

STATE OF NORTH CAROLINA
COUNTY OF WAKE

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

HOKE COUNTY BOARD OF)
EDUCATION, *et al.*,)
)
Plaintiffs,)
)
and)
)
CHARLOTTE-MECKLENBURG BOARD OF)
EDUCATION,)
)
Plaintiff-Intervenors,)
)
and)
)
RAFAEL PENN, *et al.*)
Plaintiff-Intervenors,)
)
and)
)
v.)
)
STATE OF NORTH CAROLINA, *et al.*,)
Defendants,)
)
and)
)
CHARLOTTE-MECKLENBURG BOARD OF)
EDUCATION,)
)
Realigned Defendant.)

**PENN-INTERVENORS’
RESPONSE TO STATE
DEFENDANTS’ FIRST
REPORTS ON PROGRESS ON
COMPREHENSIVE
REMEDIAL PLAN**

Penn-Intervenors submit to the Court this response to the two recent progress reports submitted separately to the Court by the State of North Carolina and the North Carolina State Board of Education (collectively, “State Defendants”) on August 6, 2021. Under this Court’s Order on the Comprehensive Remedial Plan signed on June 11, 2021 (“Order on CRP”), the State Defendants were ordered, in part, “to seek[] and secur[e] such funding and resources as needed and required to implement in a sustainable manner the programs and policies set forth in the Comprehensive Remedial Plan” (“CRP” or “Leandro Plan”). The State of North Carolina did “seek” resources that would help ensure implementation of the CRP by submitting a budget to the General Assembly that would cover the cost of the CRP for years two (2021-22) and three (2022-23). However, the State Defendants have not “secured” the funding and resources required

under the Order on CRP. The General Assembly has failed to act and the current operating budget of the State will not cover the costs of fully implementing the CRP.

Indeed, as the two reports reflect, despite significant, existing State resources to meet the demands of the CRP and a reasonable budget proposed by Governor Cooper that would fully cover the expected cost of implementing the CRP in FY 2022 and FY 2023, the State Defendants have fallen woefully short of securing the resources and funds necessary to carry out their current obligations owed to North Carolina school children and school districts under the CRP. The General Assembly is not expected to ensure compliance as both the House and Senate's proposed budgets fall far short. Undoubtedly, the State's most aggrieved students and schools will continue to be deprived of the essential educational opportunities needed to access a sound basic education as ordered nearly two decades ago in *Hoke County Board of Education v. State of North Carolina*, 358 N.C. 605, 599 S.E.2d 365 (2004).

Below, Penn-Intervenors summarize for the Court the substantial shortcomings noted in both state reports and highlight how specific failings will negatively impact the learning and education of North Carolina's most marginalized students. Penn-Intervenors also share an analysis of the House and Senate proposed budgets against the Leandro Plan's budget listed in the CRP's appendix, demonstrating significant budget deficiencies. Finally, Penn-Intervenors respectfully urge the Court to begin to examine its judicial powers to enforce the Court's orders against State Defendants as there is little hope that the constitutional deficiencies will be remedied anytime soon. The children of North Carolina have a fundamental right to have the opportunity to receive a sound basic education (*Leandro v. State of North Carolina*, 346 N.C. 336, 488 S.E.2d 249 (1997)) and can wait no longer.

I. State Defendants' Reports Demonstrate Substantial Noncompliance with the Comprehensive Remedial Plan for FY 2022

According to State Defendants' two progress reports, the State is not expected to meet the vast majority of its obligations to provide a sound basic education to the children of North Carolina in 2021-22 (Year 2). The table submitted by the State of North Carolina, for example, identifies **forty-six (46)** separate obligations under the CRP for which further legislative action is pending, forty-three of which have no funding allocated to date. Together, the reports submitted by State Defendants show that presently, **the State has failed to comply with at least 65% (62/96) of its obligations under the CRP.**¹

The pandemic has only heightened the imminent need for State Defendants to meet the constitutional obligations owed to North Carolina's most afflicted students. After a year of

