Id.* at p. 108 (emphasis added).
- The Court is of the opinion “that money matters provided the money is spent in a way that is logical and the results of the expenditures measured to see if the expected goals are achieved.” Memorandum of Decision, Section One, p. 116.
- This Court’s finding that the State’s funding delivery system for the public schools was constitutionally sufficient was based, in part, on the existence of the following funding allotment categories: (i) Assistant principals (1 month per 72.64 ADM); (ii) teacher assistants (\$778.36 per child K-3); (iii) Textbooks (\$49.11 per ADM); (iv) at-risk funds and student accountability; (v) Limited English Proficient (“LEP”) program funding (\$4,951 per LEP student); (vi) staff development (approximately \$123 per teacher in the 1999-00 school year); and (vii) technology funding. Memorandum of Decision, Section One, pp. 99, 101-03, 110-11.

3. Based on the clear and convincing credible evidence presented at the trial of this case, and in over twenty hearings since the issuance of the Final Judgment, this Court has found that at-risk children require more resources, time and focused attention in order to learn. *See*

Final Judgment at p. 79. The State has recognized and acknowledged the needs of at-risk students through funding and programs targeted to at-risk students. Specifically, this Court has held:

- “At-risk children need adequately targeted remediation services.” *Id.* at p. 50.
- “Enabling at-risk children to perform well in school requires more time and more resources.” Memorandum of Decision, Section Two, p. 10.
- “At-risk children need smaller classes in early grades.” Final Judgment at p. 60.
- “From this review, it became crystal clear to the Court that there are two distinct groups attending the public schools in North Carolina – those children at risk of academic failure that are not obtaining a sound basic education and those children who are not at risk of academic failure and who are obtaining a sound basic education. The major factors which can be used to identify ... those children at-risk and those not at-risk, are (1) socio-economic status (2) level of parental education and (3) free and reduced price lunch participation, all of which are inextricably intertwined with the other.” Memorandum of Decision, Section III, p. 64.

4. The Supreme Court affirmed that test score evidence in subject areas that correspond to the very core of the Supreme Court’s definition of a sound basic education is relevant to the question of whether children are receiving the opportunity for a sound basic education. *Leandro II*, 358 N.C. at 625, 599 S.E.2d at 382. The end-of-grade (“EOG”) and end-of-course (“EOC”) test scores from across the State and from Hoke County were submitted into evidence in this case in 1999 (and subsequently in the twenty compliance hearings that have been held since *Leandro II*) and were used by the trial court to conclude that the failure of such a large contingent of Hoke County students to achieve Level III proficiency indicated that they were not obtaining a sound basic education in the subjects tested. 358 N.C. at 623-25, 599 S.E.2d at 381-83. Specifically, this Court found, and the Supreme Court upheld:

A student who is performing below grade level (as defined by Level I or Level II) is not obtaining a sound basic education under the *Leandro*

standard. A student who is performing at grade level or above (as defined by Level III or IV) is obtaining a sound basic education under the Leandro standard.

Memorandum of Decision, Section One, p. 183. This Court further noted, “[t]here is one thing for sure, however, the standard of performance now in place **may not be lowered.**” *Id.* at p. 181 (emphasis in original). While test scores are not the sole factor for assessing whether the State is meeting its constitutional obligation to provide children with the opportunity for a sound basic education, such evidence was an important contributing factor in the decision of this Court and the North Carolina Supreme Court. *Leandro II*, 358 N.C. at 625, 599 S.E.2d at 383.

5. This Court found that the State’s school-based accountability program was valid, and met the Constitutional standards enumerated in *Leandro*. Memorandum of Decision, Section One, pp. 120, 192. At that time, the high school model included the results from eleven EOC tests, including six courses required for graduation from high school – Algebra I, Biology, English I and II, ELPS, and United States History – and five college preparatory courses – Algebra II, Chemistry, Physical Science, Geometry and Physics. *Id.* at pp. 126-27. The State’s own witness, Dr. Triplett, testified that **every school** in North Carolina is capable of having **90 percent** of its students score at proficient levels (*i.e.*, Level III or IV) on EOG and EOC tests (except for students with disabilities or LEP who are excused from the tests). *Id.* at pp. 187-88.

