

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.)

CASE MANAGEMENT AND
SCHEDULING ORDER

THIS MATTER is before the Court on the *Joint Motion for Case Management and Scheduling Order* filed by Defendant State of North Carolina (the “State”) and Plaintiffs Hoke County Board of Education, *et al.* (“Plaintiffs”) and the Penn Plaintiff-Intervenors (with Plaintiffs, collectively, the “Plaintiff Parties”). For good cause shown, including all matters of record before the Court and the arguments of counsel, and pursuant to this Court’s inherent authority to manage cases before it, the Court hereby orders as follows:

1. The Plaintiff Parties and the State have jointly nominated, for the Court’s consideration and appointment, an independent, non-party consultant to develop detailed, comprehensive, written recommendations for specific actions necessary to achieve sustained compliance with the constitutional mandates articulated in this case. The consultant will be charged with recommending specific actions the State should take:

- a. To provide a competent, well-trained teacher in every classroom in every public school in North Carolina;

- b. To provide a well-trained, competent principal for every public school in North Carolina; and
- c. To identify the resources necessary to ensure that all children in public school, including those at risk, have an equal opportunity to obtain a sound basic education, as defined in *Leandro I*.

The Plaintiff Parties and the State represent that they believe that the consultant has the institutional capacity, independence, and expertise to develop a full understanding of the complexity of this task, and to develop a comprehensive remedial plan as set forth herein.

2. Prior to appointment, the Plaintiff Parties and the State shall certify to the Court that the nominee has represented that it is prepared, willing, and able to take on the task of serving as a consultant in this case and complying with the terms of this Order, and intends to serve if selected by the Court. Following the appointment, Plaintiffs and the State shall jointly report to the Court, not less than bi-monthly (every two months), on their progress in securing funding as set forth in Paragraph 8 below.

3. The nominee's acceptance of this Court's appointment shall constitute an acknowledgment of the nominee's submission to the jurisdiction of the Court in this action. The parties and the nominee acknowledge the continuing jurisdiction of the Court over the parties, the nominee and the subject matter and agree to inform the Court, not less than monthly, of the nominee's progress and/or any anticipated deviation from the scheduling set forth in this Order. The parties and the nominee acknowledge that the Court may, upon the request of any party, the nominee, or upon its own motion conduct such hearings or inquiries as may appear to the Court to be reasonable or necessary to insure compliance with the constitutional mandates articulated in

this case as well as the nominee's timely submission of the written recommendations contemplated by this Order.

4. The Court has been apprised by the State that Governor Roy A. Cooper, III, by Executive Order No. 10 dated July 21, 2017, superseded and replaced by Executive Order No. 27 dated November 15, 2017, created the Governor's Commission on Access to Sound Basic Education. According to the State, the members of this Commission will be appointed by the Governor. The Court takes judicial notice of the Executive Order. Under the Executive Order, the Commission will be constituted and directed to gather information and evidence to assist in the development of a comprehensive plan to address compliance with the constitutional mandates that have been articulated in this case and as set out above. *See* Final Judgment dated April 4, 2002 ("Final Judgment") at 109-110, *aff'd Hoke County Bd. of Educ. v. State*, 358 N.C. 605, 637, 599 S.E.2d 365, 390 (2004). Further, under the Executive Order, the Commission has been directed to make recommendations for the most efficient and effective ways to achieve such constitutional compliance, and to work in cooperation with the court-appointed consultant towards those ends.

5. The consultant shall be permitted to attend and participate in any and all meetings or proceedings held by the Commission, and will be given access to all evidence and information gathered by the Commission. Likewise, the consultant shall present information to the Commission upon reasonable request, providing this Court with a summary of the information so provided. Counsel for parties to the joint motion shall reasonably cooperate to provide the consultant and the Commission information necessary to assist the consultant and the Commission with their tasks.

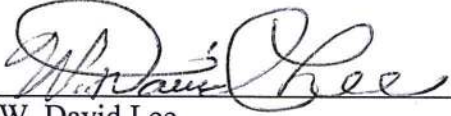
6. Within twelve (12) months from the date of its appointment, the consultant shall submit its final recommendations to all parties, the Commission, and the Court. These recommendations shall consist of the consultant's conclusions as to detailed and comprehensive actions that the State should take to achieve sustained compliance with the constitutional mandates set forth above.

7. Within 60 days after the submission of the Consultant's final report, the parties to the joint motion shall submit to the Court a proposed consent order (or, if they are unable to agree despite good faith attempts to do so, separate proposed orders) of specific actions to achieve compliance with the constitutional mandates set forth above. It is anticipated that the proposed order(s) will be based on the recommendations of the consultant and the Governor's Commission, as well as the evidence of record in this matter, and will identify, as specifically as practicable, the actions the State must take to achieve sustained compliance with the constitutional mandates articulated in this case. Prior to entry of any final order by the Court, all parties shall have the opportunity to be heard by the Court on the Consultant's final report and/or any proposed consent order(s). All parties acknowledge that the Court has the power and authority to modify or amend any proposed order(s) or, alternatively may, after all parties have the opportunity to be heard, enter such other or further order(s) as the Court deems appropriate to ensure continuing compliance with the constitutional mandates articulated in this case.

8. The Court has further been apprised that the Commission intends to seek funding through private and/or charitable sources to defray the cost of the consultant and the Commission, with the proviso that no funding sources shall have any right of control over the work of the consultant or the Commission.

This ORDER is entered without prejudice to any past, present or future argument that the State Board of Education (“SBE”) has acted and/or continues to act in compliance with the constitutional mandates referenced herein and without prejudice to the SBE’s right to bring on for hearing its Motion for Relief filed July 24, 2017, which is tentatively scheduled for February, 2018 (with Plaintiff-Parties’ response briefs due on January 31, 2018). This ORDER may not be modified except by further Order of this Court for good cause shown.

Dated: February 1, 2018.


W. David Lee
North Carolina Superior Court Judge