¹ This estimate is based on accepting at face-value the admissions and statements in the respective progress reports submitted by the State of North Carolina and the State Board of Education. However, a preliminary analysis of the actions taken by the State Board reveals apparent failures to fully comply with the terms of the CRP, including reliance on one-time federal funds (*see, e.g.*, State Board Report at 17, noting nonrecurring federal ESSER funds could possibly be accessed through an application process for professional development; *id.* at 25, noting federal CARES Act funds to be used to provide supports to low-performing schools and districts; *id.* at 31, noting federal COVID funding to provide short-term recruitment and retention strategies and professional development); and failure to fully comply with the CRP provisions (*see, e.g.*, State Board Report at 11, noting bill signed by Governor to create a permanent Advance Teaching Roles program, but also noting the lack of funding needed to monitor, evaluate and support the pilots and programs; *id.* at 22, noting the implementation of aligning grade level expectations and college- and career-ready expectations must await finalization of the innovative assessment identified in IV.B.ii.1 of the CRP).

delaying implementation of several actions under the 2020 Consent Order due to the pandemic, educational opportunities for marginalized students will only worsen with further delays. As the Court recognized in its CRP, “[w]hile all children have experienced significant disruption or trauma, the pandemic’s public health, economic, and educational costs are disproportionately borne by Black, Latino, Native, and low-income North Carolinians, and the Leandro remedy implementation must prioritize providing resources for those students.” Comprehensive Remedial Plan at 5. Yet, despite the added urgency created by the disproportionate effects of COVID-19, the State has failed miserably to comply with the Court’s Order and its constitutional obligations.

Among the several *unmet obligations* owed under the Court’s CRP in FY 2022, State Defendants have failed to take action on several critical obligations, including but not limited to the following actions that will especially impact the State’s most marginalized students:

State Defendants’ CRP Obligations (FY 2022- Year 2)		
<i>(derived from progress reports of State of North Carolina and North Carolina Board of Education)</i>		
Major Area of CRP	Met/Total Number Obligations	Specified Unmet Obligations Especially Impacting At-Risk Students (these are examples only; see State Defendants’ Progress Reports for complete list)
Section I. Qualified and Well-Prepared Teacher in Every Classroom	5/21	<i>Failure to provide support for Grow-Your-Own and 2+2 programs that help recruit and prepare teachers in high need communities.</i>
		<i>Failure to take actions to significantly increase the racial and ethnic diversity of North Carolina’s qualified and well-prepared teacher workforce and ensure all teachers employ culturally responsive practices.</i>
		<i>Failure to increase teacher compensation and enable low wealth districts to offer salaries and other compensation to make them competitive with more advantaged districts.</i>
		<i>Failure to ensure low wealth districts and high poverty schools have the resources to provide incentives for the recruitment and retention of qualified teachers.</i>
Section II. A Qualified and Well-Prepared Principal in Every School	5/11	<i>Failure to expand access to high quality principal preparation programs to all North Carolina school districts.</i>
		<i>Failure to revise the principal and assistant principal salary structures and improve working conditions to make positions in high need schools and districts more attractive to well-qualified educators.</i>
Section III. A Finance System that Provides Adequate, Equitable, and Efficient Resources	2/12	<i>Failure to increase the investment in overall spending for public education incrementally over the next eight years to provide a sound basic education.</i>
		<i>Failure to increase educator compensation to make it competitive with educator compensation in other states in theregion and with other career options that require similar levels of preparation, certification, and levels of experience.</i>

Major Area of CRP	Met/Total Number Obligations	Specified Unmet Obligations Especially Impacting At-Risk Students (these are examples only; see State Defendants' Progress Reports for complete list)
Section IV. An Assessment and Accountability System that Reliably Assesses Multiple Measures of Student Performance.	6/6 (some evidence of initial compliance)	
Section V. An Assistance and Turnaround Function that Provides Necessary Support to Low-Performing Schools and Districts	5/7	<i>Failure to provide resources and support to high poverty schools to adopt a community schools or other evidence-based model to address out-of-school barriers.</i>
Section VI. A System of Early Education that Provides Access to High-Quality Prekindergarten and Other Early Childhood Learning Opportunities	13/26	<i>Failure to expand NC Pre-K through incremental rate and slot increases.</i>
		<i>Failure to provide funding for staffing, interpreter services, a centralized provider network system, professional development, and addressing salary inequities for the NC Infant Toddler Program.</i>
		<i>Failure to develop a state plan for progress on early childhood teacher education, salary and benefits.</i>
		<i>Failure to incrementally increase funding for teacher assistants.</i>
		<i>Failure to incrementally increase funding for school counselors, nurses, social workers and psychologists.</i>

II. State Defendants have the resources available to satisfy their constitutional obligations but neither the State Board nor the General Assembly has the will to ensure a sound basic education for all of North Carolina's school children, especially its at-risk students.

