

STATE OF NORTH CAROLINA

COUNTY OF WAKE

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.

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

95-CVS-1158

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WAKE COUNTY, C.S.G.

BY

**PLAINTIFFS' RESPONSE TO THE PURPORTED "DEFINITE PLAN OF ACTION"
FOR *LEANDRO* COMPLIANCE FROM THE STATE OF NORTH CAROLINA**

Plaintiffs Hoke County Board of Education, *et al.* (collectively, "Plaintiffs") respectfully submit this response to the purported "definite plan of action" for *Leandro* compliance submitted on behalf of the State of North Carolina by the Defendant State Board.

INTRODUCTION

On March 17, 2015, the Court notified the Parties that a hearing was necessary to receive and review a "definite plan of action" from the State of North Carolina setting forth how the State, acting through its legislative and executive branches, will correct and remedy the constitutional failings impacting North Carolina's children. *Notice of Hearing and Order* at pp. 3, 14. This Court held that such a 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.*

To that end, on April 24, 2015, the Court ordered the submission of “a definite plan of action from the State of North Carolina as to how the State of the North Carolina intends to correct the educational deficiencies.” *Notice of Hearing and Order* (emphasis added). Specifically, the Court instructed that “[s]uch plan shall identify the actions necessary to address the State’s fundamental constitutional obligations as established by this Court and affirmed by the Supreme Court to provide (i) competent, certified teachers in every classroom, (ii) well-trained, competent principals in every school, and (iii) the resources necessary so that all children, including those at-risk, have an equal opportunity to obtain a sound basic education.” *Id.* (emphasis added).

The State did not do what the Court ordered it to do. The July 1, 2015 submission by the Defendant State Board (the “Submission”) is no plan, and it is certainly not a “definite plan of action” from the State of North Carolina for the remediation of ongoing constitutional violations.

Indeed, the Submission is silent as to any plan to meet, or even make progress towards meeting, the first mandate – the constitutional obligation to ensure that each classroom is staffed with a competent, certified teacher. The Submission merely acknowledges the State’s ongoing *noncompliance* with that mandate, and points out the problems with and failures in the existing teacher supply model: *i.e.*, that “[n]early 50% of teachers leave the classroom by year five of the teacher’s career,” that the growing demand for teachers “is not being met,” and that “enrollment in teacher education programs is decreasing statewide.” *See* Submission at p. 7. Simply restating the already long-recognized problems, however, is not a plan for a meaningful, workable solution. No definite initiatives or programs are proposed as potential solutions. No timetables for implementing any initiatives are provided. The Submission is void of any discussion as to

the resources that will be required to ensure that classrooms statewide are led by effective teachers, especially those in hard-to-staff, low-performing schools, and from where those resources will come. In short, the Submission demonstrates the absence of a plan.

Similarly, the Submission fails to address the State's obligation to provide a well-trained, competent principal in every school. In fact, principals are discussed on just one page. On that page (p. 11), it provides only that there are "standards" for principals and that "Principal READY sessions" (a component of Race-to-the-Top) have been held. Having "standards" is not a plan of action going forward to *recruit, retain, and support* well-trained, competent principals who can lead and increase student outcomes in hard-to-staff, low-performing schools. It is not a plan to ensure there is a principal in each school who has 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. After touting professional development sessions for principals (Submission at p. 11), the State Board subsequently concedes (p. 47) that there is "no longer" an "appropriation to continue professional development for the teachers and principals of the state." If anything, the Submission merely emphasizes that the State is moving backwards, not forwards, in terms of satisfying the mandates of *Leandro II*.

Finally, while the State Board acknowledges there are significant additional resources and programs that "need to be in place" so that a "greater number of students" can receive a *Leandro*-conforming education – such as expanded educational pre-kindergarten programming, school calendar flexibility, programs to recruit, retain, and develop teachers, and additional support for low-performing school and districts (Submission at p. 45-54) – the Submission does not state that such resources and programs will actually be implemented, nor does it set forth any workable plan for their implementation at any point in the future. This is unacceptable. Each and every child in North Carolina is vested with the fundamental constitutional right to an equal

opportunity to a sound basic education. This right does not belong to adults. This right does not belong to only a select few children. This right belongs to every child in the State. The mere recognition that additional or expanded resources are necessary if the State hopes to someday meet its constitutional obligations to all children is not an adequate plan for *Leandro* compliance. Instead, it is an admission that the State is not now complying with the North Carolina Constitution, and has no plan to do so.

It has been more than a decade since the Supreme Court's decision in *Leandro II*. 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 workable, definite plan of action by the State of North Carolina. Plaintiffs appreciate that the creation of such a comprehensive plan is no easy task. Indeed, there are hundreds of thousands of children who are performing below grade level and are, thus, not receiving a *Leandro*-conforming education. There are hundreds of schools with more than half of their students performing below grade level. Notwithstanding the difficulty of such a task, *Leandro I*, *Leandro II*, and this Court's rulings are not advisory opinions; they are the law of the case. It is long past time for the State to do what it has been ordered to do – develop a definite, workable plan of action as to how it will comply with the Constitution.

