No. 425A21-3 District 10

SUPREME COURT OF NORTH CAROLINA

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HOKE COUNTY BOARD OF EDUCATION, *et al.* Plaintiffs-Appellees, and CHARLOTTE-MECKLENBURG BOARD OF EDUCATION, Plaintiff-Intervenor-Appellee, and RAFAEL PENN, *et al.*, Plaintiffs-Intervenors-Appellees, v. STATE OF NORTH CAROLINA and STATE BOARD OF EDUCATION, Defendants-Appellees, and CHARLOTTE-MECKLENBURG BOARD OF EDUCATION, Realigned Defendant-Appellee, 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-Appellants	)	From Wake County

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BRIEF FOR THE STATE OF NORTH CAROLINA

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BRIEF FOR THE STATE OF NORTH CAROLINA

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STATEMENT OF ISSUES

1. Did the trial court have subject matter jurisdiction to enter its April 14, 2023 order recalculating the amount of funds to be transferred in light of the State's 2022 Budget?

INTRODUCTION

For decades now, the North Carolina General Assembly has stubbornly refused to adequately fund public education in this State. Last year, this Court finally demanded that the State stop violating the state constitution. *Hoke Cnty. Bd. of Educ. v. State*, 382 N.C. 386, 879 S.E.2d 193 (2022) (*Leandro IV*). But the General Assembly remains intransigent and would apparently choose endless litigation over simply providing the funding our schools so desperately need.

This Court should not countenance Legislative Intervenors' latest attempt to shirk their constitutional responsibility. The only issue this Court has agreed to review here is whether the trial court had jurisdiction to enter a statewide educational remedy like the Comprehensive Remedial Plan (CRP). It plainly did—and this Court said so just one year ago. *See id.* at 390, 879 S.E.2d at 199.

Legislative Intervenors would also have this Court consider a range of additional issues over which it expressly declined to grant review. Most

notably, Legislative Intervenors reiterate their plea for this Court to overturn *Leandro IV*. This Court should reject that request out of hand. Legislative Intervenors declined to petition this Court for rehearing of *Leandro IV*. And this Court denied the portion of Legislative Intervenors' petition for discretionary review that asked the Court to reconsider that decision. Against that backdrop, it would be grossly improper for this Court to use this appeal to overrule *Leandro IV*.

Over the last three decades, *Leandro* has given rise to many difficult appeals. This is an easy one. And the need to get it right could not be more pressing. North Carolina's educational system falls woefully behind most American States. Only three States spend less on public schools relative to their gross state product,[1] and our State ranks forty-eighth in per pupil funding.[2] Despite this Court's instruction that a sound basic education requires a certified teacher in every classroom, last year, around 5,000

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[1] Bruce D. Baker, Matthew Di Carlo, & Mark Weber, *The Adequacy and Fairness of State School Finance Systems*, Sch. Fin. Indicators Database (Dec. 2022), *available at* https://bit.ly/3vrhKNm.

[2] Danielle Farrie & Robert Kim, Educ. L. Cntr., *Making the Grade: How Fair Is School Funding in Your State?* 14 (2023), *available at* https://bit.ly/3tEY33S.

classrooms in North Carolina's public schools lacked an appropriately licensed teacher.[3] *See Hoke Cnty. Bd. of Educ. v. State*, 358 N.C. 605, 636, 599 S.E.2d 365, 389 (2004) (*Leandro II*). Meanwhile, at-risk students—students from low-income families, students with disabilities, and English language learners—continued to fall behind their peers.[4]

North Carolina's schoolchildren cannot afford to wait another generation for an adequate education. This Court should reject Legislative Intervenors' insistence to the contrary and affirm that the trial court had jurisdiction to effectuate the only plan that has ever been proposed to bring the State into compliance with its constitutional obligations.

BACKGROUND

Although this litigation has a long and winding history, the facts giving rise to this particular appeal are straightforward. In this brief, the State therefore recounts only those facts necessary to decide this appeal. A full

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[3] N.C. State Bd. of Educ. & N.C. Dep't of Pub. Instruction, *Report to the North Carolina General Assembly: 2021-2022 State of the Teaching Profession in North Carolina* 20 (Feb. 17, 2023), *available at* https://bit.ly/3RtMV1K.

[4] Pub. Sch. Forum, *Local School Finance Study* (last visited Jan. 9, 2023), https://bit.ly/4aFkdUh.

accounting of this case's history is provided in this Court's decision in *Leandro IV*, 382 N.C. at 392-429, 879 S.E.2d at 199-220.

A. *Leandro IV* holds that state courts may order state officials to remedy ongoing constitutional violations.

In November 2022, this Court affirmed a trial court order directing the State Treasurer, State Controller, and Director of the Office of State Budget and Management (OSBM) to transfer the funds necessary to effectuate years two and three of the CRP. *Leandro IV*, 382 N.C. at 422-24, 879 S.E.2d at 217.

In its decision, the Court held that the transfer order was appropriate because the judiciary has an obligation to "protect the state constitutional rights of the citizens." *Id.* at 391, 879 S.E.2d at 198 (quoting *Corum v. Univ. of N.C.*, 330 N.C. 761, 783, 413 S.E.2d 276, 290 (1992)). The Court explained that the extraordinary circumstances of this case necessitated an extraordinary remedy. Because of the State's ongoing failure to fulfill its constitutional duty, "an entire generation" of schoolchildren had been deprived of their right to a sound basic education. *Id.* at 390, 879 S.E.2d at 198.

This Court understood that education policy is generally the province of the political branches. *Id.* at 473, 879 S.E.2d at 247-48. But it explained that "compliance with our Constitution is not a mere policy choice." *Id.* at 457, 879 S.E.2d at 237. Thus, "[a]s foreshadowed in *Leandro II*," the Court

held that "the State may not indefinitely violate the constitutional rights of North Carolina schoolchildren without consequence." *Id.* at 390, 879 S.E.2d at 198. It therefore explained that "in exceedingly rare and extraordinary circumstances"—such as when the General Assembly has, for decades, refused to fund education consistent with our state constitution—courts have the inherent authority to remedy constitutional violations themselves. *Id.* at 446, 879 S.E.2d at 230.

In reaching this conclusion, the Court also rejected several arguments by Legislative Intervenors that the trial court lacked jurisdiction, describing these arguments as "untimely, distortive, and meritless." *Id.* at 391, 879 S.E.2d at 198.

First, the Court rejected Legislative Intervenors' argument that the trial court's order exceeded its jurisdiction because it had only ever conducted a trial regarding, and therefore only ever found a constitutional violation in, Hoke County. *Id.* at 469-71, 879 S.E.2d at 245-46. As this Court explained, *Leandro II* never required the trial court to hold individual trials for each school district. *Id.* at 470, 879 S.E.2d at 245 n.25. Moreover, the Court observed that the trial court *did* find a statewide violation based on clear and convincing evidence on several occasions. *Id.* at 470, 879 S.E.2d at 245-46;

see also id. at 405-08, 879 S.E.2d at 207-09 (noting findings of a statewide violation in orders issued on September 9, 2004; March 15, 2009; May 5, 2014; and March 17, 2015). Finally, the Court noted that the CRP was proposed not by Plaintiffs, but by the State, which had reasonably sought a global resolution of this multi-decade lawsuit to avoid continued protracted litigation. *Id.* at 470-71, 879 S.E.2d at 246.

Second, the Court rejected Legislative Intervenors' argument that the trial court lacked jurisdiction to accept the CRP because it was the result of a "friendly" suit. *Id.* at 474, 879 S.E.2d at 248. The Court disagreed both with the factual assertion that the State had improperly colluded with Plaintiffs, and with the legal argument that the State could not properly participate in crafting a remedial order after years of vigorously defending this lawsuit with limited success. *Id.* Contrary to Legislative Intervenors' false insinuations, the Court explained that the State had "hotly contested" this litigation. *Id.* The State's post-2018 actions, meanwhile, did not reflect improper collusion but instead a recognition that "during the remedial phase," "parties are *encouraged* to create a collaborative solution that will settle their respective rights and duties." *Id.*

Third, the Court rejected Legislative Intervenors' argument that the appropriate remedy for the State's ongoing violation represented a non-justiciable political question. *Id.* at 473, 879 S.E.2d at 247. The Court noted that it had rejected identical and similar arguments earlier in this litigation. *Id.* Moreover, the Court explained, the CRP did not reflect discretionary policy choices regarding an *ideal* system of education, but instead comprised a set of measures to ensure compliance with the Constitution's minimum requirements. *Id.* at 474, 879 S.E.2d at 248.

Having rejected these jurisdictional arguments, this Court affirmed the trial court's November 10, 2021 Order directing state officials to transfer state funds necessary to implement Years Two and Three of the CRP. *Id.* at 476, 879 S.E.2d at 249. Because the State had enacted a new budget during the pendency of the appeal, the Court remanded the case to the trial court for a "narrow purpose": to "recalculat[e] the amount of funds to be transferred in light of the State's 2022 Budget" and then order the appropriate state officials to transfer the funds. *Id.* at 391, 879 S.E.2d at 198-99.

B. The trial court completes the calculations ordered by this Court but concludes it cannot order the funds transferred.

Senior Resident Superior Court Judge James F. Ammons, Jr., presided over the proceedings on remand in March 2023. (R pp 1315, 4063-4064)

Both the State and Legislative Intervenors filed their own sets of calculations to assist the trial court in determining the amounts necessary to fully remedy the constitutional violations through the CRP. (R p 1316) However, the Legislative Defendants also argued that the trial court lacked jurisdiction to order the State to implement the CRP in the first place. (R pp 1320-1321)

Following a hearing, the trial court entered an order recalculating the amount of the CRP unfunded by the 2022 Budget. (R pp 1311-1322) The trial court largely accepted the State's calculations and rejected those proposed by the Legislative Intervenors. (R p 1320)

On funding for one action item, the New Teacher Support Program, the State and Legislative Intervenors agreed that, although the 2022 State Budget did not appropriate any additional funding to that item, the State had nevertheless funded the program using $2 million in federal funds. *See* State's Proposed Order ¶¶ 33, 36-37 (App. 132), *Hoke Cnty. Bd. of Educ. v. State*, No. 95 CVS 1158 (Mar. 24, 2023). Accordingly, the State and Legislative Intervenors urged the Court to further reduce the amount of state funds to be transferred by $2 million. *Id.* The trial court, however, rejected the State and Legislative Intervenors' position. (R p 1320)

Finally, the trial court also rejected Legislative Intervenors' argument that it lacked jurisdiction, noting that it was merely complying with this Court's order on remand. (R pp 1320-1321)

Thus, the trial court found that "the underfunding of the action items called for in Years 2 and 3 of the CRP on a per-entity basis are as follows:

a. Programs for which DHHS is responsible: $133,900,000.00;

b. Programs for which DPI is responsible: $509,701,707.00; and

c. Programs for which the UNC System is responsible: $34,200,000.00." (R p 1321)

The trial court did not, however, order state officials to transfer these funds as required by *Leandro IV*. That is because—after an intervening election—this Court had granted a motion by the Controller to reinstate a pre-*Leandro IV* Writ of Prohibition issued by the Court of Appeals barring the trial court from transferring state funds to remedy the constitutional violation. *Hoke Cnty. Bd. of Educ. v. State*, 384 N.C. 8, 9, 883 S.E.2d 480, 481 (2023); *see also In re 10 Nov. 2021 Order*, No. P21-511 (N.C. Ct. App. Nov. 30, 2021). Because of that order, the trial court determined that it could not comply with this Court's order to direct state officials to transfer the funds on remand. (R p 1322 n.1)

C. Legislative Intervenors appeal and seek a ruling from this Court prior to determination by the Court of Appeals.

Legislative Intervenors appealed the trial court's order. (R pp 1324-1325) Legislative Intervenors identified four issues on appeal:

1. Did the trial court err in its entry of its 17 April 2023 order requiring the State to implement and fund the measures set forth in Years 2 and 3 of the Comprehensive Remedial Plan?
2. Did the trial court violate the doctrine of separation of powers and impermissibly intrude into the powers of the political branches by dictating education policy and budgeting for the State through judicial order?
3. Does the trial court lack jurisdiction to exercise control over the delivery of public education in areas of the State that are not subject to Plaintiffs' claims and where there has never been any showing of a constitutional violation?
4. Does the trial court's 17 April 2023 order conflict with this Court's precedents establishing the limits of judicial power, including *Leandro v. State*, 346 N.C. 336, 488 S.E.2d 249 (1997) ("*Leandro I*") and *Hoke Cnty. Bd. of Educ. v. State*, 358 N.C. 605, 599 S.E.2d 365 (2004) ("*Leandro II*")?

(R p 1364)

Legislative Intervenors then petitioned this Court for discretionary review prior to a determination by the Court of Appeals. In their petition, Legislative Intervenors asked this Court to consider these same four questions, as well as a fifth: "Whether this Court's decision in *Hoke Cnty. Bd. of Educ. v. State*, 382 N.C. 386, 879 S.E.2d 193 (2022) should be overturned?" Pet. 46-47.

This Court granted Legislative Intervenors' petition only in part. The Court granted review only to consider "whether the trial court lacked subject matter jurisdiction to enter its order of 17 April 2023." Order at 2, *Hoke Cnty. Bd. of Educ. v. State*, No. 425A21-3 (N.C. Oct. 18, 2023). This Court declined to consider any of the Legislative Intervenors' other proposed issues, including whether to overturn *Leandro IV*.

SUMMARY OF ARGUMENT

Although Legislative Intervenors present an array of arguments in their brief—the majority of which are nothing more than requests to overrule *Leandro IV*—the only question properly presented for this Court's review is whether Plaintiffs lack standing to seek statewide relief. Legislative Intervenors' arguments on this question topple at the slightest scrutiny. Plaintiffs do not seek statewide relief—they seek relief in their school districts. This Court has already held that the Plaintiffs have standing to seek relief in their own district. *Leandro II*, 358 N.C. at 616, 599 S.E.2d at 377. And to the extent that Legislative Intervenors complain about the statewide scope of the CRP, that complaint is one of remedy, not standing. In any event, the statewide scope of the CRP is not only appropriate, but necessary. For a host of reasons, including this Court's own decision in *Leandro I*, the

State can remedy the constitutional violation at the heart of this case only through statewide initiatives. Courts, the State, and the legislature have all understood as much since at least 2002.

The rest of Legislative Intervenors' arguments are nothing more than requests to relitigate *Leandro IV*. First, these arguments are procedurally improper. The time to petition for rehearing of *Leandro IV* has long since passed. Moreover, this Court turned down Legislative Intervenors' request to overturn *Leandro IV* when it declined to grant review on this issue. Second, to overturn *Leandro IV* now would contradict principles of stare decisis, and thereby the rule of law itself. Third, Legislative Intervenors' arguments are substantively wrong. *Leandro IV* emphatically rejected each of these arguments, calling them "untimely, distortive, and meritless." 382 N.C. at 391, 879 S.E.2d at 198. Legislative Intervenors' arguments are as incorrect today as they were fourteen months ago.

Perhaps because they know their arguments on the trial court's Order are both procedurally and substantively meritless, Legislative Intervenors spend most of their brief attacking the Comprehensive Remedial Plan itself, the development of which is *not* at issue in this appeal. Nevertheless, the State takes this opportunity to correct Legislative Intervenors'

misrepresentations of the record. *The State* proposed the CRP because the trial court had repeatedly rejected the State's prior attempts to comply with *Leandro II*. (R p 737) The CRP sets a clear roadmap for the steps the State needs to take to achieve constitutional compliance. That clear guidance ensures that students timely receive a sound basic education and prevents the State from wasting taxpayer funds on additional proceedings in this litigation.

Legislative Intervenors ask this Court to throw out the CRP but fail to propose any alternative plan for achieving constitutional compliance. That path will inevitably lead to decades of further litigation. Court dockets will be clogged with legal filings, and the State will divert resources from public schools to lawyers. Meanwhile, yet another generation of children will be denied their constitutional rights.

This Court should reject that prospect and affirm.

ARGUMENT

Standard of Review

Whether a trial court possesses subject matter jurisdiction is a legal question that this Court reviews *de novo*. *Wing v. Goldman Sachs Tr. Co.*, 382 N.C. 288, 297, 876 S.E.2d 390, 398 (2022). Still, "[t]his Court presumes the

trial court has properly exercised jurisdiction unless the party challenging jurisdiction meets its burden of showing otherwise." *Id.* at 298, 876 S.E.2d at 398 (quoting *In re L.T.*, 374 N.C. 567, 569, 843 S.E.2d 199, 200 (2020)).

Discussion of Law

I. The Trial Court Had Jurisdiction to Enter the April 14, 2023 Order.

Legislative Intervenors assert a medley of arguments in which they purport to challenge the trial court's subject matter jurisdiction. However, only one of these is properly before this Court on appeal: whether Plaintiffs had standing to seek relief outside their own school districts. Br. 39-46. But this argument is groundless. Plaintiffs have never demanded relief outside their school districts. Rather, the only legal way for the State to remedy the constitutional harms in Plaintiffs' school districts is through statewide action. Plaintiffs do not lose standing simply because the State cannot remedy their claims without taking broader action.

Legislative Intervenors also argue that the trial court lacked subject matter jurisdiction because (1) the trial court never found a statewide violation; (2) the CRP is purportedly the product of a friendly suit; and (3) remedying the State's ongoing constitutional violation represents a non-justiciable political question. But these arguments—all of which amount to

requests that this Court overrule *Leandro IV*—are not properly before this Court. And to consider these arguments now would run counter to this Court's principles of stare decisis.