As the State of North Carolina concedes in its report, "The State has the fiscal resources to implement the next two years of the CRP." State of North Carolina Report at 1. This includes **\$8 billion in state reserves** and more than **\$5 billion** in forecasted revenues that exceed the existing base budget.

Based on these significant revenues and in light of the State's continuing obligations to North Carolina children under the orders of this case, Governor Cooper submitted to the General Assembly a proposed budget that covered the expected costs of the Leandro Plan for 2021-22 (\$725.6 million) and 2022-23 (\$1.15 billion). *Id.* These figures were well within the expected state budget revenues for both years.

However, neither the Senate nor the House is willing to meet the State Defendants' obligations under the orders of this Court. As the State of North Carolina notes in its report, the Senate budget proposes a paltry \$191.6 million for 2021-22, or approximately 27.74% of the estimated costs for the Leandro Plan; and \$213.7 million (or approximately 20.16%) for 2022-

23. *Id.* The Senate proposed tax cuts amounting to \$690 million in 2021-22 and \$1.9 billion in 2022-23 indicate a flagrant disregard for the State’s constitutional obligation to North Carolina students. The House does not fare much better, proposing \$300.5 million (or approximately 48%) for 2021-22 and \$314.4 million (or approximately 32%) for 2022-23. *See* Appendix A at 2.²

Appendix A provides a more global picture of the State Defendants’ failure to uphold its constitutional obligations. These figures show sharp divestments in the State’s educational system, including no funds allocated under either budget for 2021-22 (Year 2) or 2022-23 (Year 3) that would otherwise provide critical supports for at-risk students such as:

- comprehensive induction services for beginning teachers in low performing, high poverty schools (compare CRP’s \$2.2 million cost for Year 2 and \$5 million for Year 3) (Appendix A at 1);
- costs of National Board certification for educators in high need, low-performing schools (compare CRP’s \$1.9 million cost for Year 2 and Year 3 (Appendix A at 1)
- critical supports for children with disabilities that could result from increasing supplemental funding to more adequate levels and removing the funding cap (compare CRP’s \$40 million cost for Year 2 and \$70 million for Year 3); (Appendix A at 1)
- ensuring greater access to key programs for at-risk students by combining the DSSF and at-risk allotments for all economically disadvantaged students (compare CRP’s \$35 million cost for Year 2 and \$70 million for Year 3) (Appendix A at 1)
- assisting English learner students by eliminating the funding cap, simplifying the formula and increasing funding to more adequate levels (compare CRP’s \$10 million for Year 2 and \$20 million for Year 3) (Appendix A at 1)

III. In light of State Defendants’ failure to comply substantially with the Comprehensive Remedial Plan and the resulting, continuing harm cast upon North Carolina’s school children, Penn-Intervenors respectfully urge the Court to begin examining lawful ways to ensure compliance.

The State Defendants’ dereliction of their constitutional duties will undoubtedly and yet again delay delivery of the requisite educational opportunities to North Carolina’s school children-- especially marginalized students of color and other at-risk students-- to access a sound basic education. For nearly two decades, schoolchildren and school districts have sought relief in this Court. As this Court noted in the CRP, based on its findings:

² These projected figures were compiled by Kris Nordstrom, Senior Policy Analyst with the North Carolina Justice Center, and published in a blog. *See* Kris Nordstrom, *House budget writers adopt the extreme view that NC constitution is optional*,” NC Policy Watch, The Progressive Pulse (Aug. 6. 2021) available at [2021-08-09 HouseBudgetAnalysis.xlsx \(ncpolicywatch.org\)](https://www.ncpolicywatch.org/2021-08-09-HouseBudgetAnalysis.xlsx). The figures exclude certain federal funds as the Court and the Parties have acknowledged that the State Defendants should not rely upon federal funds to carry out their constitutional obligations. *See, e.g.*, June 7, 2021 Order on Comprehensive Remedial Plan at 4 (noting that “the Parties recognized these [COVID-19 federal] funds are not intended to address the historical and unmet needs of children who are being denied the opportunity for a sound basic education.”).