I. A STATUS QUO APPROACH IS NOT AN ACCEPTABLE “PLAN OF ACTION” TO REMEDY ONGOING CONSTITUTIONAL VIOLATIONS.

The bulk of the Submission (titled “Level 1”) is a high-level summary of the work conducted by the various divisions within the Department of Public Instruction, as well as an outline of existing programs overseen by the State Board. The Submission states that the State Board “is satisfied” the programs already in place are sufficient to ensure that the children in North Carolina have access to “the opportunity for a sound basic education” such that no additional remedial plan is necessary. *See* Submission at p. 45. That contention is unfounded,

and it is disappointing, to say the least, that the State insists on re-litigating issues already long-resolved and, in doing so, makes arguments wholly at odds with the undisputed evidence.

First, the Submission admits that there are children across the State who do not have access to and who are not receiving the equal opportunity for a sound basic education. The Submission further concedes that those children will continue to be deprived of their constitutional right unless and until resources and programmatic initiatives are expanded. *See* Submission at p. 45 (according to the Submission, expanded resources would “need to be in place” before “a greater number of students at risk are able to access and receive a sound basic education”) (emphasis added). The fact that expanded resources are necessary to provide a *Leandro*-conforming education to a “greater number of students” means that the State is **not** providing access to a constitutionally-conforming education to all children. A “*status quo*” approach, under which children are presently deprived of their constitutional right, is not (and cannot possibly be) an acceptable “definite plan of action” going forward. The State Constitution entitles each and every child the opportunity to obtain a sound basic education, irrespective of the school he or she attends, the district where he or she lives, or his or her socio-economic status. N.C. Const. Art. I, § 15 and Art. IV, § 5; *Leandro v. State*, 346 N.C. 336, 347, 488 S.E.2d 249, 255 (1997) (“*Leandro I*”).

Second, this Court found, and the Supreme Court unanimously affirmed, that: (i) school children had been denied their constitutional right to the opportunity for a sound basic education as evidenced by, among other things, the vast numbers of children not demonstrating proficiency at or above grade level, (ii) the State is responsible for this constitutional violation, and (iii) the State must implement a remedial plan to address and correct the deficiencies. Final Judgment at p. 104-105, 110-111. The existence of a constitutional violation and the State’s obligation to

provide a remedy for such violation have been established by this Court, affirmed by the Supreme Court, and are the law of the case.

Third, the undisputed evidence, admitted in connection with this Court's extensive review of the academic performance of every school in North Carolina over the last decade, makes plain that hundreds of thousands of children are performing below grade level and are, thus, not receiving the opportunity to a sound basic education. For the 2012-2013 school year, 358,187 of the State's children in grades 3-8 were reading below grade level and, thus, were not receiving a *Leandro*-conforming education. Specifically, in reading (i) 54.8% of third graders (or 58,868 children) were not proficient; (ii) 56.3% of fourth graders (or 65,160 children) were not proficient; (iii) 60.5% of fifth graders (or 70,035 children) were not proficient; (iv) 53.6% of sixth graders (or 63,060 children) were not proficient; (v) 52.2% of seventh graders (or 60,807 children) were not proficient; and (vi) 59% of eighth graders (or 67,257 children) were not proficient. State Defs.' Ex. 1, Nov. 13, 2013 Hearing, READY Accountability Report: 2012-2013 Growth and Performance, N.C. DEPT. OF PUB. INSTR. (Nov. 7, 2013).¹

The 2012-2013 statistics for math are equally dismal. There were nearly 400,000 students in grades 3-8 performing below grade level:

	% of Students <u>Not</u> Proficient in Math (Performing Below Grade Level) (2012-2013)	# of Students <u>Not</u> Proficient in Math (Performing Below Grade Level) (2012-2013)
Grade 3	53.2 %	57,151
Grade 4	52.4%	60,655
Grade 5	52.3%	60,542
Grade 6	61.1%	71,880
Grade 7	61.5%	71,633
Grade 8	65.8%	75,003
	Total =	396,864

¹ See also 2012-2013 READY Accountability Reporting Data, NCAccModel_2013_Summary.xls, <http://www.ncpublicschools.org/accountability/reporting/datasets>.

Id. The number of high school students demonstrating proficiency on end-of-course tests that year fared no better: (i) 57.4% were not proficient in Math I; (ii) 54.5% were not proficient in Biology, and (iii) 48.9% were not proficient in English II. *Id.* With regard to performance on the ACT, only 13% of 11th graders met all four college-readiness benchmarks (English, math, reading, and science). State Defs.’ Ex. 8, Nov. 13, 2013 Hearing, ACT Profile Report – Grade 11.

