

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; STATE)
BOARD OF EDUCATION,)
)
Defendants.)

**MOTION FOR A SCHEDULING
ORDER ON COMPLIANCE PLAN
HEARING**

NOW COME Plaintiffs Hoke County Board of Education, *et al.* (collectively, “Plaintiffs”) and move this Court for an order establishing a schedule for the Parties’ pre-hearing submissions in advance of this Court’s hearing on the State Defendants’ plan for *Leandro* compliance.

Introduction

1. In its *Notice of Hearing and Order* dated March 17, 2015 (p. 3, 14), the Court notified the Parties that a hearing will be held (subsequent to the April 8-9, 2015 hearing) to review a “definite plan of action” proposed by the State Defendants setting forth how the State, acting through both its legislative and executive branches, will correct and remedy the constitutional failings impacting North Carolina’s children (hereinafter, the “Compliance Plan”).

2. This Court held that such a Compliance Plan was “necessary to meet the requirements and duties of the State of North Carolina with regard to its children having the

equal opportunity to obtain a sound basic education as mandated [by] the Constitution of North Carolina and mandated by the North Carolina Supreme Court in *Leandro*.” *Id.* at 3.

3. Plaintiffs submit that the Compliance Plan proposed by the State Defendants should address the State’s fundamental constitutional obligation to provide each and every child the constitutional right to an equal opportunity to obtain a sound basic education. *Leandro v. State*, 346 N.C. 336, 347, 488 S.E.2d 249, 255 (1997) (“*Leandro I*”). As established in this Court’s Final Judgment and the North Carolina Supreme Court in *Hoke County Bd. of Educ. v. State*, 358 N.C. 605, 599 S.E.2d 365 (2004) (“*Leandro II*”), this requires the State to 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; and

(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.

4. The State Defendants’ Compliance Plan should identify (with timetables) the specific action items to be implemented by the State to address each of these fundamental constitutional requirements. In the years since this Court’s Final Judgment and the Supreme Court’s decision in *Leandro II*, this Court has held more than twenty (20) evidentiary hearings

pertaining to issues and obstacles impacting the State's ability, or present inability, to fulfill these constitutional obligations. Any meaningful Compliance Plan should address these issues and obstacles, which Plaintiffs have summarized below.

5. Plaintiffs submit that pre-hearing submissions (written submissions prior to the hearing on the Compliance Plan), as outlined below, will provide the Court and the Parties the opportunity to evaluate the proposed Compliance Plan, assess whether the implementation of such Plan is likely to achieve compliance with the Final Judgment and mandate of the Supreme Court, and assist in clarifying the issues to be addressed at a subsequent hearing on the Plan.

Proposed Schedule for Pre-Hearing Submissions

6. Consequently, Plaintiffs request that the State Defendants serve their Compliance Plan, any supporting documentation, and a list of witnesses who may testify on their behalf at the hearing on such Plan at least sixty (60) days prior to the hearing.

7. Plaintiffs request that their response, and their list of witnesses who may testify on their behalf, be due thirty (30) days after service of the Compliance Plan to provide the State Defendants with sufficient time review Plaintiffs' response prior to the hearing.

Matters That Should Be Addressed In State Defendants' Plan for *Leandro* Compliance

8. As noted above, the State Defendants' Compliance Plan should identify (with timetables) the specific action items that will be implemented to address the State's fundamental constitutional obligations: how the State will provide (i) competent, certified teachers, (ii) well-trained, competent principals, and (iii) the resources necessary so that all children, including those at-risk, have an equal opportunity to obtain a sound basic education. With regard to these fundamental constitutional requirements, Plaintiffs submit that the State Defendants' Compliance Plan should address, at a minimum, the following questions:

