

FILED
STATE OF NORTH CAROLINA

GENERAL COURT OF JUSTICE

2019 JUN 28 PM 1:11
COUNTY OF WAKE

SUPERIOR COURT DIVISION

WAKE CO., C.S.C.

95 CVS 1158

HOKE COUNTY BOARD OF EDUCATION,

et al.,

Plaintiffs

And

ASHEVILLE CITY BOARD OF EDUCATION,

et al.,

Plaintiff-Intervenors

ORDER

v.

STATE OF NORTH CAROLINA and STATE

BOARD OF EDUCATION,

Defendants

This matter coming before the Court this 18th day of June, 2019 with the consent of all parties; and counsel for all parties being present via telephone conference, as appears of record; and Andrea Browning, a representative of this Court's independent consultant, WestEd, also being present via telephone;

And this Court having previously entered orders dated March 13, 2018 and June 25, 2018 appointing WestEd as an independent consultant and clarifying its ongoing work;

And this Court, by these previous orders, having sought to encourage collaboration and to insure a transparent and well-vetted study;

And on June 17, 2019 WestEd having forwarded to the undersigned a confidential working document styled “An Action Plan for North Carolina,” the same indicating on its face that it is a confidential working document-not for distribution; and it appearing and the Court finding as follows:

1. WestEd has been specifically retained to offer the Court detailed analysis, and potential remedial measures, to address the complex educational system questions presented by this case.
2. The retention of WestEd, and the availability of data and information necessary to WestEd’s work has been a collaborative effort involving each of the parties to this litigation.
3. The Court has received and considered the working document, not as the final operative document, but rather, as the first draft of what will eventually become a final report, the working document being subject to potentially significant revision or modification.
4. The topics and challenges addressed by this preliminary working document reflect urgent issues that have been the subject of debate for over two decades.
5. The resolution of these challenges, in whatever form, will weigh heavily upon the important public interest of ensuring comprehensive, fair, and effective education of school age children throughout the State, while also considering the obligations and resources of the pertinent State educational entities.

6. It is the Court's intention to allow the parties to this litigation sufficient time to consider WestEd's working document and when appropriate, endeavor to collectively amend its terms and effectuate a plan of action.
7. The Court notes that the Defendant State Board of Education will not meet in person as a full body until at least 1 August of this year, at which time it will have an opportunity to consider WestEd's working document.
8. The Court believes that premature dissemination of the working document, or its attendant materials, may jeopardize some or all of the efforts that have been expended by WestEd, and the litigants, over the last number of months.
9. In addition, while the Court believes that WestEd has taken precautions to prevent disclosure of student, personnel, and other confidential data, the parties should have the opportunity to conduct an independent review to ensure that dissemination of the report and its attendant materials, alongside other publicly available information, will not lead to inadvertent and unlawful disclosures, by means of deduction, about individual student matters protected as confidential under G.S. 115C-402 and 20 U.S.C. 1232g and/or individual personnel matters protected as confidential under G.S. 115C-319.
10. A trial court may, in the proper circumstances, shield portions of court proceedings and records from the public; the power to do so is a necessary power rightfully pertaining to the judiciary as a separate branch of government.

11. This necessary and inherent power of the judiciary should only be exercised when its use is required in the interest of the proper and fair administration of justice or where, for reasons of public policy, the openness ordinarily required will be more harmful than beneficial.
12. Accordingly, the Court notes that notwithstanding the broad scope of public records statutes, and the specific grant of authority in N.C.G.S. § 7A–109, this Court retains the inherent authority granted by Article IV, Section 1 of the North Carolina Constitution to control these proceedings, including filings and records, and that it may do so to ensure a fair and comprehensive analysis of the implicated public policy issues, protection of litigant rights, and in the pursuit of the best interests of justice.
13. Given the potential ramifications of premature publication of all, or any part of the preliminary WestEd working document, the Court believes that it is in the best interests of the parties, the fair and impartial process of these proceedings going forward, and the important issues presented by this case, to maintain the confidentiality of the working document, pending further orders of this Court.

THEREFORE IT IS ORDERED that WestEd immediately transmit to all counsel of record the preliminary WestEd working document, which shall be considered by counsel as confidential upon receipt.

IT IS FURTHER ORDERED that the working document and all related materials are deemed “Confidential” by the Court, and shall be protected from any public or non-party disclosure, absent further order of this Court.

At the appropriate time, and in light of the State Board's meeting schedule, the Court will entertain a motion from any party to consider partial or full release of a final report. In the alternative, on its own initiative, the Court may permit release of all, or a portion, of the preliminary WestEd working document.

IT IS FURTHER ORDERED that the parties are hereby authorized to produce or receive the protected working document and materials for the sole purpose of pursuing agreed upon modifications, a resolution of the implicated issues, or as otherwise necessary for the litigation, so long as the information is designated Confidential. The parties shall not to use or disclose the working document, or related materials, for any other purpose or other proceeding without prior Court approval.

IT IS FURTHER ORDERED that counsel for any party may freely communicate with WestEd, seeking clarification, revision or modification of the working document; provided, however, that with respect to any substantive inquiry WestEd shall respond via email, providing a copy of its communication to all counsel of record.

IT IS FURTHER ORDERED that any Confidential information produced in accordance with the provisions of this Order shall be used solely for purposes of this litigation and its contents shall not be disclosed to any person unless that person falls within at least one of the following categories:

1. Counsel for the parties, and the attorneys, paralegals, stenographic, and clerical staff employed by such counsel;
2. Vendor agents retained by the Parties or counsel for the parties, provided that the vendor agrees to be bound by this Order;

3. The Court, the Clerk of Superior Court, any Referee appointed by the Court, and any members of their staffs to whom it is necessary to disclose the information;
4. Experts and/or consultants, whether compensated or not, provided that such persons agree to be bound by this Order; and,
5. Any individual(s) who authored, prepared, or previously reviewed or received information used in the preparation of the preliminary report.

This the 18th day of June, 2019.

A handwritten signature in black ink, appearing to read "W. David Lee", is written over a horizontal line.

W. David Lee, Judge Presiding

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was served on the parties by depositing a copy hereof, first class postage pre-paid in the United States mail, properly addressed as follows, and with a courtesy copy by electronic mail, to:

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This the 28th day of June, 2019.



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