

STATE OF NORTH CAROLINA

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

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. )

**MOTION TO STAY**

Pursuant to Rules 31(e) and 8(a) of the North Carolina Rules of Appellate Procedure and Rule 62(a) and (d) of the North Carolina Rules of Civil Procedure, and this Court’s inherent authority to manage its own docket, Plaintiffs Cumberland County Board of Education, Halifax County Board of Education, Hoke County Board of Education, Robeson County Board of Education, and Vance County Board of Education (collectively, “Plaintiffs”) hereby move the Court to stay the execution of the mandate of the North Carolina Supreme Court for the appeal of this case captioned *Hoke County Bd. of Educ., v. State*, No. 425A21-3, pending a decision on a forthcoming petition for rehearing, and including time for further proceedings in the event that the Supreme Court grants the petition for rehearing.

In support of this Motion, Plaintiffs show the Court as follows:

1. The Superior Court order entered on 17 April 2023 by the Honorable James F. Ammons Jr. was appealed by Defendants-Intervenors 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.
2. On 20 October 2023, the Supreme Court granted a petition for discretionary review prior to determination by the Court of Appeals.
3. On 2 April 2026, the Supreme Court entered an opinion on the appeal, vacating the 17 April 2023 order and dismissing this action with prejudice for lack of subject matter jurisdiction.
4. Plaintiffs intend to file a Petition for Rehearing with the Supreme Court.
5. Under Rule 31(a) of the Rules of Appellate Procedure, Plaintiffs have fifteen days from the issuance of the mandate of the Supreme Court to file the Petition for Rehearing.
6. Rule 62(a) of the Rules of Civil Procedure creates a short automatic stay of execution of appellate court mandates, as it directs that “no execution shall issue upon a judgment

nor shall proceedings be taken for its enforcement until the expiration of the time provided in the controlling statute or rule of appellate procedure for giving notice of appeal from the judgment.”<sup>1</sup>

7. Under Rule 31(e) of the Rules of Appellate Procedure, in conjunction with a petition for rehearing process, Plaintiffs may also obtain a stay of execution in the trial court to which the mandate of the appellate court has been issued using the procedures of Rule 8 of the Rules of Appellate Procedure.

8. Rule 8(a) of the Rules of Appellate Procedure directs that ordinarily a party must seek a stay of execution or enforcement with the superior court.

9. Rule 62(d) of the Rules of Civil Procedure authorizes requests for stays pending appeal.

10. This Court also has discretion to enter a stay of all matters by virtue of its inherent authority to manage its own docket. *See e.g. Cinoman v. University of North Carolina*, 234 N.C. App. 481, 764 S.E.2d 619 (2014).

11. Pursuant to the foregoing, Plaintiffs request a stay of execution of the mandate and other proceedings, pending the Supreme Court’s decision on their forthcoming Petition for Rehearing.

12. Plaintiffs believe that unless the Supreme Court grants the petition, then this stay would likely last no more than 45 days from the issuance of the mandate because the petition must be filed within 15 days (during which time the automatic stay of Rule 62(a) of the Rules of Civil Procedure would apply), and then Rule 31(c) of the Rules of Appellate Procedure requires the Supreme Court to grant or deny the petition within 30 days of its filing.

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<sup>1</sup> The Court of Appeals has held that the term “judgment” in this rule includes the mandate of an appellate court. *Estates, Inc. v. Town of Chapel Hill*, 130 N.C. App. 664, 667, 504 S.E.2d 296, 299 (1998).

13. In light of the thirty-year history of this case and its great public significance, a stay pending a petition for rehearing furthers the public interest by demonstrating that the courts are taking care to resolve all aspects in an orderly and proper manner.

14. Moreover, because this case has been dormant before this trial court for several years, and the mandate does not relate to any injunction or enable the Defendants to move forward with a money judgment, a brief stay would not prejudice any of the Defendants

WHEREFORE, Plaintiffs Cumberland County Board of Education, Halifax County Board of Education, Hoke County Board of Education, Robeson County Board of Education, and Vance County Board of Education hereby request an order staying execution of the Supreme Court's mandate and all proceedings in this court to expire upon the earliest of: (1) Plaintiffs' failure to file a petition for rehearing within the time specified in the Rules of Appellate Procedure; (2) the Supreme Court's denial of Plaintiffs' petition for rehearing; or (3) in the event the Supreme Court grants Plaintiffs' petition for rehearing, the conclusion of any subsequent proceedings on the petition.

This the 22nd day of April, 2026.

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**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this date served the foregoing document in the above-entitled action on all parties to this cause by electronic mail to the following:

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The undersigned has also provided by electronic mail a courtesy copy of the foregoing document to the following attorneys who have entered an appearance in *Hoke County Bd. of Educ., v. State*, No. 425A21-3:

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This 22nd day of April, 2026.

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