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| STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE  SUPERIOR COURT DIVISION  WAKE COUNTY 95 CVS 1158 |

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| HOKE COUNTY BOARD OF EDUCATION; et al.,  Plaintiffs,  and  CHARLOTTE-MECKLENBURG BOARD OF EDUCATION,  Plaintiff-Intervenor,  and  RAFAEL PENN, et al.,  Plaintiff-Intervenors,  v.  STATE OF NORTH CAROLINA and the STATE BOARD OF EDUCATION,    Defendants,  and  CHARLOTTE-MECKLENBURG BOARD OF EDUCATION,  Realigned Defendant,  and  PHILIP E. BERGER, in his official capacity as President *Pro Tempore* of the North Carolina Senate, and TIMOTHY K. MOORE, in his official capacity as Speaker of the North Carolina House of Representatives,  Intervenor-Defendants. | **PLAINTIFFS’ PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW** |
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This case is on remand from our Supreme Court for the limited purpose of determining “what effect, if any, the enactment of the State Budget has upon the nature and extent of the relief” granted in the trial court’s order issued on 10 November 2021 (“10 November 2021 Order”).

In the 10 November 2021 Order, the Court ordered the Office of State Budget and Management and the current State Budget Director (“OSBM”), the Office of the State Controller and the current State Comptroller (“Controller”), and the Office of the State Treasurer and the current State Treasurer (“Treasurer”) to take necessary actions to transfer the total amount of funds necessary to effectuate Years 2 & 3 of the Plan (the “Plan”), from the unappropriated balance within the General Fund to the state agents and state actors with fiscal responsibility for implementing the Plan.

At the time the 10 November 2021 Order was issued, a budget had yet to be enacted pertaining to the fiscal years relevant for Year 2 (2021-2022) and Year 3 (2022-2023). Recognizing this, the Court stayed operation of its 10 November 2021 Order for thirty (30) days in the event that a budget was passed that may impact the funding amounts set forth therein.

Approximately one week later, the State enacted the Current Appropriations Act of 2021 (Session Law 2021-180, SB 105) (the “Appropriations Act”). Accordingly, on 30 November 2021, the Court issued an order extending the stay of its 10 November 2021 Order and stating as follows:

[O]n November 18, 2021, the State enacted the [2021 Appropriations Act]. The Appropriations Act appears to provide for some—but not all—the resources and funds required to implement years 2 & 3 of the Comprehensive Remedial Plan, which may necessitate a modification of the November 10 Order.

The Court noticed a hearing for 13 December 2021, the purpose of which was for the State “to inform the Court of the specific components of the Comprehensive Remedial Plan for years 2 & 3 that are funded by the Appropriations Act and those that are not.” Before that hearing could happen, however, the appellate process was initiated and, separately, the Court of Appeals of North Carolina issued a writ of prohibition, restraining the Court from taking further action.

Specifically, Plaintiffs appealed from and petitioned the Supreme Court to certify for discretionary review the writ of prohibition issued by the Court of Appeals on 30 November 2021. On 14 February 2022, Defendant State of North Carolina petitioned the Supreme Court for discretionary review of the 10 November 2021 Order. By order entered 21 March 2022, the Supreme Court allowed both the Plaintiffs’ petition for discretionary review and the Defendant State of North Carolina’s petition for discretionary review. The Supreme Court concurrently issued a thirty-day, limited remand instructing this Court to make any necessary findings of fact and conclusions of law concerning the effect, if any, of the Appropriations Act on the relief granted in the 10 November 2021 Order.

