

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

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

Plaintiff-Intervenors,

v.

STATE OF NORTH CAROLINA, *et al.*,

Defendants.

FILED
2011 JUN 24 A 10:12
WAKE COUNTY
BY _____
NORTH CAROLINA STATE BOARD OF
EDUCATION'S MOTION FOR RELIEF
PURSUANT TO RULE 60 AND RULE 12

NOW COMES the North Carolina State Board of Education ("SBE"), and hereby submits, pursuant to Rule 60 and Rule 12, this Motion for Relief from the Judgment dated April 4, 2002, and any other applicable remedial Superior Court Orders. The Superior Court has retained remedial jurisdiction over this action for fifteen (15) years. The SBE requests that this Court relinquish this jurisdiction. In support of this Motion, the SBE shows the following:

1. On April 4, 2002, the Superior Court entered Judgment against the State. The Superior Court's 2002 Judgment arose from a complaint filed on May 25, 1994, and a trial held beginning in September of 1998, that focused on educational conditions in Hoke County. The Superior Court's Judgment pertained to the State's liability for the education of at-risk children.

In paragraph 2 of the April 2002 Judgment, the Superior Court decreed:

~~That there were children at-risk of educational failure who [were] not being provided the equal opportunity to obtain a sound basic education because their particular LEA, such as Hoke County Public Schools, is not providing them with one or more of the basic educational services set out in *paragraph 1, above.*~~

MDO at 110 (*italics added*). Paragraph 1 had three parts that read as follows:

- 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 need of at-risk children to that they can have the equal 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 a sound basic education can be met.

MDO at 109-110.

2. The Superior Court ordered the State of North Carolina to “remedy the Constitutional deficiency for those children who are not being provided the basic educational services set out in Paragraph 1, whether they are in Hoke County, or another county within the State.” MDO at 111, paragraph 4. The Superior Court declined to involve itself in the “nuts and bolts” of how to accomplish the task, which the Court stated belonged to the Executive and Legislative Branches, at least initially. MDO at 111, paragraph 5.

3. The Superior Court “retain[ed] jurisdiction over this matter for the purposes of resolving any remaining issues, including, but not limited to, enforcement of this Judgment. ...” MDO at 112, paragraph 9.

4. The North Carolina Supreme Court affirmed the ruling that the State must act to correct the deficiencies. *Hoke Cty. Bd. of Educ. v. State*, 358 N.C. 605, 599 S.E.2d 365

(2004)(“*Leandro IP*”). The Supreme Court remanded proceedings as to the other plaintiff school districts. The Court stated:

However, because this Court’s examination of the case is premised on evidence as it pertains to Hoke County in particular, our holding mandates cannot be construed to extend to the other four rural districts named in the complaint. With regard to the claims of named plaintiffs from the other four rural districts, the case is remanded to the trial court for further proceedings that include, but are not necessarily limited to, presentation of relevant evidence by the parties, and findings and conclusions of law by the trial court.

Id. at 613, n.5, 599 S.E.2d at 375, n.5.

5. For over a decade, the Superior Court has retained and exercised jurisdiction in this case. This Superior Court has not, however, held a trial as to any other plaintiff school board.

6. In 2009, the North Carolina Court of Appeals summarized the results of the Superior Court’s monitoring based on the post 2004 and pre-2009 record:

In the years since *Leandro II*, the trial court has continued to monitor the progress of the State’s efforts to comply with *Leandro I* and *Leandro II*. The State has established the Disadvantaged Student Supplemental Fund (“DSSF”) to assist at-risk children, and has fully funded the Low Wealth Schools Fund (“LWF”). Additionally, the State has allocated funds to (1) expand the More-at-Four program which provides education to at-risk four-year-olds; (2) reduce class size; (3) increase resources to the Hoke County school system, including increased teacher salaries and creation of Learn to Earn High Schools; and (4) create new programs to adequately train school superintendents and administrators.