In any event, this Court rejected these exact arguments in *Leandro IV*. It should reject them again now, both because they are incorrect and because overturning *Leandro IV* would be inconsistent with the rule of law.

A. Plaintiffs had standing when the trial court entered its Order.

Legislative Intervenors' primary argument is that the trial court lacked jurisdiction to enter its Order because Plaintiffs lack standing to seek statewide relief through the CRP. Br. 39-46. This argument is without merit.

Plaintiffs have standing. North Carolina's constitution does not even require standing. *Comm. to Elect Dan Forest v. Emps. Pol. Action Comm.*, 376 N.C. 558, 599, 853 S.E.2d 698, 728 (2021). Rather, this Court has its own prudential standing requirements. *Cmty. Success Initiative v. Moore*, 384 N.C. 194, 206-07, 886 S.E.2d 16, 28 (2023). But they merely demand that a plaintiff have a sufficient stake in the outcome of the controversy to ensure concrete adverseness. *Id.* at 206-07, 8866 S.E.2d at 28-29. Whether the plaintiff has such a stake (and thus whether the requisite adverseness is present) is measured "at the time the pleadings are filed." *Town of Midland*

v. Harrell, 385 N.C. 365, 371, 892 S.E.2d 845, 850 (2023) (quoting *Quesinberry v. Quesinberry*, 196 N.C. App. 118, 123, 674 S.E.2d 775 (2009)).

Moreover, as this Court previously explained, "[i]n declaratory actions involving issues of significant public interest"—like schoolchildren's constitutional right to a public education—courts often broaden the standing parameters. *Leandro II*, 358 N.C. at 615, 599 S.E.2d at 376. In those cases, plaintiffs have standing to proceed "so long as the interest sought to be protected by the complainant is arguably within the 'zone of interest' to be protected by the constitutional guaranty in question." *Id.* at 615, 599 S.E.2d at 376-77.

No one doubts that Plaintiffs have a sufficient stake in the outcome of this controversy to confer standing, especially given the broadened standing parameters that govern this case. Even Legislative Intervenors concede that *Leandro II* expressly held that Plaintiffs have standing to seek relief in their own school districts, if not more broadly. Br. 44 (citing *Leandro II*, 358 N.C. at 615-16, 599 S.E.2d at 376-77).

Legislative Intervenors nevertheless argue that even if Plaintiffs have standing to assert their claims, they do not have standing to seek statewide relief. But Plaintiffs have never sought statewide relief. Instead, they merely

seek relief in their own school districts, which *Leandro II* explicitly held they have standing to do. 358 N.C. at 376-77, 599 S.E.2d at 615-16.

To overcome this obstacle, Legislative Intervenors claim that *Plaintiffs* are the ones who proposed the CRP. But as this Court reminded Legislative Intervenors once before, "the CRP is not the 'Plaintiffs[']s . . . chosen remedy'"—it is the State's. *Leandro IV*, 382 N.C. at 473, 879 S.E.2d at 247. And the State can remedy the undisputed constitutional violations in Plaintiffs' school districts only through statewide initiatives.

First, our Constitution requires the State to maintain a "uniform system" of public education. N.C. Const. art. IX, § 2. Thus, the State must provide all children an *equal* opportunity to a sound basic public education. *Leandro I*, 346 N.C. at 353, 488 S.E.2d at 258. The State risks an equal protection or due process violation when it treats school districts differently for arbitrary or capricious reasons. *Id.* Any effort by the State to remedy its constitutional violation in one school district risks creating a different constitutional problem in another school district. That is precisely why the urban school districts intervened in this litigation: to ensure that the State did not resolve the rural school districts' claims in a way that resulted in harm to their own.

Second, courts frequently order States to use statewide initiatives to remedy constitutional violations. *See, e.g.*, *Buffkin v. Hooks*, No. 1:18-cv-502, 2019 WL 1282785, at *12 (M.D.N.C. Mar. 20, 2019) (ordering the State to expand access to direct-acting antiviral drugs for inmates with chronic hepatitis C); *United States v. Sec'y, Fla. Dep't of Corr.*, 828 F.3d 1341, 1348 (11th Cir. 2016) (ordering Florida to provide state prisoners kosher meals and explaining that "the legislature must appropriate enough funds to honor that obligation"). When a constitutional violation is sufficiently widespread, courts have ordered States to remedy the violation statewide, even when the violation is alleged only by a single plaintiff and only in a specific place. For example, in *Clement v. California Department of Corrections*, the Ninth Circuit affirmed an injunction prohibiting enforcement of policies limiting inmates' access to mail in prisons statewide, even though the plaintiff, a single inmate, challenged only the policy at his prison. 364 F.3d 1148, 1153 (9th Cir. 2004). The remedy's broad scope was appropriate, the Ninth Circuit explained, "[b]ecause a substantial number of California prisons are considering or have enacted virtually identical policies," and thus "the unconstitutional policy has become sufficiently pervasive to warrant system-wide relief." *Id.*

Third, Legislative Intervenors' argument suffers from a broader analytical defect: How a court orders *a defendant* to remedy a constitutional violation has nothing to do with *a plaintiff's* standing. Legislative Intervenors' complaint is not with Plaintiffs' injury, but with the scope of the remedy the trial court ordered. But unlike standing, challenges to the scope of a remedy are not jurisdictional and cannot be raised at any point in proceedings. *See, e.g.*, *Greene v. Royster*, 187 N.C. App. 71, 77, 652 S.E.2d 277, 281 (2007) (declining to consider a constitutional challenge to the trial court's order granting the plaintiff punitive damages because the defendant waived the issue). And *Leandro IV* already held that the remedy's scope was appropriate. 382 N.C. at 461-66, 879 S.E.2d at 240-43.

Even more nuanced variations on Legislative Intervenors' arguments have repeatedly failed. For example, the State unsuccessfully argued in *Leandro III* that even if the State *chose* to remedy Plaintiffs' constitutional harms through statewide action, a trial court could not *command* the State to follow through on any part of its remedial action except in Hoke County. There, the State appealed a trial court order finding that the State had failed to comply with *Leandro II* because it had altered the allocation procedures for the More-at-Four program, thereby reducing statewide funding for pre-

kindergarten programs targeted to at-risk children. *Hoke Cnty. Bd. of Educ. v. State*, 222 N.C. App. 406, 410, 731 S.E.2d 691, 693-94 (2012), *vacated as moot*, *Hoke Cnty. Bd. of Educ. v. State*, 367 N.C. 156, 749 S.E.2d 451 (2013). The Court of Appeals rejected the State's argument that a court could only direct the State to restore funding for pre-kindergarten programs targeted to at-risk children *in Hoke County*, not statewide. *Id.* at 415, 731 S.E.2d at 696. Because the State had offered the trial court statewide evidence of the More-at-Four program's effectiveness, the Court of Appeals explained, the State could not later complain that the trial court had ordered it to take statewide action. *Id.* at 414-15, 731 S.E.2d at 696.

The State appealed that decision to this Court, but the General Assembly acceded to the Court of Appeals' decision and restored *statewide* funding for pre-kindergarten programs for at-risk children. 367 N.C. at 159-60, 749 S.E.2d at 454-55. Thus, even the General Assembly has previously recognized that only statewide action can effectively remedy Plaintiffs' individual harms.

Most recently, this Court rejected Legislative Intervenors' argument that the trial court could not enter an order compelling the State to stick to

its proposal to administer relief statewide. *Leandro IV*, 382 N.C. at 470-71, 879 S.E.2d at 245-46.

Simply put, Plaintiffs unquestionably possess standing to seek relief in their school districts. The State's position has long been that it can only remedy the constitutional violations in Plaintiffs' school districts through statewide action. And courts, including this one, have held that it is appropriate to require the State to remedy the constitutional violations identified by Plaintiffs though a statewide remedy. Accordingly, the trial court did not err when it calculated the amount of state funds necessary to implement the State's proposed statewide remedy as instructed by this Court on remand.

B. Legislative Intervenors' remaining arguments are meritless.

This Court should reject Legislative Intervenors' remaining arguments that the trial court lacked subject matter jurisdiction. These arguments are procedurally improper and substantively wrong. And accepting them here would do significant damage to the rule of law.

Legislative Intervenors say that the trial court lacked jurisdiction to recalculate the state funds necessary to implement the CRP because (1) the trial court never found a statewide violation; (2) the CRP is purportedly the

product of a friendly suit; and (3) remedying the State's ongoing constitutional violation represents a non-justiciable political question. But just fourteen months ago, this Court rejected each of those arguments. *Leandro IV*, 382 N.C. at 391, 879 S.E.2d at 198. Legislative Intervenors do not even pretend otherwise. Instead, they ask this Court to revisit and reverse *Leandro IV*. This Court should reject that brazen invitation.

i. Legislative Intervenors' arguments are procedurally improper.

For two reasons, Legislative Intervenors' remaining arguments—in which they ask this Court to overturn *Leandro IV*—are procedurally improper. That is reason enough for this Court to reject them.

First, Legislative Intervenors' arguments amount to an untimely request to rehear *Leandro IV*. This Court should reject Legislative Intervenors' unabashed attempt to evade the appellate rules. A party who believes "the court has overlooked or misapprehended" issues of law or fact may petition the same court for rehearing "within fifteen days" of the mandate. N.C. R. App. P. 31(a). That deadline has long since passed. Acceding to the Legislative Intervenors' procedural gambit, which arose only

after this Court's composition changed, would profoundly undermine the rule of law.

Nor can Legislative Intervenors evade the appellate rules merely by reframing their arguments. Legislative Intervenors did not label their brief a request for rehearing, but the substance of their brief is plainly that. For example, they explicitly ask this Court to "correct" certain rulings from *Leandro IV*. Br. 47. Elsewhere, they acknowledge that *Leandro IV* already "addressed" the arguments they now raise. Br. 66. To allow parties to flout procedural rules merely by giving their filings creative names would render those rules meaningless. For that reason, this Court has previously rebuffed attempts to revisit a decision through a procedure other than a petition for rehearing. *See, e.g.*, *Nowell v. Neal*, 249 N.C. 516, 521, 107 S.E.2d 107, 111 (1959). It should follow the same course here.

Second, Legislative Intervenors' arguments exceed the scope of this Court's order granting their bypass petition. This Court was very specific about the issue it agreed to review. In their petition for discretionary review, Legislative Intervenors requested that this Court review multiple questions that they claimed were left "[u]nresolved" by *Leandro IV*. Pet. 35. In its order responding to Legislative Intervenors' petition, however, this Court

granted review "solely on the question of whether the trial court lacked subject matter jurisdiction to enter its order of 17 April 2023." Order at 2, *Hoke Cnty. Bd. of Educ. v. State*, No. 425A21-3 (N.C. Oct. 18, 2023). That question was not one of the five specifically proposed by Legislative Intervenors, but instead was fashioned by the Court itself. And, importantly, the Court denied Legislative Intervenors' request to reconsider *Leandro IV*.

Legislative Intervenors' repeated requests to overturn *Leandro IV* flout this Court's decision to deny review on that issue. As the Court has confirmed, "[t]he scope of review by this Court is limited by the nature of the question before it." *Waste Mgmt. of Carolinas, Inc. v. Peerless Ins. Co.*, 315 N.C. 688, 691, 340 S.E.2d 374, 377 (1986). This Court thus "strongly disapprove[s] of and discourage[s] attempts by appellate counsel to bring additional issues before this Court without its appropriate order allowing counsel's motion to allow review of additional issues." *State v. Rankin*, 371 N.C. 885, 895, 821 S.E.2d 787, 796 (2018) (quoting *Blumenthal v. Lync*h, 315 N.C. 571, 577-78, 340 S.E.2d 358, 361-62 (1986)); *see also Cryan v. Nat'l Council of Young Men's Christian Ass'ns of United States*, 384 N.C. 569, 575, 887 S.E.2d 848, 852-53 (2023) (declining to address issue on appeal that was outside the scope of dissent). Likewise here, the Court should decline

Legislative Intervenors' invitation to delve into questions outside the scope of the issues properly before the Court. Moreover, because the scope of this Court's order granting review is explicitly limited to Judge Ammons' April 2023 order, any remedy by this Court should be limited to affirming or vacating that order alone.

ii. Legislative Intervenors' arguments disregard stare decisis.

Legislative Intervenors' request that this Court overturn *Leandro IV* also discards stare decisis. But this bedrock principle of our jurisprudence may not be so easily dismissed.

Stare decisis is fundamental to the stability of our laws. As this Court has recognized, "[t]he salutary need for certainty and stability in the law requires, in the interest of sound public policy, that the decisions of a court of last resort affecting vital business interests and social values, deliberately made after ample consideration, should not be disturbed except for most cogent reasons." *Potter v. Carolina Water Co.*, 253 N.C. 112, 117-18, 116 S.E.2d 374, 378 (1960) (quoting *Williams v. Randolph Hosp., Inc.*, 237 N.C. 387, 391, 75 S.E.2d 303, 305 (1953)). For these reasons, in construing our state constitution, "the rule is almost universal to adhere to the doctrine of stare

decisis." *Hill v. Atl. & N.C.R. Co.*, 143 N.C. 539, 55 S.E. 854, 866 (1906). "[T]he weightiest reasons make it the duty of the court to adhere to its decisions." *Id*. at 867.

In particular, stare decisis functions as a hedge against judicial vacillation and the differing opinions of a changing judiciary. It operates to "keep the scale of justice even and steady, and not liable to waver with every new judge's opinion" because it is not for a "subsequent judge to alter or swerve from [a former precedent] according to his private sentiments." *In re S.C.C.*, 379 N.C. 303, 311-12, 864 S.E.2d 521, 527 (2021) (quoting *McGill v. Town of Lumberton*, 218 N.C. 586, 591, 11 S.E.2d 873, 876 (1940)). And it cautions against arbitrary changes in course "even if [judges] should differ from [their] predecessors, who were as able . . . to decide wisely, impartially, and correctly." *Hill*, 143 N.C. 539, 55 S.E. at 871. If this Court's opinions "change with its membership, . . . [i]ts members might be seen as partisan rather than impartial and case law as fueled by power rather than reason." Amy Coney Barrett, *Precedent and Jurisprudential Disagreement*, 91 Tex. L. Rev. 1711, 1725-26 (2013). Thus, as this Court has acknowledged, deviating from prior decisions "in accordance with 'changing times' would result in the Court

essentially engaging in 'impermissible judicial legislation.'" *West v. Hoyle's Tire & Axle, LLC*, 383 N.C. 654, 659, 881 S.E.2d 149, 153 (2022).

Because of the essential and fundamental importance of stare decisis, setting aside this principle is extraordinary. It occurs only in cases of "palpable error" or "grievous wrong," or where it "clearly is apparent" that "an outmoded rule, due to changing conditions, results in injustice." *Sidney Spitzer & Co. v. Comm'rs of Franklin Cnty.*, 188 N.C. 30, 123 S.E. 636, 638 (1924); *State v. Ballance*, 229 N.C. 764, 767, 51 S.E.2d 731, 733 (1949); *Rabon v. Rowan Mem'l Hosp., Inc.*, 269 N.C. 1, 15, 152 S.E.2d 485, 495 (1967).

Such circumstances are not present here. *Leandro IV* was correctly decided in November 2022, and it remains correctly decided today. *Infra* Section I.B.iii. It certainly is not "clearly apparent" that it is outmoded or perpetuates injustice. In fact, Legislative Intervenors never even contend that it meets the threshold for overturning precedent in that it contains "palpable error" or is grievously wrong. Br. 47 (describing *Leandro IV* as merely "erroneous").

Legislative Intervenors nevertheless rely on this Court's decision in *Ballance* to argue that stare decisis does not apply because "there is no line of cases that follow [*Leandro IV*'s] holding" and because of the presence of a

dissent. Br. 47 n.21. Initially, as this Court has previously held, even "a single decision may become a precedent sufficiently authoritative to protect rights acquired during its continuance." *Williamson v. Rabon*, 177 N.C. 302, 98 S.E. 830, 831 (1919). Thus, a "single decision . . . may be upheld even though [justices] would decide otherwise were the question a new one." *Hill*, 143 N.C. 539, 55 S.E. at 867. And in any event, *Leandro IV* does not stand alone but rather represents the continuation of a long series of precedents by this Court, over the course of nearly thirty years. Such a rich historical pedigree provides even more reason to adhere to this Court's principles of stare decisis here.

Moreover, *Ballance* is distinguishable. The decision overturned there—*State v. Lawrence*—had been decided almost eleven years earlier. *See* 213 N.C. 674, 197 S.E. 586 (1938). It was therefore notable that *Lawrence* had not generated reliance by the lower courts. And *Ballance* overturned *Lawrence* not merely because subsequent courts did not cite it, but because subsequent courts *rejected* it. *Ballance*, 229 N.C. at 767, 51 S.E.2d at 733 (explaining that *Lawrence* was "irreconcilable" with the Court's subsequent decision in *State v. Harris*, 216 N.C. 746, 6 S.E.2d 854 (1940)). Legislative Intervenors point to no subsequent decision conflicting with *Leandro IV*.