DEFENDANTS’ REPRESENTATIONS TO THIS COURT

6. As this Court and the Supreme Court have noted, Defendants have historically acknowledged the importance of qualified, highly effective teachers and principals, as well as additional resources necessary to meet the needs of at-risk children by developing, promoting and funding programs to meet those needs. In addition, in the decade since the Supreme Court’s *Leandro II* ruling, Defendants have made the following representations to this Court regarding

the remediation of constitutional deficiencies preventing them from providing every child a sound basic education. These representations and commitments have included the following:

Teachers

- “Improved teacher retention and effectiveness are essential to improving educational opportunities for all students.” Defendants’ Oct. 25, 2004 Action Plan. *See also* Aug. 1, 2007 Hearing Transcript (State’s Witness Kenneth McEwin, Ph.D), p. 114 (“one of the most powerful determiners of student learning – in fact, the most powerful determiner of the student learning is quality of the teacher”).
- “Research has consistently demonstrated that teachers make a greater difference in student achievement than any other single school factor.” Sept. 26, 2007 Compliance Hearing, Defendants’ Ex. 21A at p. 1 (“Report on the 2006 North Carolina Teacher Working Conditions Survey”).
- “The State will develop a comprehensive portfolio of professional development offerings in core areas for ... teachers to ensure access to high quality professional development in key content areas and skills to improve the achievement of at-risk students. . . .” Defendants’ Oct. 25, 2004 Action Plan (this “includes identifying the content areas and skills where teachers ... need the greatest support, the development of these professional development models, and the deployment of them (including on-line instruction) to teachers. . . .”).
- Expanding teacher supply in hard-to-staff schools is imperative. Scholarships such as the Teaching Fellows and Future Teachers of North Carolina help the State achieve this goal. *See* Defendants’ Aug. 9, 2005 Compliance Report (“expand[ing] teach supply for hard-to-staff schools” is a component of Defendants’ *Leandro* compliance plan).
- The State committed to implement the N.C. Teacher Academy for teacher development and training. *See* Defendants’ Aug. 9, 2005 Compliance Report.
- The “State foresees expanding the ‘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.” *See* Defendants’ October 25, 2004 Action Plan; *see also* Defendants’ Oct. 25, 2005 Compliance Update.
- The State committed to enact a plan to bring teachers’ salaries above the national average in order to improve the State’s ability to recruit and retain quality teachers. Defendants’ Oct. 25, 2005 Compliance Update.

- The disparity of teacher quality in wealthy and poor counties is a root of the State's problems, and the State needs to allocate money to retain quality teachers in poor counties. First Report of the Evaluation of the DSSF, *available at* http://soe.unc.edu/fac_research/spotlight/2007/dssf.pdf (April 2007).
- The State committed to “provide new, targeted investments in education including funding for... teacher recruitment scholarship programs; teacher production in high need areas; [and] teacher retention... .” Defendants’ Aug. 9, 2005 Compliance Report.
- “Successful reform ... will take building the capacity of these lower performing schools to recruit, retain and support teachers who can make a difference... .” Sept. 26, 2007 Compliance Hearing, Defendants’ Ex. 21.

Principals

- High-quality professional development for principals is crucial to improve the performance of at-risk students. Final Judgment at p. 46.
- “The principal’s impact on the school and the success of the school is very, very important. The principal plays a huge role in that.” June 23, 2011 Hearing transcript, p. 91.
- “The State will develop a comprehensive portfolio of professional development offerings in core areas for principals ... to ensure access to high quality professional development in key content areas and skills to improve the achievement of at-risk students. . . . This includes identifying the content areas and skills where ... principals need the greatest support, the development of these professional development models, and the deployment of them (including on-line instruction) to ... principals.” Defendants’ October 25, 2004 Action Plan; *see also* Defendants’ August 9, 2005 Compliance Report.
- The State committed to “provide new targeted investments in education including the funding for ... principal effectiveness... .” Defendants’ August 9, 2005 Compliance Report.
- The State proposed implementation of the “Principal’s Executive Program” for the training and development of principals. *Id.*
- The State proposed implementation of an on-line professional development resource center for the training and development of principals. *Id.*

