STATE OF NORTH CAROLINA

COUNTY OF WAKE

HOKE COUNTY BOARD OF EDUCATION; HALIFAX COUNTY BOARD OF EDUCATION; ROBESON COUNTY BOARD OF EDUCATION; CUMBERLAND COUNTY BOARD OF EDUCATION; VANCE COUNTY BOARD OF EDUCATION; RANDY L. HASTY, individually and as Guardian Ad Litem of RANDELL B. HASTY; STEVEN R. SUNKEL, individually and as Guardian Ad Litem of ANDREW J. SUNKEL; LIONEL WHIDBEE, individually and as Guardian Ad Litem of JEREMY L. WHIDBEE; TYRONE T. WILLIAMS, individually and as Guardian Ad Litem of TREVELYN L. WILLIAMS; D.E. LOCKLEAR, JR., individually and as Guardian Ad Litem of JASON E. LOCKLEAR; ANGUS B. THOMPSON II, individually and as Guardian Ad Litem of VANDALIAH J. THOMPSON; MARY ELIZABETH LOWERY, individually and as Guardian Ad Litem of LANNIE RAE LOWERY, JENNIE G. PEARSON, individually and as Guardian Ad Litem of SHARESE D. PEARSON; BENITA B. TIPTON, individually and as Guardian Ad Litem of WHITNEY B. TIPTON; DANA HOLTON JENKINS, individually and as Guardian Ad Litem of RACHEL M. JENKINS; LEON R. ROBINSON, individually and as Guardian Ad Litem of JUSTIN A. ROBINSON,

IN THE GENERAL COURT OF JUSTICE   
 SUPERIOR COURT DIVISION   
 95-CVS-1158

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| Plaintiffs,  and  CHARLOTTE-MECKLENBURG BOARD OF EDUCATION,  Plaintiff-Intervenor,  and  RAFAEL PENN; CLIFTON JONES, individually and as Guardian Ad Litem of CLIFTON MATTHEW JONES; DONNA JENKINS DAWSON, individually and as Guardian Ad Litem of NEISHA SHEMAY DAWSON and TYLER ANTHONY HOUGH-JENKINS,  Plaintiff-Intervenors,  v.  STATE OF NORTH CAROLINA and the STATE BOARD OF EDUCATION,  Defendants,  and  CHARLOTTE-MECKLENBURG BOARD OF EDUCATION,  Realigned Defendant. |

**ORDER**

In the absence of a State budget, on November 10, 2021 the Honorable W. David Lee entered a remedial Order in this matter. Thereafter, on November 18, 2021 a State budget was adopted when the General Assembly enacted the Current Operation Appropriations Act of 2021 (Session Law 2021-180, SB 105).

Since then, the Court’s November 10, 2021 Order has been made the subject of four separate appeals. Pursuant to N.C. Gen. Stat. § 71-31(b), on March 21, 2022 the North Carolina Supreme Court granted discretionary review, without prior determination by the North Carolina Court of Appeals, of two of those appeals.

As part of that Order, the Supreme Court remanded the case to this Court for the limited purpose of amending the November 10, 2021 remedial Order, and specifically, to reflect “what effect, if any, the enactment of the State Budget has upon the nature and extent of the relief” that was granted.

In compliance with the Supreme Court’s directives, this Court now amends the November 10, 2021 remedial Order as follows:

1. Finding of Fact 22 of the November 10, 2021 Order is amended, as follows:

“Pursuant to this Court’s Scheduling Order and Notice of Hearing of 24 March 2022, the State of North Carolina filed the *Affidavit of Ms. Kristen Walker, the Chief Deputy Director of State Budget for the North Carolina Office of State Budget Management*. Ms. Walker’s Affidavit sets out the fiscal requirements of the Comprehensive Remedial Plan, and the funding impact of the Current Operation Appropriations Act of 2021.

In reliance upon Ms. Walker’s Affidavit, the Court finds as fact that the Current Operation Appropriations Act of 2021 includes only partial funding for Years 2 and 3 of the Comprehensive Remedial Plan. Specifically, 63% of the contemplated funding for Year 2 of the Comprehensive Remedial Plan was included in the Appropriations Act, leaving an unappropriated amount of approximately $257,418,175. Similarly, the Appropriations Act provided roughly 49% of the contemplated funding for Year 3, leaving $537,409,782 unfunded.

Further, the Court finds that with respect to fiscal year 2021-2022, and taking into account tax reductions and the reservation of certain funds, the gross amount of the General Fund was $28.41 billion, from which the Appropriations Act designated $26.03 billion, leaving $2.38 billion in unappropriated funds. For fiscal year 2022-23, it is estimated that receipts will be approximately $27 billion, with an appropriation of $26.98 billion, leaving approximately $22 million in unappropriated funds. However, the Budget reserves $1.134 billion to the State’s Savings Reserve, raising the amount of available funds in the Reserve to $4.25 billion as of 1 July 2022.

Further, the Court finds as fact that according to the North Carolina Office of the State Controller, the State’s Unreserved Cash Balance as of 1 April 2022 is $3.8 billion. However, of the $3.8 billion, S.L. 2021-180 (as amended by S.L. 2021-189 and S.L. 2022-6), anticipates $2.36 billion to be either reserved or appropriated in in fiscal year 2022-23. As such, in addition to the $4.25 billion in the State’s Savings Reserve, the State maintains an additional Unreserved Cash Balance of $1.44 billion.

The State maintains funds sufficient to fully fund Years 2 and 3 of the Comprehensive Remedial Plan”

1. Finding of Fact 24 of the November 10, 2021 Order is amended, as follows:

“The State has not implemented many of the actions in the Comprehensive Remedial Plan and has not secured the resources to fully implement the Comprehensive Remedial Plan.”

1. Conclusion of Law 5 of the November 10, 2021 Order is amended, as follows:

“The General Assembly has a duty to guard and maintain the right to sound basic education secured by our state constitution. See N.C. Const. art. 1, sec. 15. As the arm of the State responsible for legislation, taxation, and appropriation, the General Assembly’s principal duty involves adequately funding the minimum requirements for a sound basic education. While the General Assembly could have enacted new legislation to fully fund a sound basic education, it has elected not to do so.”

1. Conclusion of Law 26 of the November 10, 2021 Order is amended to include new subpart (i.), as follows:

“i. Despite enactment of the Current Operation Appropriations Act of 2021 on November 18, 2021, years 2 and 3 of the Comprehensive Remedial Plan still remain significantly unfunded.”

1. Paragraph 1, subparts (a) – (c) of the decretal portion of the November 10, 2021 Order are amended, 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. Paragraph 9 of the decretal portion of the November 10, 2021 Order is deleted in its entirety.

This Order may not be modified except by further Order of this Court upon proper motion presented. The Court shall retain jurisdiction over this matter.

This the \_\_\_ day of April, 2022.

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The Honorable Michael L. Robinson

Special Superior Court Judge

for Complex Business Cases