It is true that in *Ballance,* the Court noted that *Lawrence* was also "weakened as an authoritative precedent by a dissenting opinion of acknowledged power and force of reason." *Id.* (cleaned up). But in the Court's view, this "acknowledged power" derived from no fewer than four cases by the supreme courts of other States that expressly relied on *Lawrence*'s dissent. *Id.* at 768, 51 S.E.2d at 733 (noting that *Lawrence* "is contrary to the conclusion reached by the courts of last resort" in other jurisdictions). No such reliance on *Leandro IV*'s dissent exists here. And in any event, the presence of a dissent can also "emphasize[] the fact that the case was well considered." *Hill*, 143 N.C. 539, 55 S.E. at 865. Legislative Intervenors' suggestion that *Leandro IV*'s dissent warrants reversal simply proves too much.

To reconsider and overrule *Leandro IV*—a decision that is grounded in three decades of this Court's precedent—would seriously undermine the rule of law. Accordingly, this Court should decline to set aside its own long-standing adherence to stare decisis.

iii. Legislative Intervenors' arguments are just as incorrect today as they were in *Leandro IV*.

Even if this Court were to consider Legislative Intervenor's arguments on their merits, this Court should reject them as meritless.

First, Legislative Intervenors contend that the trial court lacked subject matter jurisdiction to calculate the amount of funds necessary to implement the CRP because the CRP is a statewide remedy, and the trial court has never found a statewide violation. Br. 46-60. But as Legislative Intervenors concede, this Court has already rejected that argument. Br. 47. *Leandro IV* held that "the trial court, in alignment with this Court's instructions in *Leandro II*, properly concluded based on an abundance of clear and convincing evidence that the State's *Leandro* violation was statewide." 382 N.C. at 462, 879 S.E.2d at 241.

This conclusion was correct. Following *Leandro II*, the trial court held frequent hearings to assess the State's compliance with the standard this Court had announced. In those hearings, the trial court routinely considered evidence that schools were failing to provide a sound basic education on a statewide basis. *See, e.g.*, R pp 1700-1704 (taking evidence on "the problem of poor academic performance in high schools throughout North Carolina" in 2005); R pp 2630-2637 (noticing an evidentiary hearing concerning over a

dozen allegedly constitutionally deficient middle schools across the State); R pp 2640-2651 (taking evidence on statewide deficiencies in math instruction). Thus, for 27 years before Legislative Intervenors joined this litigation, the parties understood this case to concern the constitutional adequacy of public education statewide. *Leandro IV*, 382 N.C. at 391, 879 S.E.2d at 198 (describing this litigation as "twenty-eight years of focusing on statewide problems and statewide solutions); *see also* Br. of State Bd. of Educ. at 3, *Hoke Cnty. Bd. of Educ. v. State*, 382 N.C. 386, 879 S.E.2d 193 (2022) ("This case is, and always has been, about the constitutionality of North Carolina's general and uniform free system of public education."). This Court should reject Legislative Intervenors' attempt to rewrite history.

Legislative Intervenors also argue that the trial court lacks subject matter jurisdiction because the CRP was purportedly the product of a "friendly suit." Br. 60-66. This Court has already explained that this argument "is wrong on several fronts." *Leandro IV*, 382 N.C. at 474, 879 S.E.2d at 248. As this Court held, Legislative Intervenors "ignore[] the decades of history . . . in which this case was hotly contested" and "functionally disregard[] everything before 2018." *Id.* The Court also noted that the parties' respective actions after 2018, far from rendering the suit

friendly, merely reflect that "during the remedial phase," "parties are *encouraged* to create a collaborative solution that will settle their respective rights and duties." *Id.*

That remains true. State defendants, including legislative leaders, frequently comply with remedial orders even when they disagree with the court's finding of a violation. *See, e.g.*, *Stephenson v. Bartlett*, 357 N.C. 301, 303-04, 582 S.E.2d 247, 248-49 (2003); *N.C. League of Conservation Voters, Inc. v. Hall*, Nos. 21 CVS 015426, 21 CVS 500085, 2022 WL 2610499, at *2 (N.C. Super. Ct. Feb. 23, 2022). Legislative Intervenors' suggestion that defendants must be resolutely intransigent during remedial proceedings, even after they have repeatedly been found in violation of the constitution, flies in the face not only of effective litigation strategy, but also of responsible leadership and basic common sense.

The State routinely settles complex litigation through cooperatively crafted consent orders with defendants. For example, the State entered a consent judgment to settle its lawsuit against JUUL, a vape manufacturer that advertised its harmful and addictive products to North Carolina's children, on the eve of trial. *See* Final Consent J., *State ex rel. Stein v. JUUL Labs, Inc.*, No. 19-CVS-2885 (N.C. Super. Ct. June 28, 2021). And the State

received millions of dollars in funds for opioid addiction treatment from McKinsey & Co., who settled the State's claims against it for its role in the opioid epidemic. Consent Judgment, *State ex rel. Stein v. McKinsey & Co., Inc.*, No. 21-CVS-001635 (N.C. Super. Ct. Feb. 4, 2021).

Defendants enter these settlements not because they are "friendly" with the State, but because as sophisticated business actors, they understand that settlement is often the best way to manage risk and resolve complex cases. These settlements commonly offer relief that is broader than that sought by the individual plaintiff because the defendant recognizes that future plaintiffs are also likely to prevail after costly litigation.

The State, itself a sophisticated actor, is no different when it is a defendant. That is especially true where constitutional rights are at issue. Those cases, *Leandro IV* held, "demand a more reasonable and efficient resolution." 382 N.C. at 471, 879 S.E.2d at 246. Thus, for example, after this Court held that the North Carolina Department of Transportation effectuated a taking when it filed highway corridor maps that restricted affected property owners' rights pursuant to the Map Act, the State settled hundreds of claims—accounting for nearly $600 million. Letter from Daniel Johnson, Gen. Couns., N.C. Dep't of Transp., to Jnt. Legis. Transp. Oversight

Comm. (Mar. 22, 2022), *available at* https://bit.ly/3tNUUyN; *see also Kirby v. N.C. Dep't of Transp.*, 368 N.C. 847, 848, 786 S.E.2d 919, 912 (2016).

In any event, the State was unequivocally adversarial to Plaintiffs even on the Order appealed here. In the remand proceedings, the State *opposed* Plaintiffs' calculations of the fund required under the CRP. Contrary to Plaintiffs, the State argued that because it had given $2 million in federal funds to the New Teacher Support Program, no additional state funds were owed to that CRP action item. State's Proposed Order ¶¶ 36-37 (App. 132), *Hoke Cnty. Bd. of Educ. v. State*, No. 95 CVS 1158 (Mar. 24, 2023). Legislative Intervenors' contentions that this is a "friendly suit" are without merit and cannot upset this Court's previous holdings in *Leandro IV*.

Finally, Legislative Intervenors argue that the issue of how to remedy the ongoing violation of the right to the opportunity to obtain a sound basic education is a non-justiciable political question. Br. 66-72. Again, this Court has already rejected this argument. *Leandro IV*, 382 N.C. at 475, 879 S.E.2d at 249. In *Leandro IV*, the Court reminded the parties that "[c]onstitutional compliance is not a policy choice." *Id.* at 474, 879 S.E.2d at 248. Because "[i]t is the state judiciary that has the responsibility to protect the state constitutional rights of the citizens," to refuse to remedy an ongoing

constitutional violation would "render this Court complicit in the constitutional violation." *Id.* at 475, 879 S.E.2d at 249.

Once again, this Court's conclusions were consistent with its precedents, including in this very litigation. For example, *Leandro II* specifically held that "when the State fails to live up to its constitutional duties, a court is empowered to order the deficiency remedied." *Leandro II*, 358 N.C. at 642, 599 S.E.2d at 393. There, the Court emphasized that "if the offending branch of government or its agents either fail to do so or have consistently shown an inability to do so, a court is empowered to provide relief by imposing a specific remedy and instructing the recalcitrant state actors to implement it." *Id.*

As this Court has repeatedly held, the judiciary is not required to sit idly by while another branch willfully violates our constitution. This Court should again reject Legislative Intervenors' attempt to place themselves beyond the constitution's reach.

II. The Comprehensive Remedial Plan Is a Necessary Response to an Ongoing Constitutional Violation.

For all the above reasons, this Court should affirm the trial court's April 14, 2023 Order requiring implementation of the CRP. Although none of Legislative Intervenors' challenges to the CRP are properly before this Court

today, they nevertheless launch a host of false attacks on the plan. To avoid the possibility that this Court resolves this appeal based on Legislative Intervenors' misrepresentation of the CRP, the State corrects the record here.

The CRP is neither the product of a friendly suit between the State and Plaintiffs nor Plaintiffs' proposed remedy. Instead, after more than a decade of the trial court rejecting the State's remedial efforts as insufficient, the State chose to craft a clear roadmap for fulling its constitutional duties. In doing so, the State sought the Court's guidance not only to protect the rights of North Carolina's citizens, but also to conserve state resources. The CRP is that roadmap. And even now, it remains the only plan any party has proposed for resolving this litigation. This Court should not jettison the CRP in exchange for untold additional years of litigation.

A. The State has worked in good faith to remedy the ongoing constitutional violation.

After a trial court found in 2002 that the State was not providing children in Hoke County and elsewhere across North Carolina the opportunity to obtain a sound basic public education, the State worked in good faith to come into constitutional compliance.

From the outset, the State understood that any effort to remedy the constitutional violation would require statewide action. Almost immediately following the trial court's liability decision in 2002, the State informed the Court of several statewide initiatives it planned to undertake to remedy the violation. *See* R pp 1389-1461 (describing "actions that the State has taken . . . to expand pre-kindergarten educational programs for at-risk children and to improve performance, instruction, administration and accountability in North Carolina public schools" statewide). When the trial court and Plaintiffs criticized the State for not proposing any initiatives directed specifically to Hoke County, the State replied that it "always understood that this case was about whether the State was fulfilling its constitutional obligation to provide a 'general and uniform system of free public schools' in which every student has the opportunity to obtain a sound basic education." (R p 1491; *see* R pp 1472, 1602)

The State's conclusion that it could remedy the violation only through statewide initiatives was informed by the Constitution's text. Because the Constitution requires the State to maintain a "uniform system" of public education, the State cannot address Plaintiffs' concerns by devoting extra resources to certain school districts alone. *See* N.C. Const. art. IX, § 2.

It was also informed by *Leandro I*. There, this Court explained that the State is required to grant all children an *equal* opportunity to obtain a sound basic education, and held that the State risks an equal protection or due process violation when it treats school districts differently for arbitrary or capricious reasons. *Leandro I*, 346 N.C. at 353, 488 S.E.2d at 258. Thus, any effort by the State to remedy its constitutional violation in one school district would risk creating a different constitutional problem in another.

The trial court's liability judgment in 2002 further confirmed the State's understanding that any remedy must be statewide. On remand from this Court's decision in *Leandro I*, the trial court selected Hoke County to serve as the bellwether county for the rural school districts' constitutional claims. *See Leandro II*, 358 N.C. at 613, 599 S.E.2d at 375. The trial court took evidence and made factual findings on "the circumstance of Hoke County's student population in general," and "across the state." *Id.* at 615, 599 S.E.2d at 376; *id.* at 633, 599 S.E.2d at 387 n.14. Ultimately, the trial court found that "the clear and convincing evidence also shows that there are thousands of children *scattered throughout the State* . . . who are not being provided with the minimum educational resources necessary for them to have the equal opportunity to receive a sound basic education." (R p 673 (emphasis added))

In light of these findings, the trial court ordered the State to "remedy the Constitutional deficiency" whether it be in "Hoke County, or another county within the State." (R p 680)

When this Court affirmed the trial court's liability judgment, it explained that its affirmance was "limited to the issues relating solely to Hoke County." *Leandro II*, 358 N.C. at 613, 599 S.E.2d at 375. But it did nothing to cast doubt on the reality that any remedy would require statewide relief. Quite the opposite, the decision concluded by challenging the State to "step forward, boldly and decisively, to see that *all children*" receive a constitutionally adequate education. *Id.* at 649, 599 S.E.2d at 397 (emphasis added).

In 2004, the trial court approved the State's decision to focus on statewide remedial efforts. (R pp 1654-1656) After the State represented that it would pursue statewide relief, many of the urban school districts voluntarily dismissed their complaints. (R pp 734-735) The reason was obvious: those districts intervened because they believed that the State was violating the constitution by "failing to implement a public education system that adequately and equitably takes into account the educational and resource needs of all students and school districts." (R pp 160, 162-164) Once

the State committed to a statewide remedy rather than a district-specific one, those concerns were alleviated.

Between 2002 and 2018, the State established or expanded a host of initiatives—nearly all of which were statewide—in a good-faith effort to remedy the constitutional violation. For example, the General Assembly established the Disadvantaged Student Supplement Fund, an entirely new public school allotment category to assist at-risk children. *See* R p 1691 (explaining that the State proposed the Fund "in June[] 2004 in response to the decisions and orders of" the trial court) Similarly, in 2005 and 2006, the State fully funded the Low Wealth Schools Fund, a pre-existing program devoted to raising the resources of low-wealth school districts to meet the statewide average. (R p 2588) The State also expanded—statewide—the More-at-Four program, a pre-kindergarten program for at-risk four-year-olds. (R pp 2591-2593) Additionally, the State gave school districts substantial resources to reduce class sizes in early grades. (R p 1673) And as yet another example, the State created programs to adequately train school superintendents and administrators. (R p 2644)

But none of these actions were enough. Instead, the trial court repeatedly found that, despite the State's efforts, many children across North

Carolina were not receiving the opportunity to obtain a sound basic education. For example, in May 2014, the trial court found, based on several hearings examining deficient statewide End-of-Course, End-of-Grade, and ACT scores, that there are "thousands of school children from kindergarten through the 11th grade in high school who have not obtained [a] sound basic education." (R p 2867) In 2017, the State Board of Education moved for relief from judgment, arguing that the State's public education system no longer meaningfully resembled the system the trial court had found constitutionally deficient in 2002. (R pp 2915-2922) The trial court denied that motion, explaining that the *present* system of public education remained constitutionally deficient. (R pp 2935-2941)

After years of repeatedly being unable to demonstrate to the trial court that the State had complied with *Leandro I* and *II*, the State began in 2018 to chart a different path. Guided by its constitutional duty to provide a sound basic education, as well as its obligation to use state resources responsibly, the State agreed to a court-supervised process. That process entailed extensive statewide fact-finding followed by an attempt to develop a clear plan that would finally achieve compliance with the *Leandro* standard. The benefit to the State and its citizens from this approach was obvious: If the

trial court adopted such a plan, the State would finally have a clear roadmap for satisfying its constitutional obligation. In other words, the State would have definitive direction as to what specific actions were necessary to bring this litigation to a close.

The CRP was the product of a detailed and open process in collaboration with the Learning Policy Institute and North Carolina State University's William & Ida Friday Institute for Educational Innovation. The plan identifies discrete, individual action steps to be taken to fulfill the overarching constitutional obligation to provide all children the opportunity to obtain a sound basic education in a public school. The CRP's action items are tied directly to the standards this Court announced in *Leandro II* for a constitutionally compliant system of public education. Relatedly, because *Leandro II* focused on the educational opportunities afforded to at-risk students, a majority of funding in the CRP is targeted to at-risk schoolchildren. And perhaps most importantly, "[t]he CRP is the only remedial plan submitted to the trial court by any party in this case." *Leandro IV*, 382 N.C. 415, 879 S.E.2d at 213.

B. The CRP remains a necessary response to the ongoing constitutional violation, especially in the absence of another proposed remedy.

The present state of public education in North Carolina demonstrates the wisdom of the State's decision to seek the CRP. Despite three decades of litigation, thousands of students across the State continue to be denied the opportunity to obtain a sound basic education.

Across North Carolina, the State is falling short of the standards set out by this Court in *Leandro II*. For example, *Leandro II* said that to satisfy the constitution, the State must ensure that "every classroom" has a "competent, certified, well-trained teacher." *Leandro II*, 358 N.C. at 636, 599 S.E.2d at 389. But on the fortieth day of the 2022-2023 school year, the State's public schools lacked appropriately licensed permanent teachers for 5,091 positions statewide.[5]

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[5] N.C. State Bd. of Educ. & N.C. Dep't of Pub. Instruction, *Report to the North Carolina General Assembly: 2021-2022 State of the Teaching Profession in North Carolina* 20 (Feb. 17, 2023), *available at* https://bit.ly/3RtMV1K. The number of vacancies on the fortieth day of school, when the school year is in full swing, provides a more accurate representation of statewide classroom vacancies than does the number of vacancies on the first day of school, when administrators may still be able to hire a certified teacher. *See* Mebane Rash, *Data Released on Back to School Vacancies*, EdNC (Sept. 6, 2023), *available at* https://bit.ly/4at6kZr.

Leandro II also required the State to provide every school "the resources necessary to support the effective instructional program within that school so that the educational needs of all children, including at-risk children, to have the equal opportunity to obtain a sound basic education, can be met." *Id.* But that is not happening either. In 2021, average local spending in the 10 highest spending counties was $3,100 per pupil more than the average local spending in the 10 lowest spending counties.[6] Thus, at-risk children in low wealth counties face far greater obstacles to obtaining a sound basic education than their peers in high wealth counties.

These shortcomings are precisely what the CRP was designed to address. The CRP adds financial incentives for the recruitment and retention of certified teachers in high-poverty schools and invests an addition $15.5 million in teacher and principal development programs. (R pp 803, 806-807) It also addresses funding disparities between high-wealth and low-wealth school districts. More than 90% of the recurring funding in the CRP is targeted to early and K-12 education at the local level. *See generally* R pp 801-829 (Comprehensive Remedial Plan Appendix: Implementation

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[6] Pub. Sch. Forum, *Local School Finance Study* (last visited Jan. 9, 2023), https://bit.ly/4aFkdUh.