The Court, having reviewed the briefs, affidavits, and other evidence of record, and having heard the arguments of counsel on 13 April 2022, finds and concludes as follows:

**PROPOSED FINDINGS OF FACT**

1. Pursuant to the scheduling dated 24 March 2022, the Defendant State of North Carolina filed with the Court an accounting showing the extent to which the 2021 Appropriations Act, 2021 N.C. Sess. Laws 180, funded—or did not fund—the specific components of the Comprehensive Remedial Plan for Years 2 & 3. ECF No. 12 (with attachments).
2. Specifically, the State’s accounting was provided through the Affidavit of Kristin L. Walker, Chief Deputy Director of State Budget for the North Carolina Office of State Budget and Management (“Walker Affidavit”). ECF No. 12.
3. Plaintiffs informed the Court that they agree with—and do not dispute—the facts set forth in the Walker Affidavit.
4. The Walker Affidavit establishes that:
   1. The State has failed to fully fund Years 2 & 3 of the Plan, as it was required to do under the Court’s previous orders. *See* ECF No. 12 ¶ 6.
   2. Among the forty-four (44) specific components required to be funded for Year 2, the State provide no funding at all for at least twenty-four (24) of them and only partial funding for others. Specifically, the State underfunded Year 2 by $257,418,175. ECF No. 12.3 at 2.
   3. Among the forty-two (42) specific components required to be funded for Year 3, the State provide no funding at all for at least twenty-two (22) of them and only partial funding for others. Specifically, the State underfunded Year 3 by $537,409,782. *Id.*
   4. The State has the fiscal resources available to fund Years 2 & 3 of the Plan in full. The State admits that, as of March 25, 2022, it has a gross cash balance of $9.84 billion and a net unreserved cash balance of $4.79 billion. *Id.*
5. There are three agencies charged with administering the respective components of Years 2 & 3 of the Comprehensive Remedial Plan: the Department of Public Instruction (“DPI”), the Department of Health and Human Services (“DHHS”), and the University of North Carolina System (“UNC”). *Id.*
6. For Year 2 of the Plan, the State acknowledges that DPI needed a total amount of $597,551,500 to implement specific components of the Plan that it was charged with administering. As the State also acknowledges, the Appropriations Act, however, provided only $419,866,224 of these required amounts. *Id.*
7. For Year 2 of the Plan, the State acknowledges that DHHS needed a total amount of $76,400,000 to implement specific components of the Plan that it was charged with administering. As the State also acknowledges, the Appropriations Act, however, provided only $9,846,101 of these required amounts. *Id.*
8. For Year 2 of the Plan, the State acknowledges that UNC needed a total amount of $16,700,000 to implement specific components of the Plan that it was charged with administering. As the State also acknowledges, the Appropriations Act, however, provided only $3,521,000 of these required amounts. *Id.*
9. In Year 3 of the Plan, the State acknowledges that DPI needed a total amount of $924,501,500 to implement specific components of the Plan that it was charged with administering. As the State also acknowledges, the Appropriations Act, however, provided only $508,558,580 of these required amounts. *Id.*
10. For Year 3 of the Plan, the State acknowledges that DHHS needed a total amount of $113,400,000 to implement specific components of the Plan that it was charged with administering. As the State also acknowledges, the Appropriations Act, however, provided only $11,512,138 of these required amounts. *Id.*
11. In Year 3 of the Plan, the State acknowledges that UNC needed a total amount of $24,600,000 to implement specific components of the Plan that it was charged with administering. As the State also acknowledges, the Appropriations Act, however, provided only $5,021,000 to UNC of these required amounts. *Id.*
12. The above is summarized in the following table, which was included in the Walker Affidavit (ECF No. 12.3):



1. In some cases, the Plan requires recurring (R) funds to be appropriated, but the Budget appropriated nonrecurring funds (NR). Though those amounts are funded for Years 2 & 3, a higher amount of recurring funds will be needed for the remaining years in order to be compliant with this Court’s Order. *Id.*

**CONCLUSIONS OF LAW**

1. The 2021 Appropriations Act fails to fund Years 2 & 3 of the Plan in full.
2. Based on the State’s accounting, which Plaintiffs do not dispute, the 2021 Appropriations Act impacts the remedy set forth in Paragraph 1(a) – (c) (p. 19) of the 10 November 2021 Order as follows:

(a) Department of Health and Human Services (“DHHS”): $168,441,761.00;

(b) Department of Public Instruction (“DPI”): $593,628,196.00; and.

(c) University of North Carolina System: $32,758,000.00.

1. The remainder of the 10 November 2021 Order is not impacted by the Appropriations Act. All other issues related to or arising out of the 10 November 2021 Order are pending before the North Carolina Supreme Court.