Competent, Certified Teachers

- What is the State's plan to attract and recruit highly qualified individuals and leaders into the field of teaching (*e.g.*, will there be programmatic replacements for the now-eliminated/defunded North Carolina Teaching Fellows Program, Future Teachers Scholarship/Loan Program, North Carolina Teacher Corp, and Teacher Cadet Program)?
- What is the State's plan to strengthen recruitment and selection criteria for prospective teacher candidates?
- What is the State's plan to address declining enrollment in the UNC system's schools of education (*e.g.*, how will campus-based recruitment programs reflect current regional school district needs and how will the State increase the number of teachers graduating from quality traditional and alternative educator preparation programs)?
- What is the State's plan to *recruit, retain, and support* quality, certified teachers in hard-to-staff schools and lower-performing schools (including turnaround schools) who are effective in improving academic achievement of at-risk students?
- What is the State's plan to reduce and/or eliminate the disparity in teacher quality and resources between wealthy and poor LEAs?
- What is the State's plan to use strategic staffing models to reduce and/or eliminate the disparity in teacher quality among schools within an LEA?
- What is the State's plan to improve *support, training, and mentoring* for early-career/beginning teachers?
- What is the State's plan to provide continuing education and training to teachers (*e.g.*, will there be a programmatic replacement and expansion of the now-eliminated North Carolina Teacher Academy)?
- What is the State's plan to increase the number of teachers with in-field advanced degrees?
- What is the State's plan to incentivize highly-effective teachers to remain in the teaching field? How will the State address ineffective teachers?
- What is the State's plan to ensure that teachers have the resources and training necessary to effectively use assessments in providing differentiated and individualized instruction to children with different needs?

Well-trained, Competent Principals

- What is the State's plan to ensure that every school is led by a principal with the ability to hire and retain highly-effective teachers and implement an effective and cost-effective instructional program meeting the needs of all students, including those at-risk of academic failure?
- What is the State's plan to *recruit, retain, and support* well-trained, competent principals who can lead and make a difference in hard-to-staff schools, in lower-performing schools (including turnaround schools), and schools with a high percentage of at-risk children?
- What is the State's plan to reduce and/or eliminate the disparity in principal quality between wealthy and poor LEAs?
- What is the State's plan to use strategic staffing models to reduce and/or eliminate the disparity in principal quality among schools within an LEA?
- What is the State's plan to strengthen recruitment and selection criteria for prospective principal candidates (such as continuing and expanding the Regional Leadership Academies)?
- What is the State's plan to provide quality leadership and professional development training to principals (*e.g.*, will there be a programmatic replacement of the now-eliminated Principals' Executive Program)?
- What is the State's plan to ensure that principals can drive differentiated and individualized instruction to children with different needs in their schools?
- What is the State's plan to ensure that all principals can lead teachers in the effective use of assessments to evaluate student proficiency?
- What is the State's plan to ensure that principals can properly evaluate the effectiveness of teachers?

Resources

- What is the State's plan to address the disparity in resources among LEAs across North Carolina?
- What is the State's plan to address the disparity in resources among schools within an LEA?
- What is the State's plan to provide assistance and remedial efforts to lower-performing, including turnaround, schools/LEAs?

- What is the State’s plan to fully fund the Disadvantaged Student Supplement Fund (DSSF) at the State’s original *Leandro* plan level of \$1,000/student?
- What is the State’s plan to provide at-risk children with access to proven remedial strategies such as before-school remediation, after-school remediation, and summer school? How will the State’s plan provide transportation, meals, and other resources necessary for at-risk children to take advantage of such remedial strategies?
- What is the State’s plan to address the constitutional deficiencies impacting at-risk four-year-olds? How many at-risk four-year-olds are in the State (per LEA)? How many such children are not being served with a high-quality, academic-based pre-kindergarten program?
- What is the State’s plan to ensure that at-risk four-year-olds have access to remedial assistance such that they have an equal opportunity for a sound basic education when they reach school age?
- What is the State’s plan to implement class-size reductions?
- What is the State’s plan to improve high-school graduation rates, especially among those students for whom the traditional instructional model does not well serve? How will the State reduce the percentage of students needing remediation in post-secondary education?
- What is the State’s plan for increasing the number of graduates who are prepared for post-secondary education and/or the workforce based on such measures as the ACT and WorkKeys assessments?
- What is the State’s plan to institute greater accountability in the use of existing resources to ensure that critical state and local funds are being used to increase student performance?
- What is the State’s plan to implement digital learning opportunities and ensure that all students have equal access to such opportunities?