Timeline and Estimated Costs, Fiscal Year 2021-2028). Further, $1.945 billion (35.1%) of the funding in the CRP is specifically intended to help school districts address the educational needs of the most at-risk students—students from low-income families, students with disabilities, and English language learners. *Id.* The Plan directly provides another $1.25 billion (22%) to support early childhood education at the local level through NC Pre-K, Smart Start, and early intervention services. *Id.*

Legislative Intervenors belatedly object to the CRP. Although they were publicly critical of the proceedings that resulted in the CRP,[7] they chose not to involve themselves in this case until December 8, 2021, years after work on the CRP began and months after the trial court ordered the State to implement the CRP. Now, they ask this Court to scuttle a plan it already approved, even though they offer no alternative plan for constitutional compliance.

Instead, Legislative Intervenors would have this Court replace the CRP with additional years of litigation in this case and possibly lawsuits from

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[7] *See Leandro IV*, 382 N.C. at 469, 879 S.E.2d at 245; *see also* State's Resp. Br. at 10 nn. 2 & 3, *Hoke Cnty. Bd. of Educ. v. State*, 382 N.C. 386, 879 S.E.2d 193 (2022) (No. 425A21-2) (collecting Legislative Intervenors' public statements).

North Carolina's other 114 school districts—all to no clear end. That approach is not just unwarranted—it is irresponsible. It promises delayed justice to the State's students, exceptional burdens on the State's courts, and unnecessary expense for the State.

This Court's most sacred function is to safeguard the fundamental rights our state and federal constitutions protect. To require North Carolina's children to wait another generation—or more—to secure a sound basic education would be a flagrant abdication of that responsibility.

CONCLUSION

For the reasons stated above, this Court should affirm the trial court's April 14, 2023 Order.

This 10th day of January, 2024.

JOSHUA H. STEIN
Attorney General

Amar Majmundar
Senior Deputy Attorney General
N.C. State Bar No. 24668
North Carolina Department of Justice
P.O. Box 629
Raleigh, NC 27602
Phone: (919) 716-6820
Email: amajmundar@ncdoj.gov

N.C. R. App. P. 33(b) Certification: I certify that the attorney(s) listed below have authorized me to list their names on this document as if they had personally signed it.

Sarah G. Boyce
Deputy Attorney General and
General Counsel
N.C. State Bar No. 56896
Email: sboyce@ncdoj.gov

Ryan Y. Park
Solicitor General
N.C. State Bar No. 52521
Email: rpark@ncdoj.gov

Lindsay Vance Smith
Deputy Solicitor General
N.C. State Bar. No. 48085
Email: lsmith@ncdoj.gov

South A. Moore
Deputy General Counsel
N.C. State Bar No. 55175
Email: smoore@ncdoj.gov

N.C. Department of Justice
P.O. Box 629
Raleigh, N.C. 27602
Phone: (919) 716-6820

Counsel for State of North Carolina

CERTIFICATE OF SERVICE

I do hereby certify that on this day a copy of the foregoing Appellee Brief was filed and served upon the following parties by email to the addresses shown below:

Melanie Black Dubis
Scott E. Bayzle
Catherine G. Clodfelter
PARKER POE ADAMS & BERNSTEIN LLP
301 Fayetteville Street, Suite 1400 (27601)
P.O. Box 389
Raleigh, North Carolina 27602-0389
melaniedubis@parkerpoe.com
scottbayzle@parkerpoe.com
catherineclodfelter@parkerpoe.com

H. Lawrence Armstrong, Jr.
ARMSTRONG LAW, PLLC
119 Whitfield Street
Enfield, North Carolina 27823
hla@hlalaw.net

Neal Ramee
David Nolan
Tharrington Smith, LLP
P.O. Box 1151
Raleigh, North Carolina 27602
nramee@tharringtonsmith.com
dnolan@tharringtonsmith.com

David Hinojosa
LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW
1500 K. Street NW, Suite 900
Washington, DC 20005
dhinojosa@lawyerscommittee.org

Christopher A. Brook
PATTERSON HARKAVY LLP
100 Europa Drive, Suite

Chapel Hill, NC 27517
cbrook@pathlaw.com

Matthew Tulchin
Tiffany Lucas
NORTH CAROLINA DEPARTMENT OF JUSTICE
114 W. Edenton Street
Raleigh, North Carolina 27603
MTulchin@ncdoj.gov
TLucas@ncdoj.gov

Thomas J. Ziko
Legal Specialist
STATE BOARD OF EDUCATION
6302 Mail Service Center
Raleigh, North Carolina 27699-6302
Thomas.Ziko@dpi.nc.gov

Matthew F. Tilley
Russ Ferguson
W. Clark Goodman
WOMBLE BOND DICKINSON (US) LLP
One Wells Fargo Center, Suite 3500
301 S. College Street
Charlotte, North Carolina 28202-6037
Matthew.tilley@wbd-us.com
Russ.ferguson@wbd-us.com
Clark.goodman@wbd-us.com

This the 10th day of January, 2024.

/s/ Amar Majmundar
Amar Majmundar
Senior Deputy Attorney General
NC State Bar No. 24668
N.C. Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602
AMajmundar@ncdoj.gov
Counsel for State of North Carolina

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Trial Court Documents

North Carolina State Constitution

Article IX.

Education.

. . .

Sec. 2. Uniform system of schools.

(1) General and uniform system: term. The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students.

(2) Local responsibility. The General Assembly may assign to units of local government such responsibility for the financial support of the free public schools as it may deem appropriate. The governing boards of units of local government with financial responsibility for public education may use local revenues to add to or supplement any public school or post-secondary school program.

State of North Carolina
Department of Justice
P. O. Box 629
RALEIGH
27602-0629

ROY COOPER
ATTORNEY GENERAL

REPLY TO: Thomas J. Ziko
Education Section
(919) 716-6920
FAX: (919) 716-6764

July 5, 2002

The Honorable Howard Manning, Jr.
Superior Court Judge
Wake County Courthouse
Post Office Box 351
Raleigh, North Carolina 27602-0351
Fax (919) 715-4046

Re: *Hoke County Board of Education v. State*

Dear Judge Manning:

In your Memoranda of Decision Section Four entered on April 4, 2002, you ordered the State, among other things, "to keep the Court advised of the remedial actions taken by the State by written report filed with the Court every 90 days, or as otherwise may be directed by the Court." Section Four, p. 111, ¶ 8. As you know, the State defendants and the plaintiff parties have filed notices of appeal from the decision. We are currently preparing the record on appeal and anticipate filing the record with the Court of Appeals sometime in August. In the meantime, none of the parties has sought a stay of the decision. Consequently, the State is filing this report in fulfillment of its obligation to keep the Court apprised of remedial actions it has taken.

When composing this report, the State has kept in mind your findings that, while the State is providing the vast majority of students in the public schools with the opportunity to obtain a sound basic education, the State is not providing all students who are at risk of academic failure an equal opportunity to obtain a sound basic education. Section Four, p. 104. The State has also focused on your determination that at a minimum the constitution requires the State to guarantee that every child has the opportunity to attend a public school which has the following resources:

> First, that every classroom be staffed with a competent, certified, well-trained teacher who is teaching the standard course of study by implementing effective educational methods that provide differentiated, individualized instruction, assessment and remediation to the students in that classroom.
>
> Second, that every school be led by a well-trained competent Principal with the leadership skills and the ability to hire and retain competent, certified and well-trained teachers who can implement an effective and cost-effective instructional program that meets the needs of at-risk children so that they can have

> the equal opportunity to obtain a sound basic education by achieving grade level or above academic performance.
>
> Third, that every school be provided, in the most cost effective manner, the resources necessary to support the effective instructional program within that school so that the educational needs of all children, including at-risk children, to have the equal opportunity to obtain a sound basic education, can be met.

Section Four, pp. 109-110.

Aside from those concerns, the State was mindful that the Court had previously found that pre-kindergarten educational programs for at-risk children must be expanded at a reasoned and deliberate pace to serve all of the at-risk children in North Carolina that qualify for such programs. Section Two, p. 43.

In fulfillment of its reporting obligations, the State is submitting the attached materials. These materials document some of the actions that the State has taken since the last hearing to expand pre-kindergarten educational programs for at-risk children and to improve performance, instruction, administration and accountability in North Carolina public schools.

Of course, all of the State's present efforts to improve educational opportunities in the public schools must be examined and evaluated in the context of the present budget crisis. At this point in time, the General Assembly has not passed and the Governor has not signed a revised budget for the 2003-03 fiscal year. When the revised budget is passed and signed, we will provide you with a copy.

Sincerely,

Thomas J. Ziko

Thomas J. Ziko
Special Deputy Attorney General

cc: Robert Spearman
Ann Majestic

Leandro
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July 5, 2002

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STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
20301 MAIL SERVICE CENTER • RALEIGH, NC 27699-0301

MICHAEL F. EASLEY
GOVERNOR

To: Chief Deputy AG Edwin Speas

From: Franklin Freeman, Senior Assistant for Governmental Affairs

Re: The State's 90-Day *Leandro* Report

Date: 3 July 2002

We have earlier provided a number of items for inclusion in the *Leandro* filing you are making on July 5.

In particular, Governor Easley wants the Court to know that he strongly believes that his statewide prekindergarten initiative for at-risk four-year olds, known as More At Four, is critical to making significant educational progress and is fully consistent with a major component of the Court's orders. His budget for 2002-03 proposes an important expansion of this prekindergarten initiative, along with an appropriation to continue class size reduction in grades K-3 that should serve as another particular benefit for at-risk students.

While the state Senate's current budget proposal does not reflect the Governor's More At Four and class size reduction requests, he is committed to ensuring that the final state budget for 2002-03 will. Based on conversations with the House leadership, Governor Easley believes that his More-at-Four and class size reduction initiatives will be included in that chamber's soon-to-be released budget.

Governor Easley would also like to direct the Court's attention to the recently released report of his Education First Task Force. Among the Task Force's recommendations of particular interest are such proposals as:

(i) instituting an "earned flexibility" structure that strengthens the performance and accountability standards for low-performing schools (See strategy 6);
(ii) intensifying our schools' focus on reading (See strategy 1); and
(iii) developing superior leaders for our schools (See strategy 3).

LOCATION: 116 WEST JONES STREET • RALEIGH, NC • TELEPHONE: (919) 733-5811

2002-2003 Recommended Adjustments
General Fund - Department of Health and Human Services - Continued

Recommended Expansion and Alternative Source of Funding

Central Administration	2002-03
1. More at Four Pre-Kindergarten Program The More at Four Pre-Kindergarten Program is a voluntary pre-kindergarten initiative to prepare at-risk four-year-olds for success in school. During the 2001-02 school year, grants were awarded to 28 communities, which include 34 counties throughout the western, piedmont, and eastern regions. One hundred sixty-six classrooms served 1,621 children. An additional 2,800 children are projected to be served in 2002-03. More at Four will be phased- in over five years to reach the estimated 40,000 four-year-old children in the state who are at risk for school failure. Funding for the More at Four program is included in the Education Lottery proposal.	$ 28,065,300
2. T.E.A.C.H. Program The Teacher Education and Compensation Helps (T.E.A.C.H.) program pays for scholarships for child care teachers and center administrators to take classes at community colleges in order to meet educational requirements. The average cost to assist a T.E.A.C.H. scholarship recipient meet his/her educational goals is $519. Funding is included in the Education Lottery proposal.	2,600,000
Total Recommended Expansion and Alternative Source of Funding	
Requirements	$ 30,665,300
Receipts	-
Appropriations	$ 30,665,300

TOTAL Recommended Adjustments for Department of Health and Human Services (including Entitlement Adjustment, Reductions and Expansion and Alternative Source of Funding)

TOTAL Recurring Adjustments	
Requirements	$(132,524,539)
Receipts	(44,002,293)
Appropriation	$ (88,522,246)
Number of Positions	(235.15)

More at Four Pre-Kindergarten Program:

Second Progress Report to the General Assembly

On Section 21.76B

Submitted by

More at Four Pre-Kindergarten Program
Governor's Office

Department of Public Instruction

Department of Health & Human Services

More at Four Pre-Kindergarten Task Force

May 1, 2002

Progress Report on the *More at Four* Pre-Kindergarten Program

In response to Session Law 2001-424, Section 21.76B.(g), a second progress report due May 1, 2002 on the development and implementation of the *More at Four* Pre-Kindergarten Program is submitted to the:

- Joint Legislative Commission on Governmental Operations,
- Joint Legislative Education Oversight Committee,
- Senate Appropriations Committee on Health and Human Services, and
- House of Representatives Appropriations Subcommittee on Health and Human Services.

All sites have been funded for the 2001-02 school year and will be continued for the 2002-03 school year. A total of 1621 child positions have been approved in 166 classrooms in 34 counties. Information on the 28 funded sites is included in the following Attachments:

- Attachment A — List of grant sites, 34 counties, and classrooms
- Attachment B — Number of children to be served, curriculum chosen, and types of service delivery setting(s) for the classrooms
- Attachment C — Number of children by types of settings
- Attachment D — Grant Contract Budgets for Start-up, Operating and Local Contributions
- Attachment D-1 — Local Operating Budget Categories
- Attachment D-2 — Start-Up Funding Budget Categories
- Attachment E — Geographic Distribution of Grant Recipients
- Attachment F — Grant Site Implementation Data: Authorized Children, and Enrollment Data
- Attachment G — Mini-Profiles of Children's and Teachers' Experiences in *More at Four* Pre-K Programs

Status of Legislative Requirements

This report is organized by each sub-section in the legislation (Section 21.76B), with the sub-section and a brief description listed in the left column and the status of implementation in the right column. Since this status report was also included in the January 1, 2002 Legislative Report, updated information is shown in **bold-faced type.**

Sub-Section of Section 21.76B	Status of Implementation
Section 21.76B(a) The Department of Health and Human Services in consultation with the Department of Public Instruction shall develop *More at Four* Pre-K Program.	A "management team" consisting of designees from the Governor's Office, the DHHS, the DPI was formed to oversee the development of the *More at Four* Pre-Kindergarten Program. The management team also consults with The NC Partnership for Children, Inc.. An Interim Director of the program, Dr. Carolyn Cobb, was hired on November 6, 2001. After the Director of the Program was hired, the management team was asked to continue functioning as an advisory group to the *More at Four* Pre-Kindergarten Program Office. **Since that time, this group has been included on the Executive Committee of the *More at Four* Pre-Kindergarten Program Task Force. (See next Section.)**

Section 21.76B.(b) Establish a *More at Four* Pre-K Task Force to oversee the development & implementation of the pilot program	The Task Force was jointly established by the DHHS and the DPI and is chaired by the Secretary of DHHS and the Superintendent of DPI. It includes representatives of the groups named in this sub-section: early childhood experts from both departments, state and local Smart Start partnerships, Head Start programs, parents, teachers certified in early childhood, private for-profit and not-for-profit child care, and other early childhood education experts. Membership also includes representatives from the UNC-General Administration, private universities and colleges, and the N. C. Department of Community Colleges.
Section 21.76B.(c) DHHS & DPI, with guidance from Task Force, shall develop/implement program. Pilot shall be distributed geographically. Program shall be consistent with standards & assessments established jointly by above groups.	**The *More at Four* Pre-Kindergarten Initiative Program Guidelines and Requirements document, which was approved by the Task Force and details the requirements to be followed by the local Pre-K sites, was attached to the January report and is also available on the Governor's web site at www.governor.nc.state.nc.** **Two rounds of competitive applications were held, with grantees first selected based on review team ratings of several aspects of program quality. Additional consideration was given to economic need and geographic distribution of the applicant communities. The map in Attachment E depicts the geographic distribution of the sites across the state. A total of 28 grants (including 34 counties) comprise the final list of grantees.**
Section 21.76B.(c)(1) and (2) Process for identifying children at risk of academic failure, and children who have never been served…	See Program Guidelines and Requirements, "Defining, Identifying and Recruiting At-Risk Children" (pages 12-16). Also see "Program Standards and Curriculum" Section, page 20, which addresses required health screening of Pre-K children, and page 22, which addresses screening in various developmental domains.
Section 21.76B.(c)(3) Curricula that are recommended by Task Force.	This requirement is addressed in the Program Guidelines and Requirements, page 19. Research-based curricula that address the developmental domains in the legislation and the five domains listed in the Ready for School Goal Team Panel were considered. Recommended curricula currently include: Bright Beginnings, Creative Curriculum, High Scope, Montessori, and Bank Street Explorations. The *More at Four* Pre-Kindergarten Program Office can review other research-based curricula. That office has established a committee of curriculum experts to conduct such reviews. **At least three other curricula have been reviewed to date and were not approved.**
Section 21.76B.(c)(4) An emphasis on family involvement.	An emphasis on family involvement is included and can be found in the Program Guidelines and Requirements, page 21.
Section 21.76B.(c)(5) Evaluation of child progress by pre- and post-assessment and ongoing assessment by teachers.	See Program Guidelines and Requirements, "Outcomes, Critical Success Factors and Evaluation Section, pages 25-27. Pre- and Post-assessment of children will be carried out by the outside evaluation starting with the 2002-03 school year. Because children will receive only a partial year of pre-K access this fiscal year, pre-post assessments were not considered to be reliable measures for evaluation purposes or to be cost-effective. **Frank Porter Graham Child Development Institute, the outside evaluator, is collecting child-specific information and survey data from staff and programs during the Spring of 2002.** Ongoing assessment by teachers is addressed in the Program Guidelines and Requirements, page 23 under "Instructional Assessment."