For the 2013-2014 school year, 381,272 students in grades 3-8 were not proficient in reading and 392,533 were not proficient in math:

	% of Students <u>Not</u> Proficient in Reading (Performing Below Grade Level) (2013-2014) ²	# of Students <u>Not</u> Proficient in Reading (Performing Below Grade Level) (2013-2014)
Grade 3	52.3%	60,344
Grade 4	55.5%	59,704
Grade 5	59.7%	69,228
Grade 6	54.3%	62,875
Grade 7	52.4%	61,828
Grade 8	57.7%	67,293
	Total =	381,272

	% of Students <u>Not</u> Proficient in Math (Performing Below Grade Level) (2013-2014) ³	# of Students <u>Not</u> Proficient in Math (Performing Below Grade Level) (2013-2014)
Grade 3	51.7%	59,665
Grade 4	52.9%	56,910
Grade 5	49.7%	57,639
Grade 6	60.4%	69,937
Grade 7	61.1%	72,094
Grade 8	65.4%	76,288
	Total =	392,533

See State Defs.’ Exs. 1-10, Jan. 21, 2015 Hearing; see also “2013-14 State, District, and School Level Drilldown Performance Data,” N.C. DEPT. OF PUB. INSTR.⁴ In high school during the

² Percentage of students performing below Level IV. For 2013-14, the State Board redefined the achievement levels for end-of-grade tests. Prior to 2013-14, there were four achievement levels (Levels I, II, III, and IV). The State Board added a new “Level V.” Levels IV and V indicate that the child is performing at a proficiency sufficient to demonstrate future college and/or career readiness (CCR). This Court has held that achievement at or above CCR demonstrates a *Leandro*-conforming education. See Notice of Hearing and Order dated March 17, 2015.

³ *Id.*

2013-2014 school year, 53.1% of students were not proficient in Math I; (ii) 54.9% were not proficient in Biology, and (iii) 48.3% were not proficient in English II. *Id.*

Behind these startling statistics are real children. And there are hundreds of thousands of them across the State being deprived of their constitutional right to a sound basic education, more than a decade after this Court's Final Judgment and its affirmation by the Supreme Court. Unless a definite "plan of action" is developed and implemented now, countless more generations of children will face the same fate. That cannot happen when fundamental constitutional rights are involved. As held by the North Carolina Supreme Court, "the children of North Carolina are our state's most valuable renewable resource." *Hoke County Bd. of Educ. v. State*, 358 N.C. 605, 616, 599 S.E.2d 377, 365 (2004). "If inordinate numbers of them are wrongfully being denied their constitutional right to the opportunity for a sound basic education, our state courts cannot risk further and continued damage. . . ." *Id.*

II. THE SUBMISSION IS NOT A "DEFINITE PLAN OF ACTION" TO REMEDY ONGOING CONSTITUTIONAL VIOLATIONS.

A workable, definite plan of action requires clearly-defined action items designed to achieve a goal, timetables for implementing those actions, identification of individuals or groups responsible for implementing those actions, measurable objectives to evaluate the progress of implementation, an assessment of the resources necessary for such actions, and a mechanism to obtain those resources. These elements are absent in the Submission. The Submission fails to identify any definite actions that the State of North Carolina will take to ensure: (i) a competent, certified teacher for every classroom, (ii) a well-trained, competent principal in every school, and (iii) the resources necessary so that all children, including those at-risk, have an equal opportunity to obtain a sound basic education.

⁴ Available at <http://www.ncpublicschools.org/accountability/reporting/>.

A. The Submission Has No Plan For Providing A Competent, Certified Teacher In Every Classroom.

The Submission outlines the existing challenges to providing a competent, certified teacher in every classroom. The Submission acknowledges that “[e]nrollment in teacher education programs is decreasing statewide” and “studies show that fewer students are entering the teacher education programs in our colleges and universities.” See Submission at pp. 7, 45. Indeed, enrollment in teacher education programs within the University of North Carolina system **plummeted 27.6%** from 2010 to 2014.⁵ On top of that, nearly 50% of teachers who begin their teaching careers in the State leave the classroom within their first five years of teaching. *Id.* at p. 7. The vast majority of the teachers in the State are inexperienced; in fact, more teachers in North Carolina are in their first year of teaching than any other year of experience.⁶ The Submission concedes that, under the existing conditions and current teacher supply framework, the State of North Carolina is unable to recruit and retain sufficient numbers of qualified teachers “to satisfy demand.” Submission at p. 7.

Yet, the Submission provides no plan for addressing and correcting these critical problems, and the State presents no solution to these problems, nor any plan to make significant progress towards any solution.

The Submission provides only that “[i]f public schools are to compete with other employment and career opportunities, the school must offer comparable salaries and benefits to attract bright, committed individuals to enter the profession” and suggests that “a scholarship/loan forgiveness program” to encourage candidates to become teachers “should [b]e consider[ed].” Submission at pp. 46-47 (emphasis added). While Plaintiffs agree that higher salaries/benefits for teachers and scholarship/loan forgiveness programs are necessary

⁵ *UNC Education Program Enrollment by Institution – Fall 2010 through Fall 2014*, UNIVERSITY OF NORTH CAROLINA, UNC-GA IRA/SDF.2009/03DEC14.