Resources

- Defendants proposed the creation of the Disadvantaged Student Supplemental Fund (DSSF) to meet the needs of at-risk students and

estimated that approximately \$223 million in funding would be necessary to establish the fund. June 7, 2004 90-Day Report, attachment 8.²

- “Recognizing that students who do not start schools ready to learn remain at-risk of school failure and dropping out throughout their career, the State intends to expand [More at Four] ... 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.” Defendants’ Oct. 25, 2004 Action Plan. *See also* Defendants’ Oct. 25, 2005 Compliance Update (More at Four “will serve” as many as 40,000 with ongoing support provided by the Lottery).
- “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.” Defendants’ Oct. 25, 2004 Action Plan.
- The State will create 75 Learn and Earn high schools and 100 new economic development-themed high schools by 2008-09. Defendants’ Oct. 25, 2005 Compliance Update.
- The State committed that the student-to-teacher ratio, which was reduced to 18:1 for K-3, will be maintained by recurring Lottery funding. Defendants’ Oct. 25, 2005 Compliance Update.

RECORD EVIDENCE OF THE CURRENT STATE OF *LEANDRO* COMPLIANCE

7. While this Court found that Defendants had failed to provide a *Leandro*-conforming education to at-risk children, the Court did find, in 2002, that the education delivery system in North Carolina was sound. However, beginning in 2008, many of the fundamental assumptions on which this Court based its finding concerning the educational delivery system have now been decimated, or in some instances, completely eliminated.

8. For example, in 2002, in finding that the State’s system for certifying and employing teachers to ensure a sufficient number of competent, certified teachers was valid and constitutionally sound, this Court relied upon the State’s efforts to raise the teacher salary

² The \$223 million estimate was based on the number of at-risk and/or disadvantaged children in the State in 2004. As previously noted, there are now far more at-risk and/or disadvantaged children in the State. Considering this fact, as well as inflation, much more than \$223 million would be needed to fully fund DSSF today.

ranking to 27th nationally, the State's program of professional development, and programs to attract and retain teachers – such as the Teaching Fellows Scholarship Program, the Prospective Teacher Scholarship Loan, the Model Teacher Consortium and salary supplement for National Board Certification.³ Since 2008, however, many of these components of the North Carolina educational delivery system have been eliminated or substantially abandoned. For example:

- North Carolina has dropped to 46th in the nation in teacher salary. *State Superintendent Calls for Exempting Public School Teachers from Personal State Income Taxes*, N.C. DEP'T OF PUB. INSTRUCTION (June 17, 2013).
- Funding for teacher salaries has been reduced (including by 5,200 positions for 2013-14). *Summary of Special Provisions*, N.C. DEP'T OF PUB. INSTRUCTION (July 29, 2013) (“*Summary of Special Provisions*”).
- Teaching Fellows scholarships were eliminated in 2011-12. *Id.*; *Report on the Continuation, Expansion and Capital Budgets*, House Bill 22 (June 16, 2011).
- All remaining funding for the Future Teachers Scholarship/Loan Program was eliminated in 2011-12. *Report on the Continuation, Expansion and Capital Budgets*, House Bill 22 (June 16, 2011).
- \$12.5 million allocated to staff development funding was eliminated in 2009-10. *Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets*, Senate Bill 202 (Aug. 3, 2009).

9. Similarly, in finding, in 2002, that the State's funding delivery system was valid and constitutionally sufficient, this Court noted that the system at that time included allocations for assistant principals (1 month per 72.64 ADM), teacher assistants (\$778.36 per child K-3), textbooks (\$49.11 per ADM), at-risk and student accountability funding, staff development and LEP funding (\$4,951 per LEP student). Since 2008, however, these components have been eliminated or substantially abandoned. For example:

³ Similarly, the North Carolina Educator Effectiveness Compensation Task Force (the “Task Force”) recently found that teacher “base pay matters,” compensation reform is an effective means for expanding the pool of high quality candidates in the teaching profession, and “intensive” professional development is a “key factor” in successful teacher compensation models such as IMPACT. *Report to the 2014 Session of the 2013 General Assembly of North Carolina*, N.C. EDUCATOR EFFECTIVENESS & COMPENSATION TASK FORCE 13 (April 2014).