“North Carolina’s PreK-12 education system leaves too many students behind, especially students of color and economically disadvantaged students. As a result, thousands of students are not being prepared for full participation in the global, interconnected economy and the society in which will live, work and engage as citizens.”

Comprehensive Remedial Plan at 2.

After substantial efforts by the parties to reconcile their differences, and with considerable guidance and support from the Court, the Parties reached an agreed upon plan in 2020 (and again in 2021) that would finally resolve the outstanding constitutional deficiencies. As the Court recognized, “[t]he specific objective of the [Comprehensive Remedial] Plan was to satisfy the State’s and State Board of Education’s obligations to assure every child the opportunity to obtain a sound basic education.” Despite these clear mandates and more than sufficient resources to cover the costs of the CRP, Penn-Intervenors are back to square one with little hope.

Accordingly, unless the General Assembly immediately revisits its proposed budget and includes appropriations that would cover the costs and resources for implementing fully the Leandro Plan for Years 2 and 3, Penn-Intervenors respectfully urge the Court to begin to examine its powers to enforce its orders to ensure all North Carolina students access a sound basic education. *See Hoke Cty. Bd. of Educ. v. State*, 358 N.C. at 642, 599 S.E.2d at 393 (“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.”).

This 25th day of August, 2021.

LAWYERS’ COMMITTEE FOR CIVIL RIGHTS
UNDER LAW

By: 

ELIZABETH HADDIX
NC State Bar No. 25818

P.O. Box 956
Carrboro, NC 27510
(919) 914-6106
ehaddix@lawyerscommittee.org

DAVID HINOJOSA*
LAWYERS’ COMMITTEE FOR CIVIL
RIGHTS UNDER LAW
1500 K Street NW, Suite 900
Washington, DC 20005
Phone: 202.662.8307
dhinojosa@lawyerscommittee.org
*Admitted pro hac vice

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served on the following parties on this day by email (agreed-to form of service):

Amar Majmundar
Senior Deputy Attorney General
NORTH CAROLINA DEPARTMENT OF JUSTICE
114 W. Edenton Street
Raleigh, North Carolina 27603
E-mail: AMajmundar@ncdoj.gov

Matthew Tulchin
Tiffany Lucas
NORTH CAROLINA DEPARTMENT OF JUSTICE
114 W. Edenton Street
Raleigh, North Carolina 27603
E-mail: MTulchin@ncdoj.gov
TLucas@ncdoj.gov

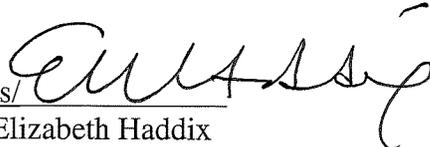
Thomas J. Ziko
Legal Specialist
STATE BOARD OF EDUCATION
6302 Mail Service Center
Raleigh, North Carolina 27699-6302
E-mail: Thomas.Ziko@dpi.nc.gov

Neal Ramee
David Nolan
THARRINGTON SMITH, LLP
P.O. Box 1151
Raleigh, North Carolina 27602
E-mail: NRamee@tharringtonsmith.com
DNolan@tharringtonsmith.com

Melanie Black Dubis & Scott E. Bayzle
PARKER POE ADAMS & BERNSTEIN LLP
P.O. Box 389
Raleigh, North Carolina 27602-0389
E-mail: melaniedubis@parkerpoe.com
scottbayzle@parkerpoe.com

H. Lawrence Armstrong
Armstrong Law, PLLC
P.O. Box 187
Enfield, NC 27823
Email: hla@hlalaw.net
Counsel for Plaintiffs

This the 25th day of August, 2021.


/s/ Elizabeth Haddix
Elizabeth Haddix