⁶ *Preparing More, Higher Quality Teachers and School Leaders for North Carolina’s Public Schools*, State Board of Education Presentation, UNIVERSITY OF NORTH CAROLINA (May 2015).

components of any solution, the Submission provides no plan for the implementation of these initiatives. Without a comprehensive plan of action, the State will never make progress towards achieving constitutional compliance. With regard to the teacher supply, a workable, meaningful plan of action should address, at a minimum, the following:

- Given the Submission's admission that fewer young people are choosing to enter teacher education programs in our universities, what is required to make the teaching profession attractive to the young people we need to have in our schools?
- What actions will the State take to recruit and retain high quality, certified teachers to work in poor, hard-to-staff, low-performing schools and districts? When will those actions be implemented? What resources are necessary for the implementation?
- How will the State reduce and/or eliminate the disparity in teacher quantity and quality between wealthy and poor districts?
- How will the State reduce and/or eliminate the disparity in teacher quantity and quality among schools within a district?
- What is the State's current and future teacher supply need (on a per district basis)?
- How will the State 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)?
- How will the State strengthen recruitment and selection criteria for prospective teacher candidates?
- The Submission states that teacher salaries in North Carolina must be raised for the State to recruit and retain high quality teachers. What salary level will be necessary for North Carolina to *attract, recruit, and retain* sufficient numbers of bright, committed, and qualified individuals into the teaching profession?
- What salary level is necessary to *attract, recruit, and retain* high quality teachers in poor, hard-to-staff, low-performing schools and districts?
- What resources are necessary to provide the compensation needed to attract and retain quality teachers in all schools? Will the State provide the resources, or will the State require districts to provide a portion of the

resources, and will such local responsibilities, if any, be adjusted on the basis of county wealth?

- The Submission states that a teacher scholarship/loan forgiveness program should be part of a *Leandro*-compliance plan, but is silent on all specifics of such a program. What is the plan? When will it start? Who will administer it? How many students will it serve? What is the funding level of each scholarship/loan? What will the overall program cost? Will it focus on hard-to-staff subjects and schools? Who will administer the program? What will be the criteria for participation in the scholarship/loan program? What commitment to teaching will recipients be required to make? How will the effectiveness of the program be evaluated?
- How will the State incentivize highly-effective teachers to remain in the classroom as teachers and mentors?
- How will the State increase the number of teachers with in-field advanced degrees to teach the subjects that require such training?

The State Defendants have told the Court that raising teacher salaries above the national average is necessary to recruit and retain quality teachers (*see, e.g., State Defs.’ Oct. 25, 2005 Compliance Plan Update*), and have represented to the Court that teacher recruitment scholarships will be part of their efforts to expand teacher supply in hard-to-staff schools (*see, e.g., State Defs.’ Aug. 9, 2005 Compliance Report*). Yet, after making these representations to the Court, the State reduced funding for teacher positions and eliminated salary supplements for teachers holding masters degrees⁷, dropped from 27th⁸ to 46th⁹ in the nation in teacher salary, eliminated the Teaching Fellows scholarship program¹⁰, eliminated the Future Teachers Scholarship/Loan Program¹¹, eliminated the Teacher Cadet Program (which attracted top students into the teaching profession)¹², eliminated funding for teacher mentoring¹³, and

⁷ *See, e.g., Summary of Special Provisions*, N.C. DEPT. OF PUB. INSTR. (July 2013).

⁸ Memorandum of Decision, Section One, p. 76.

⁹ *State Superintendent Calls for Exempting Public School Teachers from Personal State Income Taxes*, N.C. DEPT. OF PUB. INSTR. (June 17, 2013); <http://www.ncpublicschools.org/newsroom/news/2012-13/20130617-01>.

¹⁰ *See, e.g., Rpt. on the Continuation, Expansion and Capital Budgets*, House Bill 22 (June 2011).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

dramatically cut the funding of the North Carolina Center for the Advancement of Teaching¹⁴, among other programmatic eliminations and reductions.

Furthermore, the Submission offers no plan for meaningful professional development to support teachers, especially those who are early-career/beginning teachers. The Submission concedes that professional development is a critical “element in teacher effectiveness,” but admits that there is “no longer . . . a state appropriation to continue professional development for the teachers.” Submission at p. 47.

The fact that high-quality professional development must be a component of an acceptable *Leandro* plan is uncontroverted. The Submission acknowledges this. Submission at p. 47 (“It is imperative that professional development continue to be provided.”); *see also* Final Judgment at p. 39 (“Staff development and on-going [t]raining for teachers is essential and necessary”); 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. . .”). For the last ten years, the State has in fact committed to the Court that professional development for teachers will be a component of a *Leandro*-compliance plan. *See, e.g.*, State Defs.’ Oct. 25, 2004 Action Plan (“The State will develop a comprehensive portfolio of professional development offerings in core for principals and teachers . . .”); State Defs.’ Aug. 9, 2005 Compliance Report (implementation of the N.C. Teacher Academy for teacher development and training); State Defs.’ Ex. 21, Sept. 26, 2007 Hearing (“Successful reform . . . will take building the capacity of these lower performing schools to . . . support teachers who can make a difference. . .”). A lack of an “appropriation” in the budget does not excuse the State of its obligations to comply with *Leandro*. Mandates of the Constitution, as set

¹⁴ *Id.*

forth by our Supreme Court, require the basic educational assets to be in place even in the face of limited financial resources or disagreements as to appropriation of budget line items.

An effective and legally-sufficient plan of action for constitutional compliance should address the actions the State will take to support and develop its teachers, and should specifically address the following:

- How will the State *support* teachers in hard-to-staff schools and lower-performing schools (including turnaround schools) who are effective in improving academic achievement of at-risk students?
- How will the State improve *support, training, and mentoring* for early-career/beginning teachers?
- What resources are necessary to ensure that all teachers, including those in the poorest districts, have access to meaningful professional development support and who will provide the resources?
- Will there be a continued commitment to and expansion of the North Carolina New Teacher Support Program, evaluations of which have shown its effectiveness?¹⁵
- Will there be a programmatic replacement and expansion of the now-eliminated North Carolina Teacher Academy?
- How will the State address ineffective teachers?
- What is the State's plan to ensure that teachers have the resources and training necessary for the effective use of assessments in providing differentiated and individualized instruction to children with different needs?