- Assistant principal allocation has been reduced to 1 month per 98.53 ADM. *Highlights of the North Carolina Public School Budget, February 2013*, N.C. DEP'T OF PUB. INSTRUCTION (2013) ("2013 Budget Highlights").
- The number of teacher assistant positions was reduced by 8.75% (1521 positions) in 2009-10. *Education Oversight Committee Presentation*, N.C. DEP'T OF PUB. INSTRUCTION (Oct. 13, 2009).
- Funding for teacher assistants was reduced by 21% for 2013-14 and 19% for 2014-2015. *Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets*, Senate Bill 402 (July 21, 2013); *Summary of Special Provisions*.
- \$38.3 million in Student Accountability funding was eliminated. *Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets*, Senate Bill 202 (Aug. 3, 2009).
- Textbook funding was reduced by \$48 million in 2009-10, and is now only \$14.26 per ADM (as compared to \$49.11 per ADM in 1997-98). 2013 Budget Highlights.
- Funding for the Limited English Proficient [LEP] program was reduced by \$2 million in 2009-10 and further reduced by \$6 million in 2013-14. *Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets*, Senate Bill 202 (Aug. 3, 2009); *Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets*, Senate Bill 402 (July 21, 2013).

10. Evidence introduced at the trial of this case showed that during the 1997-98 school year, 38.9% of North Carolina schoolchildren (or 480,430), were eligible for the free and reduced lunch program based on their family socio-economic status. See Memorandum of Decision, Section Two, p. 6. The Court concluded that those at-risk students required additional resources, and that the needs of those at-risk students could be met through smaller class sizes, more time on task through before and after-school programs and tutoring, early childhood education, and competent, well-trained teachers with updated professional development. *Id.* at pp. 15-19. Since the trial of this case, the percentage of at-risk students (as measured by free and reduced lunch eligibility) has increased from 38.9% in 1997-98 to 48.5% in 2006-07 (671,831) to 56% in 2011-12 (793,055). *Case Studies of Best Practices- Alternative Schools and Programs*

1998-99, N.C. Dep't of Pub. Instruction 11 (2000); *Free & Reduced Meals Application Data*, N.C. Dep't of Pub. Instruction (2007); *Free & Reduced Meals Application Data*, N.C. Dep't of Pub. Instruction (2012). During that same time period, however, Defendants have decreased and eliminated resources proven to meet the additional needs of at-risk students. For example:

- The State predicted that the Disadvantaged Student Supplemental Fund required \$223 million in funding, but no more than \$81 million has been allocated. June 7, 2004 90-Day Report, attachment 8; 2013 Budget Highlights.
- The State has now reduced the number of slots in the More at Four/NC Pre-K Program to only 27,500 (well short of the 40,000 slots it committed to provide). *Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets*, Senate Bill 402 (July 21, 2013).
- Student-to-teacher ratios were increased to adjust for the \$286.4 million reduction of funding for classroom teachers in 2013-14. *Summary of Special Provisions*.

11. In addition to the elimination of programs and funding specifically recognized by this Court, as set forth above, Defendants have further failed to comply with the Courts' directives that every child be afforded the opportunity to attend a school with competent, certified, well-trained teachers, well trained competent principals and sufficient resources to support an effective instructional program. Since at least 2008, the State has in fact eliminated many of the efforts and programs it represented to this Court were part of its plan for *Leandro* compliance and which formed the foundation of the educational delivery system the Court found sufficient. In short, the State Defendants are moving backwards, not forwards, in terms of satisfying this Court's orders and the mandates of the Supreme Court in *Leandro II*. Specifically, with respect to:

Teachers

- Defendants admit that they are aware of ineffective teachers in classrooms in North Carolina where student performance will decline, but is not

taking corrective action. See Nov. 13, 2013 Compliance Hearing Transcript, pp. 137-141.