Hoke County Bd. of Educ. v. State, 198 N.C. App. 274, 276, 679 S.E.2d 512, 515 (2009).

7. From 2007 through 2009, the United States’ economy experienced the “Great Recession.” United States Bureau of Labor, “The Recession of 2007-2009,” February 2012, available at https://www.bls.gov/spotlight/2012/recession/pdf/recession_bls_spotlight.pdf.

8. “On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (ARRA), historic legislation designed to stimulate the economy, support job creation, and invest in critical sectors, including education. ARRA provided \$4.35

billion for the Race to the Top fund, of which approximately \$4 billion was used to fund comprehensive statewide reform grants under the Race to the Top program.” “Race to the Top, North Carolina Report, Year 2: School Year 2011-2012, Executive Summary,” U.S. Department of Education, February 1, 2013, available at <https://www2.ed.gov/programs/racetothetop/performance/north-carolina-year-2.pdf>.

9. On May 27, 2010, the State of North Carolina, through the Office of Governor Beverley Perdue, State Superintendent June Atkinson, and President of the State Board of Education, William Harrison, submitted the Race to the Top Grant (RttT) Proposal to the United States Department of Education. The State proposed numerous educational reforms. Those reforms centered on: adopting rigorous college-and career-ready standards and assessments; recruiting, evaluating, and retaining highly effective teachers and principals; building longitudinal data systems to measure student success and inform teaching and learning; and turning around low-performing schools. The 261-page grant proposal is available at the North Carolina Department of Public Instruction website, <http://www.dpi.state.nc.us/rttt/>.

10. In September 2010, the State was awarded the RttT grant. “North Carolina received one of only 12 federal Race to the Top (RttT) competitive grants in 2010, bringing nearly \$400 million to the state's public school system. This funding enabled [the State] to remodel [its] state system as part of an ambitious plan to increase student achievement, close achievement gaps and continue to increase the number of career- and college- ready graduates by making sure every student has an excellent teacher.” <http://www.dpi.state.nc.us/rttt/>. (App. at 1) The RttT grant and the work related thereto was administered over a five-year period.

11. The United States Department of Education reported on the State's RttT implementation, noting a number of achievements, including the updated statewide Standard

Course of Study composed of the Common Core State Standards (CCSS). “Race to the Top, North Carolina Report, Year 3: School Year 2012-2013, Executive Summary,” at 3, available at <https://www2.ed.gov/programs/racetothetop/performance/north-carolina-year-3.pdf>. (App. at 4)

12. When the Superior Court convened an annual status conference for this case on November 13-14, 2013, State witnesses testified that the original ABC’s accountability and statewide testing model had been replaced. The READY Accountability model and new, rigorous curriculum standards were in place effective for the 2012-2013 school year.

13. School year 2012-2013 demarcates the end of the ABC’s accountability era and the beginning of READY Accountability, which creates a new Statewide educational system. READY Accountability was not the subject of the Plaintiffs’ 1994 pleadings, the parties’ discovery, or the trial. Thus, it was not the subject of the Superior Court’s 2002 Judgment.

14. Legislative changes, many of them also occurring in 2012 or thereafter, have further changed the Statewide educational system. These changes include not only the adoption of the READY Accountability model, but the adoption of the Read to Achieve Program, and other changes in the identification and support of at-risk students in this State. The result is a “future school system” that was not the subject of Plaintiffs’ 1994 pleadings, discovery, the 1999 trial, or the Superior Court’s 2002 Judgment.

15. Factual and educational circumstances in Hoke County have changed significantly since the 1999 trial.

16. Because the factual and legal landscapes have significantly changed, the original claims, as well as the resultant trial court findings and conclusions, are divorced from the current laws and circumstances; are stale; and are untethered to the new READY Accountability model and other legislative changes to the State’s educational system. Continued status hearings on the

present system, which to date have primarily included constitutional attacks based on statewide test scores, exceed the jurisdiction established by the original pleadings in this action. Future trials as to the remaining plaintiff school boards would also exceed the scope of jurisdiction. The remaining plaintiff school boards' claims are stale and said claims should be dismissed pursuant to Rule 12(b)(1), (2), and (6).