Ensuring that we have the qualified teachers needed, where they are needed, in every school (especially those in low-wealth districts) is a complex challenge, with many interdependent components. The Court's understanding of the complex challenge led to the Court's order for a "definite plan of action," without which the State will never make significant progress toward constitutional compliance. The Submission does not even attempt to offer such a plan.

¹⁵ *Initial Results from the Race to the Top Evaluation of the North Carolina New Teacher Support Program*, CONSORTIUM FOR EDUCATIONAL RESEARCH AND EVALUATION – NORTH CAROLINA (Feb. 2015).

B. The Submission Has No Plan Of Action For Providing A Well-Trained, Competent Principal In Every School.

“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.” Final Judgment at p. 33. This Court ordered the submission of a “definite plan of action” specifically addressing how the State will ensure that every school is equipped with a “well-trained, competent principal.” See Notice of Hearing and Order dated April 24, 2015. Yet, discussion of principals in the Submission is virtually non-existent. In fact, the Submission provides only that (i) the State Board has “standards” for principals, and (ii) while some principals attended “Principal READY sessions” in the past, there is no longer an appropriation for any professional development support for principals going forward. See Submission at pp. 11, 47. It is inconceivable that the State of North Carolina reasonably believes this to be a sufficient plan of action.

Having “standards” does not recruit and retain good leaders. Having “standards” does not assure school leadership that will make a difference in hard-to-staff schools and schools with high percentages of at-risk children. Having “standards” does not prepare and support existing principals to ensure that they become and remain effective leaders in their schools. Having standards is important, but it is not the same as having a plan.

Moreover, for years, the Defendants have represented to this Court that 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” as a means to comply with *Leandro*. See, e.g., State Defs.’ Oct. 25, 2004 Action Plan (emphasis added); see also State Defs.’ Aug. 9, 2005 Compliance Report. In the Submission, the State Defendants now reverse course and indicate that there is no longer a plan in place to support principals with meaningful professional

development. Submission at p. 47. This is on top of the fact that the Principals' Executive Program has now been eliminated¹⁶ and funding for assistant principals has plunged.¹⁷

Having no plan to remedy a constitutional violation is not a viable option. Here, a workable, meaningful plan regarding principals should address, at a minimum:

- How will the State provide quality leadership and professional development training to principals?
- Will there be a programmatic replacement of the now-eliminated Principals' Executive Program?
- Will the State continue and expand the Regional Leadership Academies (part of North Carolina's Race-to-the-Top initiative)?
- How will the State ensure that principals can drive differentiated and individualized instruction to children with different needs in their schools?
- How will the State ensure that all principals can lead teachers in the effective use of assessments to evaluate student proficiency?
- How will the State ensure that principals can properly evaluate the effectiveness of teachers?
- What specific action items will the State implement to ensure that every school is led by a principal with the ability to hire and retain highly-effective teachers? When will these action items be implemented?
- How will the State *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 resources are necessary to do this and from where will those resources be obtained?
- Which individuals or groups will be responsible for the implementation of that approach? How will the effectiveness of the State's approach to principals be evaluated?
- How will the State reduce and/or eliminate the disparity in principal quality between wealthy and poor districts?
- How will the State use strategic staffing models to reduce and/or eliminate the disparity in principal quality among schools within a district?

¹⁶ See, e.g., Post-Legislative Budget Summary 2007-2009, OFFICE OF STATE BUDGET AND MGMT.

¹⁷ See, e.g., *Rpt. on the Continuation, Expansion and Capital Budgets*, House Bill 22 (June 2011).

- How will the State strengthen recruitment and selection criteria for prospective principal candidates?
- C. The Submission Has No Plan Of Action For Providing The Resources Necessary So That All Children, Including Those At-Risk, Have An Equal Opportunity To Obtain A Sound Basic Education.**

The percentage of students at-risk of academic failure – as measured by free and reduced lunch eligibility – has increased from approximately 49% in 2008-09¹⁸ to nearly 60% today (or 900,000 children).¹⁹ During this same time period, however, the State has decreased and/or eliminated resources necessary to meet the needs of this growing population of at-risk children. By way of example:

- The number of slots in the More at Four/NC Pre-K Program has been reduced to approximately 27,500 for the 2014-15 year.²⁰ There are approximately 74,000 at-risk four-year-olds in the State.²¹ Thus, 46,500 (or 74,000 – 27,500) at-risk four-year-olds need, but have no access to, the program.
- In 2004, the State indicated that the Disadvantaged Student Supplement Fund required at least \$223 million in funding²², but no more than \$81 million has been allocated.²³
- Funding for literary coaches was eliminated in 2009-2010.²⁴
- Funding for school-based child and family support teams was reduced in 2009-2010.²⁵
- State educational spending per student has decreased by at least \$130.00 per student from 2008-09 to 2014-15.²⁶

¹⁸ Free & Reduced Meals Application Data 2008-2009, N.C. DEPT. OF PUB. INSTR., <http://www.nutritionnc.com/snp/pdf/cacfp/2008-2009FreeandReducedSchoolData.pdf>.