- \$500,000 allocated to a Math and Science supplemental pilot was eliminated in 2009-10. *Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets*, Senate Bill 202 (Aug. 3, 2009).
- The number of classroom teachers was reduced by 3.57% (2466 positions) in 2009-10. *Education Oversight Committee Presentation*, N.C. DEP'T OF PUB. INSTRUCTION (Oct. 13, 2009).
- Funding for classroom teachers was reduced by \$286.4 million (5200 fewer positions) in 2013-14. *Summary of Special Provisions*.
- Funding for teacher mentoring was reduced by \$2 million in 2009-10, and remaining funding was eliminated completely in 2011-12. *Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets*, Senate Bill 202 (Aug. 3, 2009); *Report on the Continuation, Expansion and Capital Budgets*, House Bill 22 (June 16, 2011).
- All funding for the NC Teacher Academy, a program which provided professional development statewide for teachers and principals, was eliminated in 2011-12. *2011-12 Budget Comparison*, N.C. DEP'T OF PUB. INSTRUCTION (June 17, 2011); *Report on the Continuation, Expansion and Capital Budgets*, House Bill 22 (June 16, 2011).
- Funding for the NC Center for the Advancement of Teaching ("NCCAT") was reduced by nearly 50% in 2011-12. *Governor's Recommended Adjustments to Base Budget*, STATE OF N.C. (2012); *Report on the Continuation, Expansion and Capital Budgets*, House Bill 22 (June 16, 2011).
- 46 NCCAT positions were eliminated in 2013-14. *Id.*; *Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets*, Senate Bill 402 (July 21, 2013).
- All funding for the Collaborative Project in five low-performing, low-wealth counties, a program which focused on teacher and principal quality and school improvement, was eliminated in 2011-12. *Allotment Policy Manual Changes for FY 2011-12*, N.C. DEP'T OF PUB. INSTRUCTION (2011).
- All funding for the Teacher Cadet Program, a program which attracted top high school students into the teaching profession, was eliminated in 2011-12. *Report on the Continuation, Expansion and Capital Budgets*, House

Bill 22 (June 16, 2011); *2011-12 Budget Comparison*, N.C. DEP'T OF PUB. INSTRUCTION (June 17, 2011).

- Salary supplements for teachers holding masters degrees were eliminated in 2013-14. *Summary of Special Provisions*.
- North Carolina does not require a minimum grade point average for teacher preparatory program applicants. N.C. GEN. STAT. § 115C-296 (2013).
- North Carolina does not require evidence of teacher effectiveness to be a factor in license renewal. *Id.*
- The State does not link compensation to district needs or teacher effectiveness. N.C. GEN. STAT. §§ 115C-295 *et seq.* (2013).
- Teachers are not required to pass subject-matter tests before entering the classroom. N.C. GEN. STAT. § 115C-296 (2013).

Principals

- The Principals' Executive Program was eliminated in 2009-10. *Post-Legislative Budget Summary 2007-2009*, OFFICE OF STATE BUDGET AND MGMT. (2007).
- Over \$22 million in funding for assistant principals was eliminated in 2011-12. *Report on the Continuation, Expansion and Capital Budgets*, House Bill 22 (June 16, 2011).

Resources

- Since 2008, State spending per student has decreased by at least \$187.12. *Highlights of the North Carolina Public School Budget, February 2008*, N.C. DEP'T OF PUB. INSTRUCTION (2008) ("2008 Budget Highlights"); 2013 Budget Highlights.
- \$12 million in funding to support 200 literary coaches was eliminated in 2009-10. *Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets*, Senate Bill 202 (Aug. 3, 2009).
- School-based child and family support teams were reduced by \$1.2 million in 2009-10. *Id.*
- Technology funding was reduced by \$9.6 million in 2009-10. *Id.*
- \$22.9 million in funding for instructional support such as guidance counselors, social workers and other personnel was cut in 2011-12.