Section 21.76B.(c)(6) Guidelines for reimbursing entities that provide Pre-K programs.	A system of reimbursement **for 2001-02 has been** finalized in conjunction with the DHHS Controller's Office, with input from DPI and The NC Partnership for Children, Inc. **In working with the DHHS Controller's Office, we determined that the** existing child care subsidy system **was not feasible** for funding stable Pre-Kindergarten programs. The system established is a blend of per student funding and funding for classrooms. When a pilot site is selected, funding to the site is based on the number of *eligible* children to be served. If a child leaves that site, the money does not automatically stop. The classroom/site will have 60 **days** to fill the position with another eligible child before it runs the risk of losing the funding **(starting with the 2002-03 school year).** This system provides more stability for classrooms and continuity for quality programs. **The system of reimbursement is under continuing study. Other strategies will be explored that may provide for less paperwork burden on the grant contractor and subcontractors as well as provide for fiscal accountability. If feasible any such funding and tracking mechanism could be put in place for the next fiscal year.**
Section 21.76B.(c)(7) System built upon existing local school, private child care providers, & other entities with ability to establish or expand Pre-K capacity.	The application and selection of *More at Four* Pre-K sites is based on existing service delivery providers. The communities selected include classes in public Pre-Kindergartens, Head Start classes, and private for-profit and non-profit child care providers. **[See Attachment B for types of settings. See Attachment C for numbers of child positions by type of setting.]**
Section 21.76B.(c)(8) and (9) Quality control system. Providers meet standards/guidelines as established by DHHS, DPI & Task Force. May use child care rating system. Standards for minimum teacher qualifications (licensure)	Requirements for staff (administrators, teachers, and teacher assistants) and for classroom/center licensing are set at a quality program level: public school licensure for teaching staff, AAS certification for assistants (staff may start with lower credentials but have 4 years to reach these standards), and a minimum of 3-star rating by DCD to be accepted as a participant (must reach 4- or 5-star rating within 3 years). [See pages 17-19 of Program Guidelines and Requirements for requirements for staff and classrooms. A number of the sites already have teachers who meet the requirements, as specified by this sub-section. **Other sites, especially rural counties, are having trouble finding qualified staff. (See attachment F for more detailed information.)**
Section 21.76B.(c)(10) A local contribution is required	The application sets forth requirements for a local contribution beyond the *More at Four* Pre-Kindergarten Program funds. Applicants are required to specify what other sources of funding will be used to support the children/classrooms included in the *More at Four* Pre-Kindergarten Program sites. The intent of this program is to provide, on average, no more than half the costs of a quality program. No site will receive more than $400 per child per month. **Sites received** between **$282** and $350 per child per month. **One rural, poor county received $395 for this first year.**
Section 21.76B.(c)(11) A system of accountability	The Program Guidelines and Requirements address this need in the "Program Standards and Curriculum" Section on pages 24. **The procedures for fiscal accountability were developed in early January and are in place. Tool(s) for ongoing program** monitoring **and accountability are nearing completion and will be ready for use in the 2002-03 school year. The child-specific database, along with teacher and program databases, have been developed in paper form for the Spring 2002 data collection. Web-based data entry will be developed via contractor for the 2002-03 school year.** The system will include data collection on children served, as well as information about staff, programs, and expenditures. Approval of invoices by the *More at Four* Pre-Kindergarten Program Office is required for reimbursement by the DHHS Controller's Office to the local contract administrator.

Section 21.76B.(c)(12) Collaboration with State agencies and other organizations.	As noted above, there has been ongoing collaboration on the development and implementation of this program prior to and continuing with the establishment of the *More at Four* Pre-Kindergarten Program office among DHHS, DPI, and the NC Partnership for Children. The original Task Force, comprised of even more groups developed the Program Guidelines and Requirements, and provided preliminary assistance with the funding of sites and application requirements. **The Executive Committee of the Task Force helps review materials and to make policy/program decisions between Task Force Meeting dates.** At the local level, collaboration is required as addressed in the Program Guidelines and Requirements, page 23.
Section 21.76B.(c)13) Consideration of reallocation of existing funds.	To be submitted to the 2003 General Assembly in the second year of the pilot after more experience is obtained and input received from local communities and state agencies.
Section 21.76B.(c)(14) Recommendation for long-term placement and administration of the program.	To be included in the 2002-03 report to the 2003 General Assembly.
Section 21.76B.(d)(1) Contract with an independent research organization…for design of evaluation component.	A contract with the Frank Porter Graham Child Development Institute (FPGCDI) **has been** established. FPGCDI is nationally known for its research in early childhood, including Pre-K programs. The evaluation design will include child-specific outcomes (starting in 2002-03), long-term follow-up plans, assessment of how well the programs are able to meet quality standards, and the impact on the existing service delivery system.
Section 21.76B.(d)(2) Develop a system to collect & maintain child-specific information for long-term evaluation of pilot	A child-specific database will be part of the ongoing system of accountability. It will facilitate the evaluation of the program, provide the basis for following children into the public school system (interfacing with the Student Information Management System and/or the NC WISE), and provide information on whether the appropriate children are being served. **To best utilize limited funding and resources, the development of the child-specific database will be carried out by FPG Child Development Institute as part of their evaluation contract. They will be developing a web-based data entry system based on one already in existence. The end-of-year specific child data collection for 2001-02 will be handled by a paper/pencil version.** *Refinements* will be made as necessary, moving toward a web-based application **in 2002-03. FPGCDI will develop databases related to staff and program information as well, since this information is also critical to their evaluation. They will provide data analyses requested by the *More at Four* Pre-K Office for monitoring and reporting purposes.**
Section 21.76B.(e) *More at Four* Pre-Kindergarten Program funds shall not supplant current state or federal expenditures.	The non-supplant provision is emphasized in the local application and is reviewed as part of the budget provided by the applicant in the selection process.
Section 21.76B.(f) Recommendations on the reallocation of funds from existing State and local programs providing Pre-K related care and services…	To be submitted to the 2003 General Assembly in the second year of the pilot after more experience is obtained and input received from local communities and state agencies.
Section 21.76B.(g) Required reports due January 1, 2002 and May 1, 2002. Final report due to 2003 General Assembly.	This report constitutes the **second** of the required reports.

Other Activities

In order to address the supply of qualified teachers and the level of training and understanding of the curricula required, several strategies are being pursued from the state level to assist local sites.

- **A partnership with the T.E.A.C.H. Early Childhood® Project was established** to provide scholarships for all *More at Four* Pre-K teachers and teacher assistants who are taking college courses to upgrade their skills. Scholarships provided through the T.E.A.C.H Early Childhood ® Project assist teachers in obtaining bachelors degrees and B-K licensure and assist teacher assistants in obtaining associate degrees in early childhood. Through an amendment to the existing contract between DHHS and T.E.A.C.H., *More at Four* Pre-K funds are being used for two new scholarship options that help meet short- and long-term *More at Four* Pre-K teacher qualification and staffing needs:
    1. The T.E.A.C.H. Early Childhood® B-K Licensure Scholarship to help increase the pool of teachers with B-K licensure.
    2. The T.E.A.C.H Early Childhood® Scholars Program to attract qualified individuals into the field of preschool education by substantially contributing to the costs of their college education
- **A contract with the University of North Carolina-Greensboro was issued** to provide statewide professional development for staff in the selected sites that will facilitate their knowledge of specific curricula and further their ability to attain the appropriate license and/or certificate. **Professional development activities include: (1) orientation session for staff, (2) training sessions on curriculum being used by the programs (High Scope, Creative Curriculum, and Bright Beginnings), (3) a mandatory two-day summer institute, and (4) an optional five-day summer institute that will offer credit-based coursework toward required licensure credentials.**

Summary and Recommendations

Mid-Year Implementation: Overview

Due to the late date for finalizing the state budget, the *More at Four* Pre-Kindergarten Program began enrollment of children in January 2002 for the first round of applicants. The second-round of applicants began enrolling children in early March of 2002. The mid-year start-up posed special challenges for the state office, local grant contractors, and actual classroom sites. A fiscal accountability and reimbursement procedure as well as procedures for recruiting and identifying at-risk children had to be developed and implemented quickly. Local expenses and budgets had already been established for the various service delivery sites when the *More at Four* Pre-K requirement for local contributions to the budget was announced.

In spite of these special challenges, the collaboration among all relevant constituent groups at the state and local levels was impressive. The Governor's Office, the Department of Health and Human Services, the Department of Public Instruction, the North Carolina Partnership for Children, and the appointed *More at Four* Pre-K Task Force have worked collaboratively and quickly to implement the grant application, review, and selection process; the reimbursement system and procedures; and to provide policy and program guidance as new issues arose. The local communities, many of which were already collaborating in important ways around the care and education of children, put quality applications together with extraordinarily quick turn-around. Since their selection, they have worked hard to move as quickly as possible to identify children, hire staff, set up classrooms, and enroll children in order to provide children with have several months of Pre-Kindergarten experience before entering Kindergarten in 2002-03.

Local communities have experienced special challenges in some areas in finding staff due to their rural location and the mid-year start-up. Others have experienced difficulty in reaching parents and identifying unserved pre-k children in the middle of the year. A few programs noted that they enrolled children, only to have the parent decide they wanted them at home. All grantees have expressed confidence that they can meet their authorized enrollment for the 2002-03 school year, as they will have the program in place and will have a number of opportunities to recruit children from the end of this school year through the summer, using more comprehensive community outreach, finding siblings of entering Kindergarten children, and having a longer period for recruitment.

Grantees and their *More at Four* Pre-K sites were surveyed in mid-April 2002 to determine the number, percentage, and demographics of children enrolled. Information was also requested regarding the number/percentage of teachers and teacher assistants hired, as well as the credentials of teaching and administrative staff. Results of this survey are described below. Information on the children by site and total is included in Attachment F. The numbers may change slightly by the end of the year as new children are identified and as new staff are added.

Children Served (see Attachment F)

Of the 1621 child positions allocated statewide, 1549 were eligible for enrollment this year and 72 are to start in programs in 2002-03. Some sites are implementing full classrooms with *More at Four* Pre-K funding; others are including several *More at Four* Pre-K children in existing classrooms, expanding the number of at-risk positions served. Of the 1549 authorized child positions, 1181 children (76%) have been enrolled as of mid-April 2002. The percentage of children enrolled ranges from 0 to 100%. One of the 28 grantees was approved to begin serving children in the 2002-03 school year, leaving 27 grants with operating programs this spring. Of those 27, another grantee was approved to

start with 36 children this spring (in the public schools and in Head Start) and to add 18 children (in private child care) in 2002-03. Three of these 27 grantees with operating classrooms have fewer than 50% of the allocated children enrolled. Anson County (0%) has identified the children to fill its 36 positions, but has been unable to recruit teachers for those classes – one of the mid-year challenges some sites have faced. Seven grant communities have filled between 50 and 75% of their positions. This example reinforces the need to continue funding the TEACH (Teacher Enhancement and Compensation Helps) Program that provides scholarships for college students pursuing elementary education degrees and B-K licensing and who commit to teach in *More at Four* Pre-K classrooms in return for tuition assistance. Most of the grant communities (70%) have between 75% to 100% of their allocated positions filled.

Demographic information on the children served currently includes ethnicity, children with disabilities or health problems, and children who have limited English proficiency. Most of the children served are Black (40.3%) or White (34.5%), followed by Hispanic/Latino (14.5%), American Indian (4.7%), Multi-racial (3.6%), Asian/Pacific Islander (2.3%), and "Other" (three children or 0.25%). The *More at Four* Pre-Kindergarten Program Guidelines and Requirements specify a target of including 10% of the *More at Four* Pre-K enrollment as children with specific disabilities. Of the currently enrolled children, approximately 11.5% have an identified disability, and another 12% have a health concern or problem. About 15% of the children have limited English proficiency (typically Latino or Asian children).

Teaching and Administrative Staff Information

The number of classes authorized to have all or some *More at Four* Pre-K children is 166, with 155 starting during the current school year. Teachers have been hired for 91% of those 155 classes. Credentials of the teachers in these classes include the following:

- 45% hold a Birth-Kindergarten (B-K) license or have a BA or MA degree with the preschool add- on;
- 30% hold a BA and are working toward the B-K license;
- 14% hold the two-year (AA) degree and are working toward the BA degree with B-K license;
- 11% were noted as "Other." The "Other" category as described in the site surveys includes teachers who hold master's degrees in elementary education or other fields and a teacher hired on an interim basis.

All of the classroom sites except the one unable to find teachers and two that are starting in 2002-03 have teacher assistant (TA) positions. There are 160.5 TA positions, with a few sites hiring more than one (part-time) TA per class. These TAs hold the following credentials:

- 22% hold the Early Childhood Education/Associate Degree.
- 22% hold the CDA credential.
- 28% have a high school degree or GED.
- 28% were designated as "other". The predominant composition of the "other" category described by sites includes many assistants with bachelor degrees in non-education related fields and one with a non-education related associate of applied science degree.

The scholarship assistance offered to *More at Four* Pre-K teachers and teacher assistants through the T.E.A.C.H. Early Childhood® Project is an important component in upgrading the qualifications of existing *More at Four* Pre-K staff to meet program standards and in recruiting new qualified teachers. These data reinforce the need to continue funding T.E.A.C.H. scholarships.

Administrative Staff Information

At the classroom site level, 117.5 administrators were reported. The goal for site-level administrator credentialing is a Level III Child Care Administrative Certification or a principal license (preferably with a major in Early Childhood Education or Child Development). Fifty-five percent (64.5) of the administrators hold principal licenses, closely paralleling the number of classrooms and children in the public schools. Of these 64.5 principal administrators, 29.5% hold a degree in Early Childhood Education or Child Development. Administrators in other types of service delivery settings, comprise the following percentages of all administrators.

- 9% have Level III Child Care Administrative Credentials.
- 12% hold Level II Child Care Administrative Credentials.
- 11% were listed as "other". This category primarily covered administrators who held degrees in other areas.

Budget Allocations and Expenditures

More at Four funds allocated to grantees for 2001-02 totaled $3,415,215 - $1,134,700 in start-up funds and $2,280,515 in ongoing operating funds. Local contributions are required and totaled $4,068,684 in cash or in-kind. The largest single local contribution came from Smart Start in many counties, followed by public school funds, Head Start, state child care subsidy, local appropriations, and preschool disabilities funds. Public school funds are broken into local school contributions and federal Title I funds. (See attachment D.)

Attachments D-1 and D-2 show the breakdown of local program operating expenses and start-up expenses by category of expenditure. Operating costs (D-1) were primarily personnel (86%). The next largest category was for educational and other supplies and assessments (6%). Student services (e.g., food/nutrition, transportation) comprised 4% and staff development 3%. One-time start-up costs (D-2) were designated primarily for education related supplies (70%), followed by student transportation (8%), staff development (7%), and equipment (6%).

Fiscal and Monitoring Procedures

Local contract administrators have worked diligently to meet the system guidelines and timelines for budgeting and reimbursement established by the *More at Four* Pre-K Office and the DHHS Controller's Office. It has created an enormous time commitment on the part of the contractors, as well as the subcontractors. Fiscal and contract management has also been a critical and time-consuming job for the state *More at Four* Pre-K Office. Yet everyone realizes this program component is essential and has worked to meet timelines and procedures with great cooperation and flexibility. On the other hand, local contract administrators are putting in a large amount of time to administer and oversee this program without receiving any reimbursement for that time. Contractors also need to provide both fiscal and program monitoring and oversight of local subcontractors (classroom sites). These tasks require funding that was not included in the *More at Four* Pre-K grants; only classroom-related expenses were included in the first year of funding.

First-Year Evaluation

The full evaluation is to be implemented with the 2002-03 school year. However, the outside evaluator is collecting end-of-year data on individual children, teachers, and programs during the spring of 2002. In the interim, this report includes aggregate data on the numbers of children enrolled,

demographic descriptions of children (see Attachment F), teachers hired and their current credentials, and other staff data. It also includes a summary of start-up funding, operating funding, and local contributions (cash or in-kind) for the 2001-02 school year (see Attachment D, break downs by category of expenditures are show for both start-up and program operating expenses in Attachment D-1 and D-2).

It was not feasible to measure child progress with pre- and post-assessments for the half year or less that children were served during the start-up phase of 2001-02. Those measures will be included in the evaluation for 2002-03. However, some stories or descriptions that describe the kinds of children being served and their experiences have been included in Attachment G in order to provide examples of what the *More at Four* Pre-K classrooms are intended to do.

Conclusions and Recommendations

While it is premature to make extensive recommendations regarding the program, the following issues need to be pursued for the 2002-03 school year based on experiences during the start-up year.

- As funds are available, a small amount of funding (e.g., maximum of 5%) may be allotted to local contractors for monitoring the local program, technical assistance to subcontractors, and their time in administering the program.
- As funds are available, additional staff assistance (either on a contractual or time-limited position basis) is needed at the state level to provide program monitoring and technical assistance in implementing appropriate educational programs for at-risk Pre-Kindergarten children, as well as for providing fiscal operations and oversight.
- The mid-year start-up presented challenges for a few sites that could not be surmounted. These classrooms have been approved to start in the 2002-03 school year.
- The system of reimbursing local grant contractors continues to be studied. The goal is to find the least cumbersome method of reimbursement that provides sound accountability. Any recommended changes will be sent to the *More at Four* Pre-Kindergarten Program Task Force for review.
- As funds are available, continue supporting the T.E.A.C.H. Early Childhood® Scholarship Project to provide tuition assistance to *More at Four* Pre-K teachers and to attract new qualified teachers to the preschool education field.