¹⁹ Submission at p. 38.

²⁰ The Submission provides that the “number of seats for disadvantage students in Pre-K programs has been increased” (p. 45). That is inaccurate. In 2008-09, there were approximately 32,500 children served in the More-at-Four program. See Plfs.’ Ex. 15, June 22, 2011 Hearing. Today, only about 27,592 children have access to the program. See NC Pre-K Program Data for 2014-15, DCDEE STATE OFFICE (Dec. 2014).

²¹ There are approximately 124,150 four-year-olds in North Carolina. See “Provisional 2014 – Age Groups-Total”, OFFICE OF STATE BUDGET AND MGMT., http://www.osbm.state.nc.us/ncosbm/facts_and_figures/socioeconomic_data/population_estimates/county_estimates.shtm. Approximately 60% of those four-year-olds are at-risk (from economically-disadvantaged households). See Submission at p. 38.

²² See State Defs.’ 90-Day Report to Court (June 2004), attachment 8.

²³ See, e.g., *Highlights of the North Carolina Public School Budget*, N.C. DEPT. OF PUB. INSTR. (Feb. 2013).

²⁴ *Jt. Conf. Comm. Rpt. on the Continuation, Expansion, and Capital Budgets*, Senate Bill 202 (Aug. 2009).

²⁵ *Id.*

- Funding for teacher assistants has decreased by 22.9%.²⁷
- Funding for instructional supplies has decreased by 51.9%.²⁸
- \$22.9 million in funding for instructional support, such as guidance counselors, social workers and other personnel, was cut in 2011-12²⁹ and was reduced by an additional \$17 million in 2013-14 and \$17.2 in 2014-15.³⁰
- 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.³¹
- All funding for the Dropout Prevention Grant program was eliminated in 2011-12.³²

The State's actions since 2008 have made it impossible for North Carolina to provide all children, especially those at-risk, with a meaningful opportunity for a sound basic education.

In the Submission, the State Board concedes that current resources must be expanded and additional programmatic initiatives must be implemented for a “greater number of students at risk” to have access to a *Leandro*-conforming education. Submission at p. 45. The State Board proposes (in “Level 2” and “Level 3” of the Submission) some “proposals” for initiatives and expansions that must be implemented for all children to have access to a constitutionally-conforming education. While Plaintiffs agree that these proposals and expansions are necessary for constitutional compliance, the Submission fails to set forth a **plan** for their implementation – either now or at any point in the future – and identifies no definite actions items that will be taken to make progress towards their implementation.

²⁶ *Funding North Carolina's Public Schools: Changes Since FY 2008-09*, N.C. DEPT. OF PUB. INSTR. (Sept. 2014).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Rpt. on the Continuation, Expansion and Capital Budgets*, House Bill 22 (June 2011).

³⁰ *Jt. Conf. Comm. Rpt. on the Continuation, Expansion, and Capital Budgets*, Senate Bill 402 (July 2013).

³¹ *Rpt. on the Continuation, Expansion and Capital Budgets*, House Bill 22 (June 2011).

³² *Id.*

Pre-Kindergarten Program For All At-Risk Four-Year Olds

Plaintiffs agree that a quality, educational-based pre-kindergarten program for at-risk four-year-olds is necessary. Plaintiffs further agree that the number of at-risk preschoolers served in the NC Pre-K program (presently, 27,500³³) must be increased so that all at-risk four-years-olds (presently, 74,000³⁴), regardless of where they live in the State, have access to the program. The Submission, however, does not indicate how or when the expansion will occur. As to the expansion of NC Pre-K, a meaningful plan should address, at a minimum, the following:

- Statewide and for each county in North Carolina, how many four-year-olds are eligible for NC Pre-K based on each of the present eligibility factors (family income, family military status, identified developmental disability, limited English proficiency, individualized education plan, or chronic health condition)?
- Statewide and for each county in North Carolina, what is the estimated number of four-year-olds who will be eligible for NC Pre-K each year for the next ten years?
- Statewide and for each county, how many four-year-olds under each of the present eligibility factors who are presently eligible for NC Pre-K are currently being served in the program?
- What is the State's plan to expand the NC Pre-K program? How will the State ensure that NC Pre-K providers across North Carolina (public and private) will have the resources and capacity to implement the expansion?
- How will the State *identify, enroll, and provide* each eligible four-year-old with NC Pre-K? If such tasks will be performed at the local level, how will the State ensure that each local area has the capacity and resources to *identify, enroll, and provide* each eligible four-year-old with NC Pre-K?
- Who (at the state level and each county/local level) will be responsible for identifying unserved, eligible children? What practices will be implemented to identify such children and to ensure that all eligible children are in fact identified?
- How will the State ensure that the NC Pre-K providers will have the capacity to implement the necessary expansion?

³³ See NC Pre-K Program Data for 2014-15, DCDEE STATE OFFICE (Dec. 2014).

³⁴ See note 20.