Report on the Continuation, Expansion and Capital Budgets, House Bill 22 (June 16, 2011).

- Funding for instructional support positions was reduced by an additional \$17 million for 2013-14 and \$17.2 for 2014-15. *Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets*, Senate Bill 402 (July 21, 2013); *Summary of Special Provisions*.
- Over \$17.2 million for central office administration, including administrative staff, curriculum and technology specialists, and other personnel was cut in 2011-12. This reduced the capacity of smaller and lower-wealth districts to support school improvement and student gains, as well as to make strategic choices about reducing budgets. *Report on the Continuation, Expansion and Capital Budgets*, House Bill 22 (June 16, 2011).
- All funding for the Dropout Prevention Grant program was eliminated in 2011-12. *Id.*; *2012-13 Education Budget Frequently Asked Questions*, N.C. DEP'T OF PUB. INSTRUCTION (May 29, 2012).
- Funding for instructional supplies was cut by 46% in 2011-12. *Report on the Continuation, Expansion and Capital Budgets*, House Bill 22 (June 16, 2011).
- Funding for the school technology fund, textbooks and instructional supplies was reduced by over \$144 million in 2011-12. *Id.*
- Funding for instructional supplies was reduced by an additional \$6.9 million in 2013-14. *Summary of Special Provisions*.
- Race-to-the-Top funding reductions will prevent Defendants from providing their current level of turnaround support and will reduce effectiveness. November 14, 2013 Hearing Transcript, pp. 230, 260.
- Teacher assistant positions were reduced by 3850 positions in 2013-14. *Summary of Special Provisions*.

12. The Defendants' actions since 2008 have made it impossible for the State to provide all children in North Carolina with a meaningful opportunity for a sound basic education.

13. At the same time Defendants have reduced and eliminated programs and resources necessary to provide the opportunity for a sound basic education to all students, including at-risk students, State Defendants have significantly impaired this Court's and the

public's ability to gage the State's compliance with its Constitutional obligations. The Supreme Court affirmed this Court's ruling that Level II ("Achieves at a basic level: students performing at this level demonstrate inconsistent mastery of knowledge and skills that are fundamental in this subject area and that are minimally sufficient to be successful at the next grade level") is **not** a sound basic education. Memorandum of Decision, Section One, p. 180-183. Only achievement at Level III or above demonstrates that a child has received an equal opportunity for a sound basic education – "Students performing at this level consistently demonstrate mastery of grade level subject matter and skills and are well prepared" for the next grade level.

14. In March 2014, Defendant State Board of Education adopted a **new** Level III, which provides that:

Students performing at this level have a sufficient command of grade-level knowledge and skills contained in the Common Core State Standards (CCSS) Reading Standards for Literature assessed at grade 3, but they may need academic support to engage successfully in this content area in the next grade level. They are prepared for the next grade level but are not yet on track for college-and-career readiness without additional academic support.

See State Board of Education 3/2014 Meeting *Executive Summary*, attach. 1. The old Level III is now Level IV, and the old Level IV is now Level V. The cut scores have also been adjusted across 5 levels, so that a lower cut score will be deemed Level III (*e.g.*, in 3rd grade reading, a cut score of 442 was required to achieve old Level III, but now a cut score of 439 is a Level III). As a result of this change, students who have not demonstrated mastery of the grade level subject matter are nevertheless deemed to be "at grade level." This is a direct violation of the Supreme Court's ruling and an attempt to mask the number of students who are not receiving an opportunity for a sound basic education.

15. The State has further eliminated eight of 11 high school end-of-course tests since 2000 (English I, ELPS, U.S. History, Algebra II, Chemistry, Physical Science, Geometry, and

Physics). The State's evidence regarding what is currently tested by the ACT test confirms that the State has no objective way to determine whether students have:

a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society; [and] sufficient fundamental knowledge of geography, history, and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student's community, state, and nation

Leandro v. State, 346 N.C. 336, 347, 488 S.E.2d 249, 255 (1997). The ACT test scores introduced into evidence further confirm that 66% of high school students are not proficient at a 10th grade level in reading and 70% of high school students are not proficient at a 10th grade level in math. Nov. 13, 2013 Hearing, Defendants' Ex. 8, Accountability (*ACT Profile Report – State*, N.C. DEP'T OF PUB. INSTRUCTION (2012)).

