

STATE OF NORTH CAROLINA
COUNTY OF WAKE

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

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,
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.

ORDER ON COMPREHENSIVE REMEDIAL PLAN

This matter, coming before the Court pursuant to the January 21, 2020 Consent Order (“January 2020 Order”) and the September 11, 2020 Consent Order (“September 2020 Order”) entered in this case; and

The Court, having received from the State of North Carolina (“State”) and the State Board of Education (“State Board”) (collectively, “State Defendants”) on March 15, 2021, a Comprehensive Remedial Plan and Appendix which are attached to this Order as “Exhibit A” and “Exhibit B” respectively (collectively, the “Comprehensive Remedial Plan”), and incorporated herein by reference, and having held a status

conference in this matter on April 13, 2021 to review the Comprehensive Remedial Plan and hear from the Parties, finds as follows:

In its unanimous opinion in *Hoke County Bd. of Educ. v. State*, 358 N.C. 605, 647 (2004) (“*Leandro II*”), the North Carolina Supreme Court held, “an inordinate number” of students had failed to obtain a sound basic education and that the State had “failed in [its] constitutional duty to provide such students with the opportunity to obtain a sound basic education.” In light of that finding, the Supreme Court ordered that “the State must act to correct those deficiencies that were deemed by the trial court as contributing to the State's failure of providing a *Leandro*-comporting educational opportunity.” *Id.* at 647-48. After eleven years and more than 20 evidentiary hearings, the nature and scope of which are set out in the record, this Court concluded that “in way too many school districts across this state, thousands of children in the public schools have failed to obtain and are not now obtaining a sound basic education as defined and required by the *Leandro* decision.” March 17, 2015 Order.

This Court examined the record again in 2018 and found that “the evidence before this court . . . is wholly inadequate to demonstrate . . . substantial compliance with the constitutional mandate of *Leandro* measured by applicable educational standards.” March 13, 2018 Order. The Court and the Parties then embarked on a process of identifying an independent, third-party consultant to assess the status of *Leandro* compliance in North Carolina and to make detailed, comprehensive, written recommendations for specific actions necessary to achieve sustained compliance with the constitutional mandates articulated in the holdings of *Leandro v. State*, 346 N.C. 336, 357 (1997) (“*Leandro I*”) and *Leandro II*. The Governor also created the Commission on Access to a Sound Basic Education (the “Commission”) at that time.

The Court appointed WestEd to serve as the Court’s consultant, and all Parties agreed that WestEd was qualified to serve in that capacity. *See* January 2020 Order at 10. WestEd presented its findings and recommendations to the Court in December 2019 in a report entitled, “*Sound Basic Education for All: An Action Plan for North Carolina*,” along with 13 underlying studies (collectively, the “WestEd Report”). The WestEd Report represents an unprecedented body of independent research and analysis that has informed the Court’s approach in this case.

The WestEd Report concluded, and this Court found, that considerable, systematic work is still required to deliver fully the *Leandro* right to all children in our State. *See* January 2020 Order at 2-3. Based on the WestEd Report, the Court specifically found that due to the increase in the number of children with higher needs, who require additional supports to meet high standards, the State faces greater challenges than ever before in meeting its constitutional obligations. *Id.* at 15. For example, North Carolina has 807 high-poverty districts schools and 36 high-poverty charter schools, attended by over 400,000 students (more than a quarter of all North Carolina students). *Id.* The Court also found that state funding for

education has not kept pace with the growth and needs of the PreK-12 student body. *Id.* at 17. While the Defendants have implemented a number of promising initiatives since the *Leandro II* decision, this Court found that many of them were neither sustained nor scaled up to make a substantial impact. *Id.*

Based on the WestEd Report and the findings and recommendations of the Governor’s Commission, Plaintiffs and Penn Intervenors (collectively, “Plaintiffs”) as well as State Defendants all agreed that “the time has come to take decisive and concrete action . . . to bring North Carolina into constitutional compliance so that all students have access to the opportunity to obtain a sound basic education.” January 2020 Order at 3. The Court agreed with the Parties’ decisions. The Court, therefore, ordered State Defendants to work “expeditiously and without delay” to create and fully implement a system of education and educational reforms that will meet the *Leandro* requirement of providing the opportunity for a sound basic education to all North Carolina children. The Court specifically ordered the Parties to submit a Joint Report outlining the specific actions that State Defendants must implement in 2020 to begin to address the issues identified by WestEd and described in the January 2020 Order.