- What resources will be required to expand NC Pre-K so that all eligible children, regardless of the county in which they live, have meaningful access to the program? From where will those resources be obtained?
- What is the timeline for implementing the expansion of the program to serve the needs of all at-risk four-year-olds? What achievement milestones will be set along the way to ensure the efficient and effective expansion of the program?
- Who at the State level will be in charge of overseeing the expansion of the program?
- How will the State ensure that NC Pre-K offerings will have highly qualified teachers? What training is necessary to ensure that all NC Pre-K teachers are effective? What mechanisms are in place to retain the highly effective teachers in the NC Pre-K program?

Increased School Time For At-Risk Children

Similarly, Plaintiffs agree that disadvantaged, at-risk students require additional instructional time for learning and that school districts should have the flexibility and resources “to extend the number of instructional days for students.” Submission at p. 45. Plaintiffs also agree that summer camp programs “would be very beneficial” to all students in grades K-3 in at-risk schools. *Id.* Once again, however, the Submission is silent as to any action that will be implemented to carry out such initiatives. In this regard, a plan should include, at a minimum, the following:

- How will the State ensure that districts, especially low-wealth districts, have sufficient resources and funding to extend the number of instructional days for at-risk students?
- How will the low-wealth counties pay for increased instructional days?
- What districts will be eligible to extend the number of instructional days? How will district eligibility be determined? When will eligible districts be able to begin extending the number of instructional days for at-risk students?
- Which students will be eligible for additional instructional days? How will the State determine if a child is sufficiently “at-risk” to qualify?

- How will transportation and meals be provided to at-risk children on non-traditional calendar school days and times? How will districts, especially low-wealth districts, pay for increased transportation and meal demands?
- What legislation, if any, is necessary to provide school districts with the flexibility to extend the number of instructional days for at-risk children?
- How will the State ensure that each district has the capacity and resources to *identify*, *enroll*, and *provide* summer camps for all children in grades K-3 who attend lower-performing schools? Will summer camp attendance be mandatory for at-risk students?
- Who will teach in the summer camps? How will the State ensure that such camps are staffed with high quality teachers?
- How will eligibility for the summer camps be determined?
- What is the estimated number (per grade) of children in each county who will be eligible for the summer camps?
- How will eligible children be identified and how will their parents be informed of the summer camps?
- What resources will be required to implement the summer camps across the State and from where will those resources come?
- How will transportation and meals be provided to at-risk children at the summer camps?

***District and School Transformation &
Improving Low Performing Schools and Districts***

The State of North Carolina is obligated to ensure that all students are receiving a *Leandro*-conforming education and, thus, the State must take action to address and correct deficiencies at low-performing schools so that their children have equal access to the fundamental constitutional right. Accordingly, Plaintiffs agree that support for low performing schools (including support provided by District and School Transformation -- DST) must be expanded. Submission at p. 47. Yet, the Submission is void as to any action that will be implemented to carry out such expansion. With regard to district and school transformation, a meaningful plan should address, at a minimum, the following:

- Which schools will be eligible to receive expanded support? What criteria will be used to determine eligibility?
- What actions will the State take to improve and/or transform identified low-performing schools? When will those actions be taken? For how long will the support be provided?
- What resources and/or funding will be required to offer support to all low-performing schools and from where will those resources be obtained? Is there a sustainable system in place to continuously provide the necessary support?
- Does the Department of Public Instruction have the resources to implement these actions?
- How will the effectiveness of such an expanded support system be evaluated? Who will be responsible for evaluating the support system?
- How many people within the Department of Public Instruction will be staffed on this initiative? Who are they?

Further, the Submission “recommends” that models from other states be “studied” concerning methods for intervention and/or takeover in districts with an ineffective superintendent or local board of education. A recommendation to study something, however, is not a definite plan of action. A plan as to this concept should include:

- What “takeover” models from other states will be studied? Who will study the models? When?
- What “intervention” models from other states will be studied? Who will study the models? When?
- How will these models be studied? What criteria will be used to evaluate their effectiveness?
- How will the State determine which models (or components from those models) may be most effective in North Carolina?
- After the models have been evaluated, when will the State determine what it will do with respect to the implementation of intervention/take-over initiatives?
- Will legislation be necessary to implement such initiatives?

Digital Tools, Resources and Courses

The Submission indicates that the State Board “supports” digital tools, resources and courses (including the North Carolina Digital Learning Plan, Home Base and North Carolina Virtual Public School (NCVPS)) as a means to enhance traditional instruction. The Submission, however, states that there are many challenges yet to be resolved if such digital tools are to be accessible and effective for students across the State, especially those in low-wealth counties. See Submission at pp. 48-50. Saying one “supports” such concepts is not a plan of action for their implementation and expansion. Moreover, while the Submission identifies the challenges to implementing such initiatives statewide, it proposes no plan to handle those challenges. With regard to this component, a workable plan should address items such as the following:

- What actions will the State take to ensure that all students and all teachers have meaningful access to digital tools (*e.g.*, Home Base/Instructional Improvement System/NCVPS, etc.)?
- How will low-wealth districts that serve students in poverty and at-risk students be provided meaningful access to such digital tools? What resources will this require? When will those resources be provided?
- What steps will the State take to ensure that students who do not have internet at home will nonetheless have meaningful access to digital tools and courses?
- What steps will the State take to ensure that at-risk students, especially those in low-wealth districts, have access to broadband or high speed internet so that they can utilize digital tools and courses?
- How will the State ensure that all districts, including low-wealth districts, have access to all components of Home Base and the NCVPS?
- How will (and if so, when will) the State expand the school connectivity initiative to support internal Wi-Fi infrastructure? What resources will be necessary for such expansion and from where will those resources be obtained?
- Will a statewide procurement system for technology infrastructure, devices, content, and services be implemented? If so, when and what will that system be?