9. Plaintiffs further submit that there must also be a mechanism in place to determine whether the “definite plan of action” proposed by the State Defendants will in fact correct the constitutional failures now impacting North Carolina’s children. In other words, there must be measureable results upon which the Compliance Plan can be evaluated and upon which it can be determined (i) whether students across the State, including those at-risk, are obtaining a *Leandro*-conforming education, (ii) whether the schools are being led by competent,

well-trained principals, and (iii) whether there are competent, effective teachers in the classrooms. Accordingly, the State Defendants' Compliance Plan should also address the following questions concerning measurable results:

- What is the State's plan to measure student achievement and proficiency and to report these results to the Court (*i.e.*, if the data the State has historically provided to the Court in the form of end-of-grade (EOG) or end-of-course (EOC) results will not be available, then what measurable results will the State provide to the Court)?
- What is the State's plan to measure whether students have obtained a "sufficient ability to read, write, and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society?" *Leandro I*, 346 N.C. at 347, 488 S.E.2d at 255.
- What is the State's plan to measure whether students have obtained "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?" *Id.*
- What is the State's plan to measure whether students have obtained "sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or vocational training?" *Id.*
- What is the State's plan to measure whether students have obtained "sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society?" *Id.*
- What is the State's plan to measure the quality and effectiveness of NC Pre-K in the public and private sectors?
- What is the State's plan to measure and evaluate teacher effectiveness?
- What is the State's plan to measure and evaluate principal effectiveness?

Conclusion

10. More than a decade has passed since the Supreme Court's decision in *Leandro II*.

The State Defendants have been afforded more than ample time to develop a remedial plan that moves the State closer to *Leandro* compliance. All parties to this litigation understand, or at

least should understand, that the constitutionally-required equal opportunity to a sound basic education cannot be provided to the children of this State without a bold, perhaps difficult, definite plan of action by the State Defendants. But, as the Supreme Court recognized in 2004, the State must “step forward, boldly and decisively, to see that all children, without regard to their socio-economic circumstances” are provided a *Leandro*-conforming education. *Leandro II*, 358 N.C. at 649, 599 S.E.2d at 396.

11. Notwithstanding the difficulty of any such challenge, *Leandro I*, *Leandro II* and this Court’s rulings are not advisory opinions. They are the law of the case and it is long past time for the State Defendants to set forth a specific written compliance plan for how the State will comply with the Constitution. The plan should set out concrete, definite action items (with timetables), as opposed to only “aspirational goals” or “desires” (*see* Attorney General’s Brief dated February 22, 2012 (COA11-1545), at p. 19), as to how the State, acting through both its legislative and executive branches, will correct and remedy the constitutional failings impacting North Carolina’s children. In so doing, the State Defendants should present evidence regarding their ability and capacity to fully implement and fulfill such a plan.

WHEREFORE, Plaintiffs respectfully request that the Court:

(A) Order the State Defendants to serve their Compliance Plan, any supporting documentation, and a list of witnesses who may testify on their behalf at the hearing on such Plan at least sixty (60) days prior to the hearing;

(B) Order that Plaintiffs will have thirty (30) after service of the Compliance Plan to respond and submit a list of witnesses who may testify on their behalf at the hearing;

(C) Require that the State Defendants’ Compliance Plan identify (with timetables) the specific action items that will be implemented to address the State’s fundamental constitutional

obligations as established by this Court and affirmed by the Supreme Court and to address the specific questions and issues outlined above;

(D) Require that the Compliance Plan present evidence regarding the State Defendants ability to fully implement and fulfill the Plan;

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

This, the 6th day of April, 2015.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was served on the following by hand-delivery, e-mail, and U.S. mail, postage pre-paid addressed to the following:

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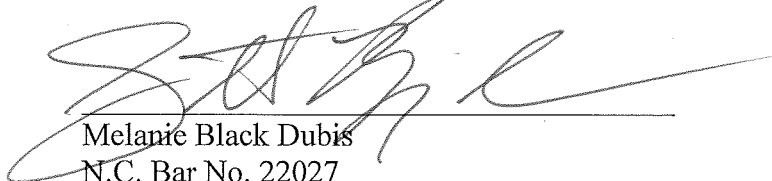
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This the 6th day of April, 2015.

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