Attachment A

More at Four Pre-Kindergarten Program
Grants, Counties, and Sites

Grantee	County/Region	Classroom Sites
Alamance-Burlington School System	Alamance	Garrett Elementary E.M. Yoder Elementary North Graham Elementary Ray Street Complex
Union County Community Action, Inc.	Anson	Central Center for Children and Families
Ashe County School System	Ashe	Even Start Family Literacy Pre-K Program at Ashe Family Central
Beaufort County Partnership for Children	Beaufort	Eastern Elementary Chocowinity Primary Care-O-World Enrichment Center
Brunswick County Partnership for Children, Inc.	Brunswick	Bolivia Elementary Lincoln Primary School Supply Elementary Babies Learning Center Cuddle Bears For Kids Only Little Sandpipers Earth Angles
Buncombe County Partnership for Children, Inc.	Buncombe	Asheville City Schools Preschool Bell Elementary School Head Start Williams Elementary School Head Start Emma Elementary School Head Start Johnston Elementary School Head Start Hominy Valley Elementary School Head Start Community Child Care Center
Carteret County Schools	Carteret	Beaufort Elementary Newport Elementary Morehead Primary My School-Private Enterprise
Catawba County Partnership for Children	Catawba	South Newton Elementary Oakwood Elementary Tyndall Center at Sipe's Orchard Home

Craven County Board of Education	Craven	Craven County Even Start Family Literacy Program James W. Smith Elementary School
Cumberland County Partnership for Children, Inc.	Cumberland	Manchester Elementary School Stedman Primary School Lake Rim Elementary School Ferguson-Easley Elementary School Lewis Chapel Day Care Center Wonder Years Child Care and Learning Center FTCC Early Childhood Educational Center
Davidson County Partnership for Children	Davidson	South Lexington Elementary Southwest Elementary Thomasville Primary Churchland Elementary Lexington Family Enrichment Center The Learning Place (Thomasville)
Forsyth Early Childhood Partnership, Inc.	Forsyth	Easton Elementary Kimberly Park Petree Elementary Mudpies Child Development Center Old Town Community Development Center New Horizons Child Development Center East Winston Primary School-Charter School
Gaston County Schools	Gaston	Cline Learning Center of Dallas Forest Heights Elementary
Granville County Schools	Granville	West Oxford Elementary
Guilford County Partnership for Children, Inc.	Guilford	Jones Elementary Erwin Elementary Falkener Elementary Poplar Grove Head Start Southside Children's Center of Developmental Day Care KIDS, Inc.
Hertford County Public Schools	Hertford	Bearfield Primary CADA Head Start
Hoke County School System	Hoke	Rockfish Hoke Elementary Scurlock Elementary South Hoke Elementary West Hoke Elementary

Charlotte-Mecklenburg Schools	Mecklenburg	Highland Renaissance Elementary Childcare Network
New Hanover County Schools	New Hanover	J. C. Roe Pre-K Center Noah's Ark Winter Park Pre-School II New Hanover County Community Action Head Start (Peabody Center)
Northampton County Schools	Northampton	Seaboard-Coates Elementary Rich-Square Elementary Willis-Hare Elementary
Orange County Partnership for Young Children	Orange	Carrboro Elementary Seawell Elementary Glenwood Elementary Chapel Hill High School Carr Court Second Baptist Lincoln Center Pathways Elementary Head Start Efland Cheeks Elementary Head Start New Hope Elementary Head Start Community School for People Under Six
Pamlico County Schools	Pamlico	Pamlico County Primary
Region A Partnership for Children	Cherokee, Clay, Graham, Swain, Macon, Jackson, Haywood	Backyard Preschool Ranger Preschool Scott's Creek Bright Adventures New Horizon's II Head Start Hayesville CDC Elf CDC Silver Bluff CDC St. John's CDC Cashiers CDC Cherokee Methodist Nursery Webster Enterprises CDC Morningstar CDC Murphy Early Care and Education Ranger CDC Valley River Extension Learning Center Hazelwood Early Care and Education Center Hampton School Jean's Kid's Place Little Hands Playskool Haywood Community College CDC

Public Schools of Robeson County	Robeson	Cottonwood Pre-Elementary Shining Stars – Bryan Shining Stars – Pembroke
Scotland County Schools	Scotland	Scotland Accelerated Academy
Vance County Schools	Vance	Zeb Vance Elementary
Wake County Smart Start	Wake	Jordan Child & Family Enrichment Center Fuquay-Varina Early Learning Center Childcare Network-Brentwood Avenue
Wayne County Partnership for Children, Inc.	Wayne	Brodgen Elementary Chestnut Street Head Start Small World Child Care Center

Attachment B

More at Four Pre-Kindergarten Program
Fiscal Year 2001-02
Funded Grants, Curricula Chosen, Number of Children, & Classroom Settings

Grant Sites	Curriculum(s) Chosen	# of Children	Classroom Settings
1. Alamance/Burlington	Bright Beginnings	24	Public preschools
2. Anson County	Creative Curriculum	36	Head Start
3. Ashe County	Creative Curriculum	15	Public preschool
4. Beaufort County	Creative Curriculum	72	Public preschools, Private non-profit child care
5. Brunswick County	Creative Curriculum & High Scope	54	Public Schools, Private child care
6. Buncombe County	Creative Curriculum	24	Public schools/Head Start blend*, Private non-profit child care
7. Carteret County	Creative Curriculum	61	Public preschools, Private for-profit child care
8. Catawba County	Creative Curriculum	54	Public preschools (one in building with other non-profits)
9. Craven County	Creative Curriculum	28	Public preschools
10. Cumberland County	Creative Curriculum	112	Public preschools; Private for profit and non-profit child care
11. Davidson County	Creative Curriculum & Bright Beginnings	96	Public preschools, Private non-profit child care
12. Forsyth County	Creative Curriculum	110	Public preschools (including 1 charter school), Non-profit child care, For-profit/Head Start blend
13. Gaston County	Creative Curriculum	36	Public preschool; Private for-profit child care
14. Granville County	Creative Curriculum	16	Public preschool
15. Guilford County	Creative Curriculum	118	Public preschool; Head Start, private non-profit child care
16. Hertford County	Creative Curriculum & High Scope	36	Public preschools, Head Start
17. Hoke County	Bright Beginnings	90	Public preschools, Head Start
20. Mecklenburg County	Bright Beginnings	54	Public preschools, private for-profit child care
18. New Hanover County	Creative Curriculum	54	Public preschools, Private child care
19. Northampton County	Creative Curriculum	54	Public preschools
21. Orange County	Creative Curriculum	100	Public preschools, Head Start/public preschool blend, Private child care
22. Pamlico County	Creative Curriculum	15	Public preschool
23.Region A**	Creative Curriculum & High Scope	106	Public preschools, Head Start, private child care
24. Robeson County	Creative Curriculum	58	Public Preschools/Head Start blend, Private for-profit child care
25. Scotland County	Bright Beginnings	36	Public preschools
26. Vance County	High Scope	18	Public preschool
27. Wake County	Creative Curriculum	90	Private child care (profit and non-profit)
28. Wayne County	Creative Curriculum	54	Public preschool, Head Start, private child care
Total Number of Children		**1621**	

*Blend refers to two primary programs – usually Public Schools and Head Start – combining to become an overall class that meets *More at Four* Pre-Kindergarten Program standard

**Region A: Cherokee, Graham, Swain, Macon, Clay, Haywood, Jackson

More at Four Pre-Kindergarten Program

Number of Children by Grant and Type of Setting

Grantee	Number of Children by Type of Setting							
	Total	Schools	Head Start	Head Start in Schools	Private For Profit	Private Non-Profit	Head Start/ Private For Profit blend	Other*
Alamance	24	24						
Anson	36		36					
Ashe	15	15						
Beaufort	72	54				18		
Brunswick	54	13			32			9
Buncombe	24			20		4		
Carteret	61	43			18			
Catawba	54	36						18
Craven	28	28						
Cumberland	112	64			16	16		16
Davidson	96	78				18		
Forsyth	110	48				16	32	14
Gaston	36	18			18			
Granville	16	16						
Guilford	118	54	36			28		
Hertford	36	18	18					
Hoke	90	72	18					
New Hanover	54	18	18		9	9		
Northampton	54	54						
Mecklenburg	54	36			18			
Orange	100			88		12		
Pamlico	15	15						
Region A	106	44	3		6	38		15
Robeson	58	40			18			
Scotland	36	36						
Vance	18	18						
Wake	90				36	54		
Wayne	54	18	18		18			
Total Number	1621	860	147	108	189	213	32	72
% of Children	100%	53.05%	9.07%	6.66%	11.66%	13.14%	1.97%	4.44%

*Other includes charter schools, community colleges

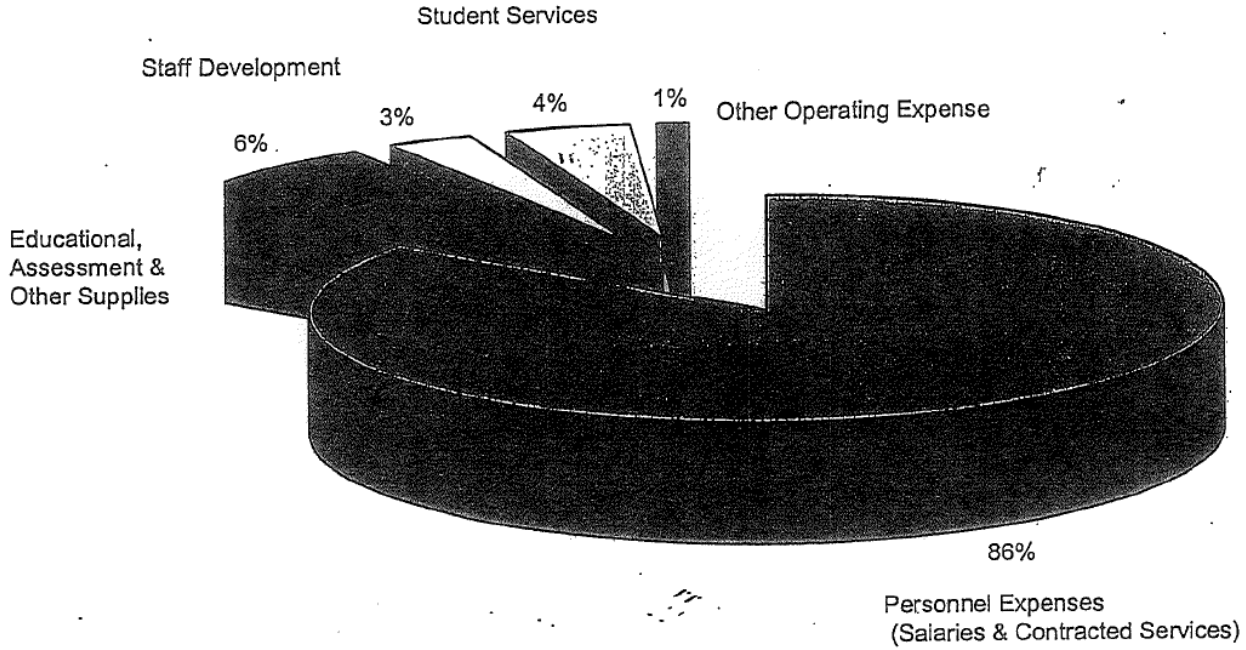
More at Four Pre-Kindergarten Program
Grant Contract Budgets for Start-up, Operating and Local Contributions

Grant Sites	Start-up Budget	Operating Budget	Local Contributions (Cash and In-kind)								
			State Child care Subsidy	Title I	Smart Start	Pre-school Disabilities	Local Appropri ation	Head Start	Public School	Other*	Total
Alamance County	16,800	25,200	-	-	-	19,046	-	-	37,969	-	57,015
Anson County	25,200	27,701	8,500	7,000	18,500	1,000	5,000	5,615	-	-	45,615
Ashe County	10,500	24,375		6,000	41,416	1,000	-	-	-	12,400	60,816
Beaufort County	50,400	122,658	-	-	10,767	-	22,500	-	-	39,610	72,877
Brunswick County	37,800	-	-	-	-	-	-	-	-	-	-
Buncombe County	16,800	39,000	123,000	17,515	53,000	4,265		32,865	91,620	15,330	337,595
Carteret County	42,700	68,744	-	16,378	-	-	-	-	26,860	10,044	53,282
Catawba County	37,800	94,500	-	4,000	2,500	8,700	-	-	-	55,300	70,500
Craven County	19,600	29,400	-	25,000	3,000	700	48,548	-	-	27,235	104,483
Cumberland County	78,400	217,449	-	14,436	120,858				30,000	23,895	189,189
Davidson County	67,200	83,694	-	2,880	1,500	14,760	4,511	-	-	39,022	62,673
Forsyth County	77,000	134,750	20,000	-	169,531	-	-	-	12,600	18,706	220,837
Gaston County	25,200	38,935	-	5,000	6,120	18,200	16,000	-	-	15,304	60,624
Granville County	11,200	16,800	-	-	21,688	-	14,243	-	-	-	35,931
Guilford County	82,600	206,500	25,000	18,149	-	-	1,563	68,664	70,883	22,241	206,500
Hertford County	25,200	36,900	-	-	420	9,000	7,000	-	11,850	600	28,870
Hoke County	63,000	177,750	14,412	65,495	160,970	29,627	18,396	5,832	8,543	-	303,275
Mecklenburg County	37,800	87,750	-	-	41,859	-	-	-	63,599	-	105,458
New Hanover County	37,800	63,000	-	30,000	7,500	7,500	-	30,000	-	-	75,000
Northampton County	37,800	57,240	-	4,850	-	500	6,857	800	-	-	13,007
Orange County	70,000	170,806	69,333	8,133	37,313	68,777	109,628	466,791	-	80,801	840,776
Pamlico County	10,500	15,750	-	-	20,000	2,000	-	-	3,000	2,374	27,374
Region A **	74,200	170,680	170,682	35,000	30,000	25,000	-	1,500	10,000	11,000	283,182
Robeson County	40,600	101,618	8,333	-	59,450	62,500	22,900	-	-	75,298	228,481
Scotland County	25,200	44,100	-	3,500	8,313	3,500	45,730	-	-	20,899	81,942
Vance County	12,600	22,750	-	4,893	6,667	-	-	-	7,630	-	19,190
Wake County	63,000	107,965	100,625	-	120,415	-	-	-	17,500	116,832	355,372
Wayne County	37,800	94,500	-	-	82,500	12,000	-	11,000	13,000	10,320	128,820
Total	1,134,700	2,280,515	539,885	253,793	903,429	288,075	322,876	623,067	375,054	762,505	4,068,684

* Other Funds include private for-profit contributions, USDA/Meals, Even Start, private non-profit contributions, Medicaid and contributions from a wide variety of local, county and state agencies.
** Includes Cherokee County, Graham County, Swain County, Macon County, Clay County, Haywood County and Jackson County.