- How will the State ensure that educators are trained and qualified in the use of digital learning tools? What types of professional development and training will be offered in this regard? What additional professional development will be offered to support teachers who serve students in poverty and other at-risk children?

Family Resource Centers/Inter-agency Cooperation

Plaintiffs agree that at-risk children often require access to critical health services and school support personnel (nurses, school psychologists, social workers, and school counselors). Indeed, access to such support personnel has been substantially decreased in recent years. \$22.9 million in funding for instructional support such as guidance counselors, social workers and other personnel was cut in 2011-12,³⁵ and this funding was further reduced by \$17 million in 2013-14 and by \$17.2 in 2014-15.³⁶ The Submission, however, only states that expansion of these resources would be “advantageous;” the Submission does not provide a plan for the expansion of such services or even indicate that such an expansion will occur. With regard to this component, a plan should address, at a minimum, the following:

- What is the State’s plan to ensure that all at-risk students have access to school support personnel, especially those students who reside in the poorest districts in North Carolina?
- The Submission indicates that North Carolina has a statewide ratio of 1 nurse for every 1,177 students, 1 psychologist for every 1,875 students, 1 social worker for every 1,623 students and 1 counselor for every 395 students, but that the “recommended national ratios” are 1:750, 1:750, 1:250, and 1:250, respectively. How do North Carolina’s student demographics compare to the national demographics used to develop these recommended ratios?
- How many support personnel must be hired by each district for every district to reach the national recommended ratios? How will the State ensure that each district has the resources and capacity to hire the additional support personnel?
- When will the numbers of support personnel be expanded to move each district into alignment with the national recommended ratios?

³⁵ *Rpt. on the Continuation, Expansion and Capital Budgets*, House Bill 22 (June 2011).

³⁶ *Jt. Conf. Comm. Rpt. on the Continuation, Expansion, and Capital Budgets*, Senate Bill 402 (July 2013).

- There are many districts that, for example, have 0 social workers. What steps will the State take to *recruit* and *retain* effective support personnel in low-wealth and/or hard-to-staff districts?
- Will districts with more at-risk students have more support personnel?

The Submission also urges “consideration” of the implementation of family resource and youth centers which, according to the State Board, have been implemented in other states and the creation of some type of interagency advisory committee on public education. *See* Submission at pp. 52-53. Vague ideas proposed for consideration do not constitute a “definite plan of action.” The Submission does not indicate that the State has any definite plans to implement such concepts.

CONCLUSION

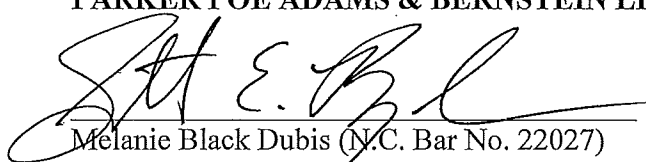
The Submission is simply no plan, and it is certainly not a “definite plan of action” from the State of North Carolina for *Leandro* compliance, which is what the Court ordered. For the foregoing reasons, Plaintiffs respectfully request that the Court:

1. Enter an Order finding that the State of North Carolina is in continued violation 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), as demonstrated by all the evidence of record in this case, including but not limited to, the vast numbers of school children each year who are not proficient and who are not performing at grade level;
2. Enter an Order finding that the Submission fails to comply with this Court’s previous order requiring the submission of a “definite plan of action from the State of North Carolina” identifying how the State of North Carolina will provide (i) competent, certified teachers in every classroom, (ii) well-trained, competent principals in every school, and (iii) the resources necessary so that all children, including those at-risk, have an equal opportunity to obtain a sound basic education.

3. Enter an Order requiring Defendants State of North Carolina and State Board of Education to involve, and work with, all necessary divisions of the executive branch and the legislative branch to develop a comprehensive and definite plan of action for *Leandro* compliance for submission to the Court within 90 days. The State Defendants should seek collaboration from Plaintiffs in the development of such plan. Such plan should be submitted by the State of North Carolina, acting through its legislative and executive branches, and should specifically identify what actions the State will take to ensure (i) a competent, certified teacher in every classroom, (ii) a well-trained, competent principal in every school, and (iii) the resources necessary so that all children, including those at-risk, have an equal opportunity to obtain a sound basic education, as well as address the questions and issues raised herein. The plan should contain, at a minimum, clearly-defined action items, timetables for implementing those actions, an identification of individuals or groups responsible for the implementation of those actions, and measurable objectives to evaluate the progress of implementation.

This the 16th day of July 2015.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PLAINTIFFS' RESPONSE TO THE PURPORTED "DEFINITE PLAN OF ACTION" FOR LEANDRO COMPLIANCE FROM THE STATE OF NORTH CAROLINA** was served on the following on this day by e-mail and hand-delivery:

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