The Parties submitted the Joint Report on June 15, 2020. The Joint Report acknowledged that the COVID-19 pandemic has exacerbated many of the inequities and challenges that are the focus of this case, particularly for students of color, English Language Learners, and economically-disadvantaged students. And while the Joint Report detailed one-time funding targeted by the Governor, the General Assembly, and the State Board to address the impact of COVID-19, the Parties recognized that these funds are not intended to address the historical and unmet needs of children who are being denied the opportunity for a sound basic education. The Joint Report set forth specific action steps that “the State can and will take in Fiscal Year 2021 (2020-21) to begin to address to constitutional deficiencies previously identified by this Court” (the “Year One Plan”). The Parties all agreed that the actions specified in the Year One Plan were necessary and appropriate to remedy the constitutional deficiencies in North Carolina public schools.

On September 11, 2020, the Court ordered State Defendants to implement the actions identified in the Year One Plan. September 2020 Order, Appendix A. The Court further ordered State Defendants, in consultation with Plaintiffs, to develop and present a Comprehensive Remedial Plan to be fully implemented by the end of 2028 with the objective of fully satisfying State Defendants’ *Leandro* obligations by the end of 2030. Lastly, to assist the Court in entering this order and to promote transparency, the Court ordered State Defendants to submit quarterly status reports of progress made toward achieving each of the actions identified in the Year One Plan.

Defendants submitted their First Status Report on December 15, 2020. The Court was encouraged to see that some of the initial action items were successfully implemented. For example, House Bill 1096 (SL 2020-56) was signed into law by the

Governor on June 30, 2020 and implemented the identified action of expanding the number of eligible teacher preparation programs for the NC Teaching Fellows Program from 5 to 8. Increased funding to support additional Teaching Fellows for the 2021-22 academic year, however, was not appropriated. Similarly, Senate Bill 681 (SL 2020-78) was signed into law by the Governor on July 1, 2020 to create a permanent Advanced Teaching Roles program that will provide grants and policy flexibility to districts seeking to implement a differentiated staffing model. The bill, however, did not provide any new funding to provide additional grants to school districts, as required by the Year One Plan.

The First Status Report also detailed the federal CARES Act funds that the Governor, the State Board, and the General Assembly directed to beginning implementation of certain Year One Plan actions. The Court notes, however, that the CARES ACT funding and subsequent federal COVID-related funding is non-recurring and cannot be relied upon by the State to sustain ongoing programs that are necessary to fulfill the State's constitutional obligation to provide a sound basic education to all North Carolina children. The Court did not receive another status report prior to State Defendants' submission of the Comprehensive Remedial Plan on March 15, 2021.

As represented by State Defendants, the Comprehensive Remedial Plan identifies the programs, policies, and resources that "are necessary and appropriate actions that must be implemented to address the continuing constitutional violations and to provide the opportunity for a sound basic education to all children in North Carolina." WestEd has advised the Parties and the Court that the recommendations contained in its Report are not a "menu" of options, but a comprehensive set of fiscal, programmatic, and strategic steps necessary to achieve the outcomes for students required by our State Constitution. WestEd has reviewed the Comprehensive Remedial Plan and has advised the Court that the actions set forth in the Plan are necessary and appropriate for implementing the recommendations contained in WestEd Report. The Court concurs with WestEd's opinion.

The Court understands that those items required by the Year One Plan that have not yet been implemented as ordered in the September 2020 Order have been included in, or "rolled over" to, the Comprehensive Remedial Plan. The Court notes that the WestEd Report contemplated that its recommendations would be implemented gradually over eight years, with later implementation building upon actions to be taken in the short term. Failure to implement all of the actions in the Year One Plan will necessarily make it more difficult for State Defendants to implement all the actions described in the Comprehensive Remedial Plan in a timely manner. The urgency of implementing the Comprehensive Remedial Plan on the timeline currently set forth by State Defendants cannot be overstated. As this Court previously found:

[T]housands of students are not being prepared for full participation in the global, interconnected economy and the society in which they live, work and engage as citizens. The costs to those students, individually, and to the State are considerable and if left unattended will result in a North Carolina that does not meet its vast potential.