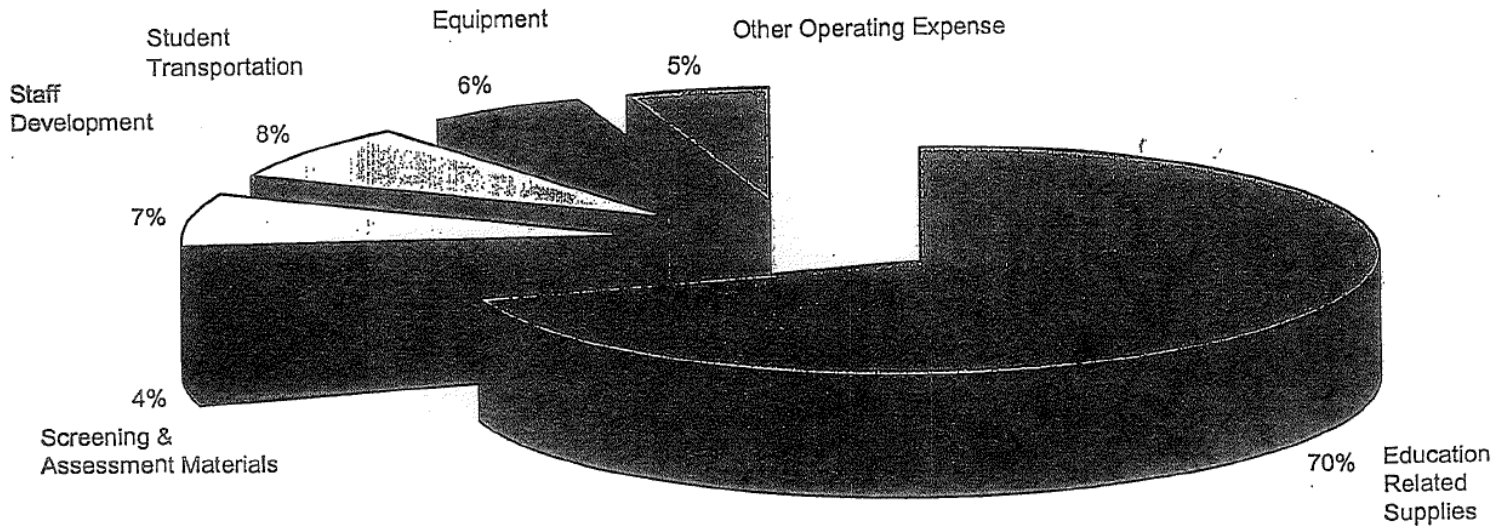
Attachment D-1

The *More at Four* Pre-Kindergarten Program
Program Operating Budget
Fiscal Year 2001-02

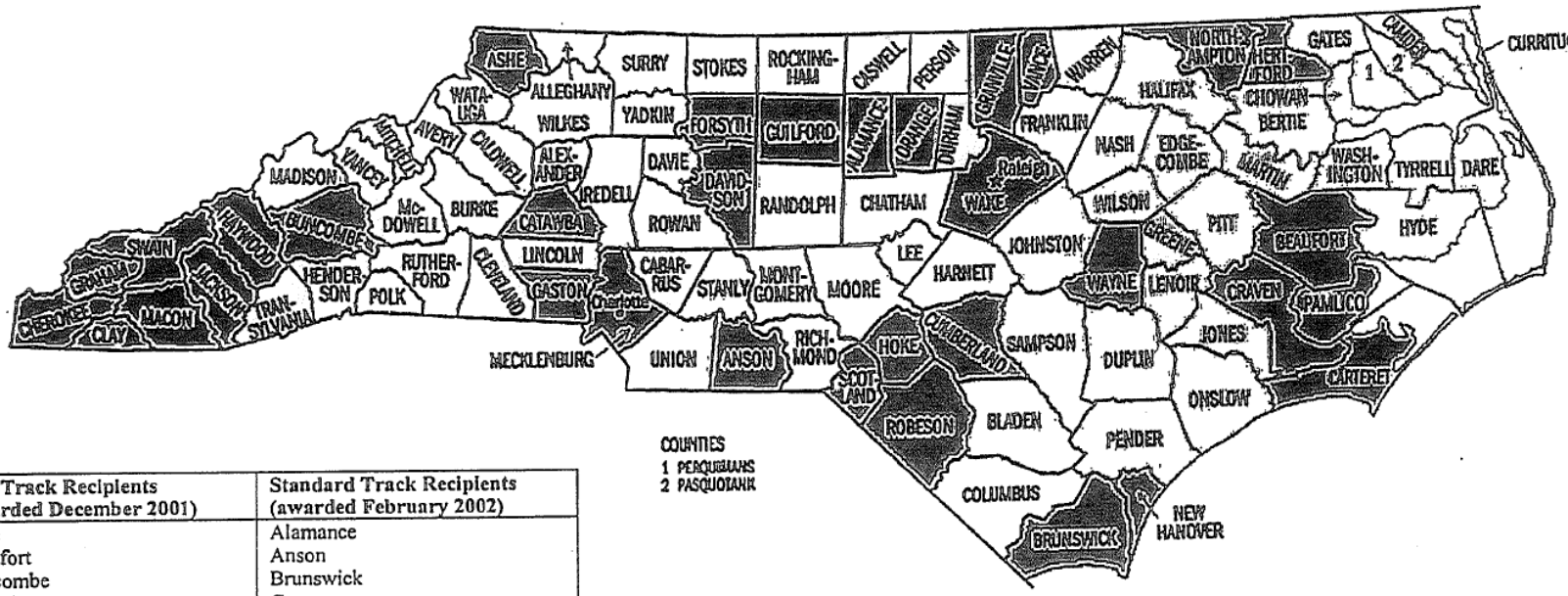


Attachment D-2

The *More at Four* Pre-Kindergarten Program
Program Start-up Budget
Fiscal Year 2001-02



More at Four Pre-Kindergarten Program
2001-02 Geographic Distribution of Grant Recipients



COUNTIES
1 PERQUIMANS
2 PASQUOTANK

Fast Track Recipients (awarded December 2001)	Standard Track Recipients (awarded February 2002)
Ashe	Alamance
Beaufort	Anson
Buncombe	Brunswick
Catawba	Carteret
Cumberland	Craven
Guilford	Davidson
Hoke	Forsyth
Mecklenburg	Gaston
Orange	Granville
Robeson	Hertford
Wayne	New Hanover
Region A (Cherokee, Clay, Graham, Swain, Macon, Jackson)	Northampton
	Pamlico
	Scotland
	Vance
	Wake

More at Four Pre-Kindergarten Program
Fiscal Year 2001-02
Grant Site Implementation Data: Authorized Children, Enrollment, and Teacher Data

Grant Sites	Number of Pre-K Children		Number (and Percent) of Children Enrolled by Ethnicity							# (and %) with Disabilities	# (and %) Limited English Proficient	# (and %) with Health Problems
	# Positions Allocated	# Children Enrolled by April 02	Hispanic/ Latino	Black (non-Hispanic)	Asian/ Pacific Islander	American Indian	Multi-Racial	White	Other			
Alamance County	24	15	8	2	0	0	0	3	2	3	4	0
Anson County	36	0	0	0	0	0	0	0	0	0	0	0
Ashe County	15	15	2	0	0	0	3	10	0	1	2	1
Beaufort County	72	72	9	31	2	0	2	28	0	0	8	5
Brunswick County	54	N/A [1]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Buncombe County	24	20	3	2	0	0	2	13	0	8	1	3
Carteret County	61	52	11	3	1	0	1	36	0	1	9	2
Catawba County	54	54	23	5	13	0	1	12	0	5	34	4
Craven County	28	24	0	11	0	0	1	12	0	4	0	6
Cumberland County	112	91	4	48	0	2	11	26	0	13	3	35
Davidson County	96	86	13	21	3	0	4	45	0	2	12	6
Forsyth County	110	62	20	35	1	0	0	6	0	6	21	
Gaston County	36	23	3	5	0	0	0	15	0	1	2	
Granville County	16	16	7	6	0	0	1	2	0	1	7	
Guilford County	118	106	4	86	2	0	3	11	0	10	6	
Hertford County	36	17	0	15	0	0	0	2	0	8	0	2
Hoke County	90	89	10	29	0	18	0	32	0	0	7	11
Mecklenburg County	54	52	13	26	3	1	3	6	0	1	10	4
New Hanover County	54	36 [2]	5	20	0	0	0	11	0	8	4	3
Northampton County	54	11	0	7	0	0	0	4	0	1	0	0
Orange County	100	68	13	33	2	0	2	18	0	14	17	3
Pamlico County	15	13	0	0	0	1	1	11	0	2	1	5
Region A **	106	62	4	1	0	4	0	53	0	10	5	8
Robeson County	58	58	1	16	0	25	4	12	0	25	2	3
Scotland County	36	23	0	12	0	4	1	6	0	0	0	0
Vance County	18	16	1	5	0	0	1	9	0	1	1	1
Wake County	90	50	13	26	0	0	0	10	1	7	19	3
Wayne County	54	50	4	31	0	0	1	14	0	4	3	26
Total	1621	1181	171 (14.5%)	476 (40.3%)	27 (2.3%)	55 (4.7%)	42 (3.6%)	407 (34.5%)	3 (0.25%)	136 (11.5%)	178 (15.1%)	141 (11.9%)

[1] Brunswick County is authorized to start classes in the 2002-03 school year; these numbers are not included in other calculations.
[2] New Hanover County started 36 children in the current school year and will start 18 children in private child care in 2002-03.

Attachment G

Mini-Profiles of Children's and Teachers' Experiences in *More at Four* Pre-Kindergarten Programs

1. "M" is one of my Hmong students. She spoke only a few words of English when she came to us. She was also very shy. Getting her to explain her artwork, even to my Hmong assistant, was impossible. Her vocabulary has increased very quickly. She is picking up the necessary words and phrases to communicate with me and the other children very well. She has become much less shy since the first day and is one of the first to raise her hand if she knows the answer.

2. "K" is also one of my Hmong students. He speaks very little English and is picking up English slowly. He comes from a household where he is allowed to roam freely, and his mother has a hard time controlling him. The first of week of school was very difficult for him. He did not follow directions and when he would get upset he would sit down in the middle of the floor and throw his shoes at us. Sometimes he would hit and kick us. He never participated in group time. These behaviors have happened much less frequently over the past three months. Most days he follows along and, although he does not always participate (I think largely because of the language barrier), he does sit and listen. We have not "cured" him from occasional fits, but they come less frequently with every week. Just yesterday I put him in time-out for hitting a little girl. He sat down like I told him to and he got up with no problem after a few minutes. That was a major accomplishment for him. I hope we can keep this up.

3. One child, "R", came to me with violent, serious behavior issues (as in kicking, hitting, knock-down, throw-down "hissy" fits). It literally took one-on-one with him during the first several weeks. He is a sad, angry, child--who wanted to play-- but simply did not know HOW to play.. His behavior was so unpredictable, I began to suspect that the mom was not being consistent in administering his ADHD medications. (Just giving him his medicine is a huge daily hurdle--and he gets it twice a day!) So after a conference with the mom, she agreed to turn over the medications to me completely. We have had several good days in a row now! She also agreed to the full DEC evaluation, which is in the works, and to having a clinical specialist from Smart Start to come and help us with some behavior strategies. I have helped "R" engage in play with his friends by modeling how to be the cashier at Wal-Mart. He likes being the "money man." Now when he hoards the money in the cash register and refuses to check out any more groceries in home living center, I might say, when the other children complain, "Well, I think "R" is having a little trouble playing right now. It's okay. You can play in blocks." "R" immediately changes his behavior so that the others will WANT to play with him. He still likes to maintain control, and perhaps always will, but at least he is enjoying some reciprocal play with his peers now. His peers are not as afraid of him now and are beginning to realize that not only will "R" not be allowed to hurt them, but also they will not be allowed to hurt "R." We are a community of learners. We care about one another. We also have a principal who makes it clear that at this preschool, we are part of something even bigger--our school, our community, and our world. The principal has been a wonderful influence on "R" and has been consistent, patient, and caring with "R" and his needs. As far as "R's" outbursts, they have subsided to a manageable point. It's not exactly a success story yet, but it's progress.

4. We have one child who has had extensive behavioral problems, a history of "displacements" with Child Care & Home Care Providers, etc. At the time of his referral to *More at Four* he was not served anywhere. So mother & child have been attending counseling sessions and the story goes on. C is in the referral process for additional testing and possible Developmental Delayed/Atypical Behavior (DD) placement. The referral is still pending and we have gotten most of the testing done. He has a DSMR-VI diagnosis, but WOW, he is doing great with Teacher A. in the *More at Four* classroom setting. So, we are waiting to see if we are on an extended honeymoon period or if he has truly found his "nitch" and was in inappropriate placements previously. Plus, we understand that he and his mother (a single, young parent) have benefited from counseling. The short of it is, we are going to hold out just another 2 or 3 weeks to see how we need to plan for his Kindergarten year

5. When I entered XYZ school yesterday, I was bombarded by administrators and other teachers with how well the *More at Four* students are doing; they look like they have been there all year long. The P.E. teacher said their ball handling skills were ahead of some of the other children who had been there since August. The teacher modestly admitted that ball throwing, kicking and balance beam walking had been a focus during recess time since they enrolled. So the moral of this story is, just give them a taste, a little bit to go on, and soon they soar like eagles. I can hardly wait to see the gains they show us in just 10+ weeks. We are working hard, but we are also having much fun!

6. A real success story for *More at Four* and for what it is really designed to do is "K." K is a child who is Hmong. The only English he spoke when he came to *More at Four* was, "Miss Gigi! Miss Gigi!" He said this often and loud during the early days as he made discoveries in the beautiful room here at South Newton. His eyes would light up with wonder as he leafed through books or built a castle in blocks. He spoke Hmong only to another Hmong child and no English to anyone. During group time, I could tell he so much wanted to contribute in some way other than pointing or gesturing or finger plays. He had no one to interpret for him, nor did I--so we just learned together. One day, after I had done a theme on nursery rhymes and traditional tales (since I realized these children were not familiar with any of them) "K" was playing on the monkey bars outside. He jumped down and came over to me and exclaimed loudly, "Miss Gigi! Miss Gigi! I NO FALL DOWN! I NO FALL DOWN!" (He was pretending to be Humpty Dumpty and he was telling me that he didn't fall down!) It was an exciting day for me and for him. He has come such a long ways in his language. In fact, today I let him be "teacher" by doing a part of our wind-down routine before nap. Each child, one at a time, comes up to the "teacher" and puts his picture/name in the container. Then the teacher issues a little two-step instruction, "Go to the potty, and then rest on your cot." "K" did it today without a single hesitation. I almost think the children who have no interpreter for them learn faster than those who do! At least this is true in K's situation. I must also give credit to "K's" mom who has been nurtured by his mom's parent educator with Parents as Teachers.

7. Overall, I have seen timid, clingy children from hard environments bloom into confident, fun-loving learners. I bought a software program for them and have introduced it to them. All of them can use the mouse now! And each child can either write his name or at least is learning to write his name and identify letters in his name. The children know what the front and back of the books are and what a title page looks like. They know what an author does and what an

illustrator does. They are learning to pattern, sequence, and problem solve. They have planted a garden outside our window and water it faithfully. The social advances I see in these children are so exciting to me. Instead of being "tattletales," they are learning to use their words to solve their problems with one another. And that is a pretty big thing to learn when you are four--or 44! **We are learning to play--but most of all, we are playing to learn. It's been a great year.**

8. I stopped by XYZ Pre-Elementary this morning and I wish you and the Governor could know what I saw and how I felt. One child came in who had not had high points on the rating scale but who was unserved. Come to find out not everything was recorded on the rating scale that reflected the home. The child's mother is in prison for a serious crime, the father is on drugs and does not want the children, the grandparents said no to the children so the children are with the great grandparents. To watch this child come in and not see the child's face, to watch the child be encouraged to visit the center only to stand as if the world has already whipped the life out of her at four years of age was too much. Please keep fighting for these children. I wondered why we took on more and daily I know more.

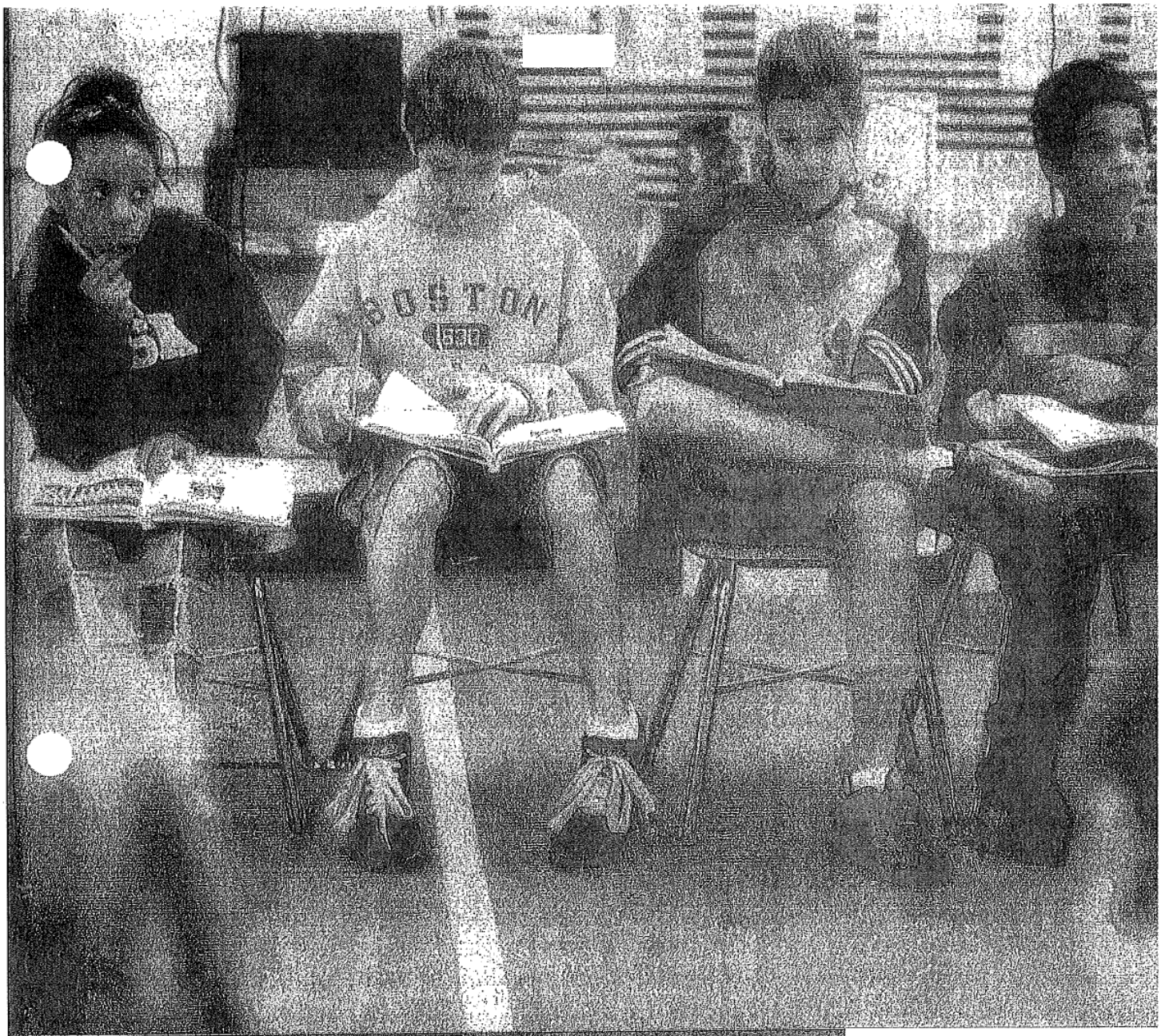
9. And finally, a letter to Governor Easley from a citizen about her observations in a *More at Four* Pre-K classroom:

   "I am retired (clerical) from our public schools and now do some volunteer work in them. Frequently during January, February, and March of this year I have assisted in the *More at Four* classroom at XYZ School.