16. This Court's Final Judgment requires the provision of certified, competent teachers in classrooms in schools led by well-trained competent principals. It also requires that:

Every school be provided, in the most cost effective manner, the resources necessary to support the effective instructional program within that school so that the educational needs of all children, including at-risk children, to have the equal opportunity to obtain a sound basic education, can be met.

Final Judgment at p. 110. The State Defendants have been afforded twelve years to develop a remedial plan that would move the State closer to satisfying these fundamental constitutional requirements. Plaintiffs submit that the State Defendants have failed to do so. While the State has advanced some meritorious initiatives, many of those initiatives, since 2008, have been eliminated or substantially curtailed. All parties to this litigation understand that the Courts have now repeatedly ruled that many North Carolina school children are not being provided their constitutionally-required equal opportunity for a sound basic education. All understand that this requisite equal opportunity cannot be provided without bold, and perhaps difficult, action by the State Defendants. Notwithstanding this challenge, *Leandro II*, and this Court's rulings, are not

advisory opinions. They are the law of the case and the State Defendants must set forth a specific, detailed plan as to how they will remedy the constitutional failures impacting North Carolina's at-risk schoolchildren.

WHEREFORE, Plaintiffs respectfully request that the Court:

(A) Hold a hearing in or about August 2014 and require Defendants to appear and show cause why the Court should not find that Defendants have failed to comply with this Court's prior orders and the ruling of the North Carolina Supreme Court as set forth in *Hoke County Bd. of Educ. v. State*, 358 N.C. 605, 599 S.E.2d 365 (2004);

(B) Order Defendants State Board and State, through its executive and legislative branches, to present a specific written plan, with timetables, for their compliance with the previous orders of this Court in this case and the orders of the North Carolina Supreme Court in *Leandro I* and *Leandro II* (the "Plan"). Order that the Plan shall include details as to how Defendants will carry out their constitutional duties and ensure that:

i. Every North Carolina public school classroom, including those in hard-to-staff LEAs and schools, is staffed with a competent certified well-trained teacher who is teaching effectively the standard curriculum and is providing differentiated, individualized instruction assessment and remediation for students.

ii. Every North Carolina public school is led by a well-trained competent principal with the skills to hire and retain competent, certified teachers who can implement a cost effective program meeting the needs of at-risk children so they have an equal opportunity to obtain a sound basic education by achieving grade level performance or above in academic performance.

iii. Every North Carolina public school is being provided, in a cost effective manner, the resources necessary so that children, including those at-risk, have an equal opportunity to obtain a sound basic education.

(C) Order Defendants to present evidence regarding their ability to fully implement and fulfill the Plan, including, but not limited to, evidence that Defendants' Level III proficiency standard is *Leandro* compliant;

(D) Order Defendants to keep the Court and Plaintiffs advised of their compliance with the Plan by a written report filed with the Court every ninety (90) days, or as otherwise may be directed by the Court;

(E) In light of the clear constitutional right of every child in North Carolina (including those at-risk) to have a meaningful opportunity to a sound basic education, the passage of time since this Court found that such a right was being denied to children across the State, and the State Defendants' failure and/or refusal to remedy these constitutional deprivations, enter a writ of mandamus requiring Defendants to comply with this Court's prior orders and the ruling of the North Carolina Supreme Court as set forth in *Hoke County Bd. of Educ. v. State*, 358 N.C. 605, 599 S.E.2d 365 (2004); and

(F) Grant Plaintiffs such other and further relief as the Court deems just and proper.

This, the 29th day of April, 2014.



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **MOTION IN THE CAUSE** was served on the parties in this action on this day by depositing a copy thereof in the United States mail, postage prepaid, addressed as follows:

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This the 29th day of April, 2014.



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