17. The Superior Court did not specify the “nuts and bolts” of how to accomplish the task of remedying the Constitutional deficiency. The present educational system is, in part, the result of the RttT grant, as well as other legislative changes, many of which have occurred post-2012. The hearings held November 13-14, 2013; January 21-22, 2015; April 8-9, 2015; and July 21-22, 2015, tell the story of many of these changes. Other changes are a matter of statute. The cumulative effect of these changes is that the State's current educational system is so far removed from the factual landscape giving rise to the complaint, trial, and 2002 Judgment that the superior court is now retaining jurisdiction over a “future school system” which was not the subject of the original action. These changed circumstances support relief under Rule 60.

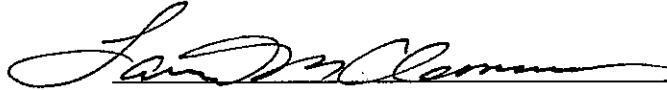
18. A Brief in Support of this Motion is submitted contemporaneously herewith. The Brief contains: citations to legislative reports; materials available on the North Carolina Department of Instruction website; and materials written and/or produced by the Hoke County Schools and also available online. These materials are produced for the Court's convenience in an Appendix also filed herein.

WHEREFORE, the SBE moves this Court for relief from the 2002 Judgment and requests that this Court relinquish its continuing jurisdiction over the SBE, or provide such other relief as this Court deems just and proper.

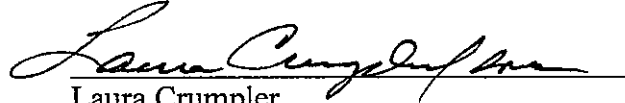
Respectfully submitted, this the 10th day of July, 2017.

Respectfully submitted, this the 24th day of July, 2017.

JOSH STEIN
Attorney General



Lauren M. Clemmons
Special Deputy Attorney General
State Bar No. 15987



Laura Crumpler
Special Deputy Attorney General
State Bar No. 8712
Attorneys for the State Board of Education

North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602

Telephone: (919) 716-6900
Facsimile: (919) 716-6763
lclemmons@ncdoj.gov
lcrumpler@ncdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing MOTION FOR RELIEF in the above-captioned matter upon all parties via United States mail or hand delivery addressed as follows:

VIA HAND DELIVERY

Melanie Black Dubis
Scott E. Bayzle
Parker, Poe, Adams & Bernstein L.L.P.
301 Fayetteville Street, Suite 1400
Post Office Box 389
Raleigh, North Carolina 27602-0389

U.S. MAIL, POSTAGE PREPAID

H. Lawrence Armstrong, Jr.
Armstrong Law, PLLC
119 Whitfield Street
Post Office Box 187
Enfield, North Carolina 27823

Counsel for Plaintiffs

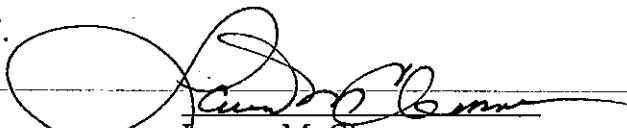
VIA HAND DELIVERY

Deborah R. Stagner
Tharrington, Smith, L.L.P.
150 Fayetteville Street, Suite 1800
Post Office Box 1151
Raleigh, North Carolina 27602 1151
*Counsel for Charlotte-Mecklenburg Board of Education, Plaintiff
Intervenor and Realigned Defendants*

U.S. MAIL, POSTAGE PREPAID

Mark Dorosin
Taiyyaba Qureshi
University of North Carolina School
of Law Center Center for Civil Rights
CB 3382
Chapel Hill, North Carolina 27599 3382
Counsel for Penn Intervenors

This the 24th day of July, 2017.


Lauren M. Clemmons
Special Deputy Attorney General