January 2020 Order. Time is of the essence.

The Supreme Court held in 1997 that if this Court finds “from competent evidence” that the State is “denying children of the state a sound basic education, a denial of a fundamental right will have been established.” *Leandro I*, 346 N.C. at 357. This Court’s finding was upheld in *Leandro II* and has been restated in this Court’s Orders in 2015 and 2018. It is, therefore, “incumbent upon [the State] to establish that their actions denying this fundamental right are ‘necessary to promote a compelling government interest.’” *Id.* The State has not done so. To the contrary, State Defendants have acknowledged that additional State actions are required to remedy the denial of this fundamental right.

State Defendants have presented a Comprehensive Remedial Plan outlining those necessary actions. Moreover, the Governor’s proposed 2021-2023 biennium budget, and the accompanying bill, Senate Bill 622, presents a balanced budget that includes funding to implement the remedial measures identified in the first two years of the Comprehensive Remedial Plan. The Court further understands that House Bill 946 (filed May 11, 2021), if passed, will fund and implement the first two years of the Comprehensive Remedial Plan. The Court has granted “every reasonable deference” to the legislative and executive branches to “establish” and “administer[] a system that provides the children of the various school districts of the state a sound basic education,” 346 N.C. at 357, including deferring to the Defendants’ leadership in the collaborative development of the Comprehensive Remedial Plan over the past three years.

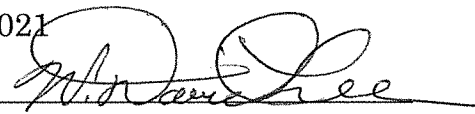
If the State fails to implement the actions described in the Comprehensive Remedial Plan—actions which it admits are necessary and which, over the next biennium, the Governor’s proposed budget and Senate Bill 622 confirm are attainable—“it will then be the duty of this Court to enter a judgment granting declaratory relief and such other relief as needed to correct the wrong.” 346 N.C. at 357.

In light of the foregoing, and having reviewed and considered the Comprehensive Remedial Plan, the North Carolina Supreme Court’s decisions in *Leandro I and Leandro II*, the arguments and submission of Counsel for all parties, this Court’s prior orders, the findings of which are incorporated herein, and the representations of State Defendants, it is hereby **ORDERED** that:

- A. the actions, programs, policies, and resources propounded by and agreed to State Defendants, and described in the Comprehensive Remedial Plan, are necessary to remedy continuing constitutional violations and to provide the opportunity for a sound basic education to all public school children in North Carolina;
- B. the Comprehensive Remedial Plan shall be implemented in full and in accordance with the timelines set forth therein;
- C. the State shall inform and engage its actors, agencies, divisions, and/or departments as necessary to ensure the State's compliance with this Order, including without limitation seeking and securing such funding and resources as are needed and required to implement in a sustainable manner the programs and policies set forth in the Comprehensive Remedial Plan;
- D. State Defendants shall submit a report to the Court regarding their progress toward fulfilling the terms and conditions of this Order no later than August 6, 2021, and Plaintiffs may submit a response to that report no later than August 20, 2021;
- E. the Court will hold a hearing on or about September 8, 2021 at 11:00 a.m. to address issues raised in that report and any response from Plaintiffs; and
- F. before October 31, 2021, and at the end of each quarter thereafter until further notice from the Court, State Defendants shall submit status reports to the Court that shall, at minimum, describe the progress they have made toward achieving each of the benchmarks identified in the Comprehensive Remedial Plan, including an explanation and identification of specific barriers to implementing each benchmark not achieved in a timely fashion. Plaintiffs shall have fourteen (14) days to submit a response to any of State Defendants' reports.

This Order may not be modified except by further Order of this Court. The Court shall retain jurisdiction over this matter.

This the 7th day of June, 2021


The Honorable W. David Lee
North Carolina Superior Court Judge