   In this classroom there is a very diverse group: two are Hmong (one of whom spoke no English and the other is fluent in Hmong and English); most are Hispanic and speak little or no English; one is Black with the remainder being White (one of whom is an Attention Deficit Disordered child who disrupts and delays the teaching/learning process……). Remarkable, in spite of this difficult obstacle, the teacher and assistant are doing well with the children….

   The Hmong child has spoken several English words. The Hispanic (students) are beginning to understand (English) spoken instructions. The Black child has adapted well to this setting. The white children (apparently poor) are eager to learn and glow with excitement at that prospect.

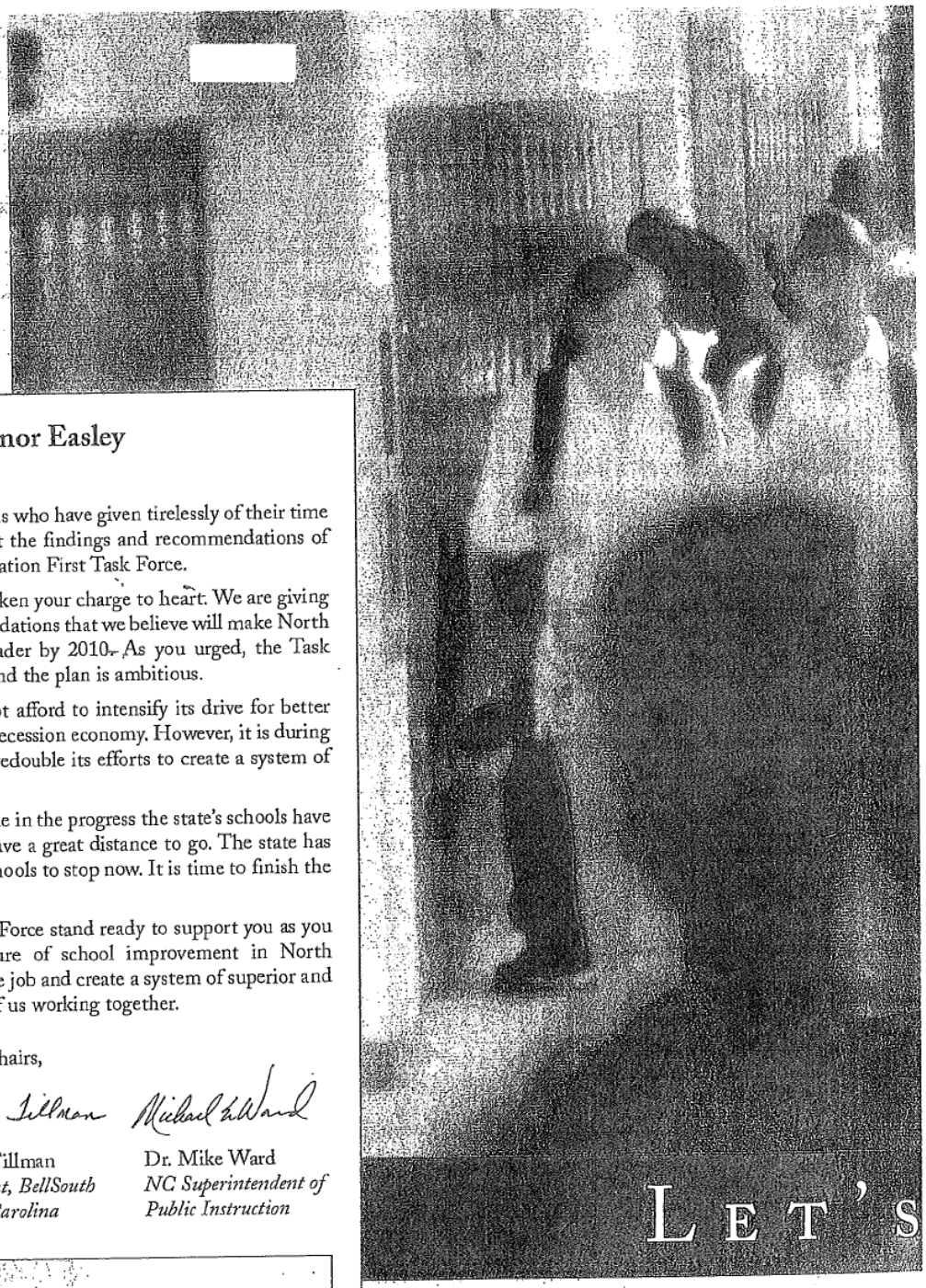
   This is only a glimpse of the *More at Four* class with which I am familiar. These children are fortunate to have this golden opportunity for Kindergarten readiness, in my opinion. I applaud your *More at Four* program and hope you will continue it."



Let's Finish the Job

Building a System of Superior Schools

A Report from the Governor's
Education First Task Force
Spring 2002



An Open Letter to Governor Easley

Spring, 2002

On behalf of the 41 North Carolinians who have given tirelessly of their time and energy, we are pleased to present the findings and recommendations of the members of the Governor's Education First Task Force.

As you will see, the Task Force has taken your charge to heart. We are giving you a research-based set of recommendations that we believe will make North Carolina the nation's educational leader by 2010. As you urged, the Task Force has been bold in its thinking and the plan is ambitious.

Some will argue that the state cannot afford to intensify its drive for better schools while we are in the grip of a recession economy. However, it is during this time that North Carolina must redouble its efforts to create a system of schools that serves all children well.

While the Task Force takes great pride in the progress the state's schools have made in the last ten years, we still have a great distance to go. The state has come too far in its drive for better schools to stop now. It is time to finish the job.

In closing, the members of the Task Force stand ready to support you as you build a consensus around the future of school improvement in North Carolina. We realize that to finish the job and create a system of superior and competitive schools, it will take all of us working together.

Sincerely from the Task Force Co-Chairs,

Willie J. Gilchrist Krista Tillman Michael E. Ward

Dr. Willie Gilchrist
Superintendent, Halifax County Schools

Krista Tillman
President, BellSouth North Carolina

Dr. Mike Ward
NC Superintendent of Public Instruction

Special Thanks
to William G. Enloe High School, Kingswood Elementary School and Magellan Charter School whose staff and students were photographed for this report.

Finish the Job

Building a System of Superior Schools

A Report from the Governor's
Education First Task Force
Spring 2002

Contents

The Task Force

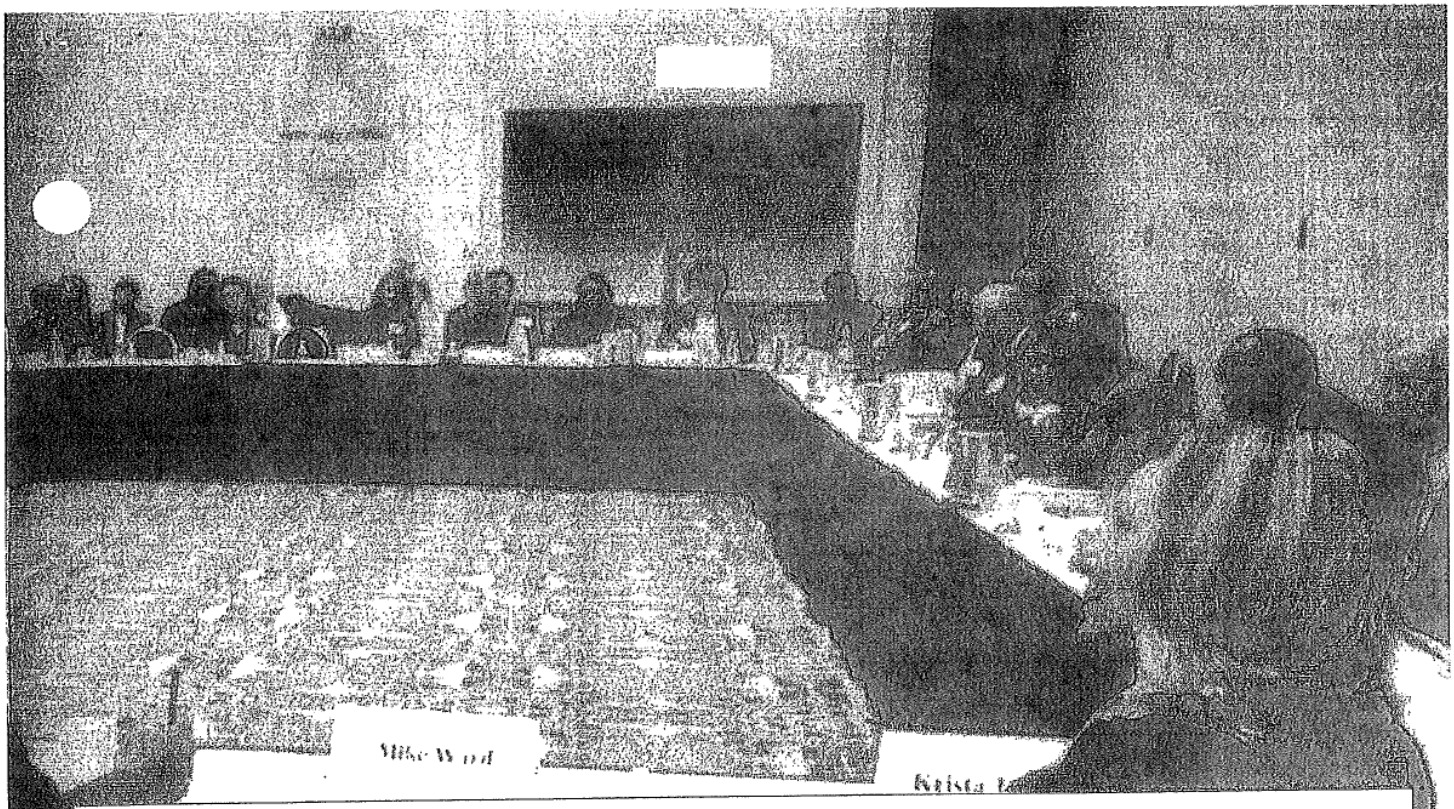
Within weeks of Governor Easley's November 2000 election victory, it became clear that he would confront the worst budget crisis any governor had faced since the Great Depression. Working to balance a budget in spite of a nearly one billion dollar deficit, the governor held firm on two major educational initiatives – the creation of "*More at Four*," a pre-kindergarten program for at-risk four-year-olds, and ambitious class size reductions in the early elementary years. Both initiatives were approved by the 2001 Session of the General Assembly. In addition, Easley sought and received funding for expansion of character education programs and new initiatives to recruit and retain high quality educators.

He was also the first governor in nearly 20 years to create a blue ribbon task force on education. The governor's Education First Task Force was composed of 41 people, including educators, business people, community activists, elected officials and concerned citizens from all corners of North Carolina. To provide leadership to the group, Governor Easley appointed three co-chairs: Halifax County Superintendent Willie Gilchrist, State Superintendent of Public Instruction Mike Ward, and President of BellSouth North Carolina Krista Tillman.

When the Task Force met for the first time in June 2001, the governor charged the group with developing a road map to make North Carolina the national leader in education by 2010. He said that the goal of the Task Force should be to go beyond creation of a system that was merely sound and basic. Instead, he called for the group to strive for creating a system that was superior and competitive.

The Task Force took the governor's charge to heart and devoted the next eight months to an exhaustive look at schools and schooling in North Carolina. Given the enormity of the subject, the Task Force was organized into three committees. Committee One undertook an examination of what came to be called "Hallmarks of Excellence" schools, schools that are succeeding in dramatically increasing student performance. Committee Two delved into the area of finance and resources, with an eye toward what research finds about educational investments and returns. Committee Three examined the myriad of issues related to teachers and teaching as well as the causes of dropouts and the structure of high schools.

The report that follows is the product of the Task Force. The report reflects the belief of Task Force members that the school improvement drive must continue unabated. The title of the report, "Let's Finish the Job," was chosen to acknowledge the efforts of many elected officials, educators, and others in bringing North Carolina's schools to a stronger position than they have occupied in the state's history. However, the Task Force firmly believes that it is up to today's generation of leaders to truly finish the job – to ensure that all of North Carolina's young people have access to a superior and competitive education.



Education First Task Force

Hallmarks of Excellence subcommittee

Willie Gilchrist, Committee Chair
Superintendent, Halifax County Schools

Eddie Davis, *NCAE*

Terry Greenlund, *AVID Program Coordinator, East Chapel Hill High School*

H. Leon Holleman, *Retired Superintendent, Educational Consultant*

Zoe Locklear, *Dean of Education, UNC Pembroke*

Tannis Nelson, *President, NC PTA*

Susan Phillips, *School Volunteer, Guilford County Schools*

Rita Roberts, *Academic Counseling and Training Sessions (ACTS), Chewning Middle School, Durham Public Schools*

Norma Sermon-Boyd, *Superintendent, Jones County Schools*

Joe Stanley, *Vice President, Joe & Mo's Auto Services*

Gary Steppe, *Superintendent, Cherokee County Schools*

George Sweat, *Secretary Dept. of Juvenile Justice & Delinquency Prevention*

Strategic Investment of Funds subcommittee

Mike Ward, Committee Chair
Superintendent, Public Instruction

Representative Donald Bonner, *NC General Assembly*

Virginia Cardenas, *Principal, Conn Elementary School*

Jim Causby, *Superintendent, Johnston County Schools*

Kerry Crutchfield, *Chief Finance Officer, Winston-Salem/Forsyth County Schools*

Senator Walter Dalton, *NC General Assembly*

Sarah Pratt, *Personnel Director, McDowell County Schools*

Ed Regan, *Deputy Director, NC Association of County Commissioners*

Gladys Robinson, *State Education Director, NAACP*

Anthony Rolle, *Professor and School Finance Analyst, Dept. of Educational Research and Leadership, and Counselor Education, NC State University*

Pam Seamans, *Immediate Past Chair, Covenant with North Carolina's Children*

John Modest, *Principal, Southeast Raleigh High School*

Craven Williams, *President, Greensboro College*

Bonnie Wright, *Program Director, Maureen Joy Charter School*

Prepared Graduates subcommittee

Krista Tillman, Committee Chair
President, NC Operations BellSouth

Bishop George E. Battle, Jr, *Presiding Prelate of the Eastern NC District of the A.M.E. Zion Church*

Don Cameron, *President, Guilford Technical Community College*

Charles Coble, *Vice President for University-School Programs, UNC General Administration*

Roy Cooper, *Attorney General, NC Dept. of Justice*

Ferrel Guillory, *Director, Program on Southern Politics, Media and Public Life, UNC Chapel Hill*

Sam Houston, *Vice President for Program and Policy, EdGate*

Darleen Johns, *President, Alphanumeric Systems, Inc.*

Senator Bill Martin, *NC General Assembly*

Tom Lambeth, *Senior Fellow, Z. Smith Reynolds Foundation*

Bill McNeal, *Superintendent, Wake County Schools*

Edgar Murphy, *Community Relations Manager, Nortel Networks*

Delores A. Parker, *Vice President, Academic and Student Services, NC Community College System*

Leonard Peace, *President, NC School Boards Association, Inc.*

Clark Plexico, *Senior Vice President, AT&T*

Bill Shore, *GlaxoSmithKline*

Executive Summary

It's time to finish the job.

For the better part of a decade, North Carolina has led the nation in progress in public education. In the past year, the governor and legislature took steps unrivaled by any state in the nation to protect our progress in education and move forward in these tough budget times.

At the same time, many challenges remain. Our gains in reading have not kept pace with those in math. Troubling achievement gaps still exist, with minority and low-income students lagging behind, and North Carolina needs to raise the performance of all students. The state's drop-out rate is alarmingly high and its graduation rate unacceptably low. Teacher attrition is on the rise and extremely high in pockets of the state.

Educational improvement: an economic imperative

Today, North Carolina is in economic transition – moving to an economy that increasingly demands knowledge capital. North Carolina must build a skilled workforce that attracts industry and good jobs, strengthens our communities and quality of life, and creates opportunity in every corner of the state. To achieve these goals, improving pre-K through grade 12 public education must remain at the center of the state's agenda.

Constructing a system of superior schools

The Education First Task Force believes it is time for North Carolina to accelerate its drive for school improvement and put into place new efforts and drivers for success. It is time for the state to finish the job that it started in the 1980s. While the Task Force is cognizant of the tough economic times confronting the state, it also believes that North Carolina must fashion a strategy for the long term – one that looks beyond the economic short run and puts into place key efforts over the next decade.

The Easley Agenda

The Task Force endorses the immediate agenda for action on education proposed by Governor Easley. Specifically, the Task Force recommends that the state should:

- Expand the *More at Four* Pre-kindergarten Program to serve the state's 40,000 at-risk four-year-olds with high quality educational opportunities.
- Reduce K-3 class size to 18 students in all schools (and to no more than 15 in K-3 in low-performing and high poverty schools).
- Continue the state's efforts to exceed national teacher salary averages and recruit and retain high quality teachers.
- Make school quality information available to parents and communities through the governor's school report cards.

With North Carolina facing its most sustained fiscal crisis since the Great Depression, accomplishing the governor's immediate agenda will be a formidable task. Yet the Task Force believes that more must be done and it has embraced the governor's charge to look beyond his agenda and chart a course for continued progress.

Deepening the commitment to at-risk students and high achievement for all

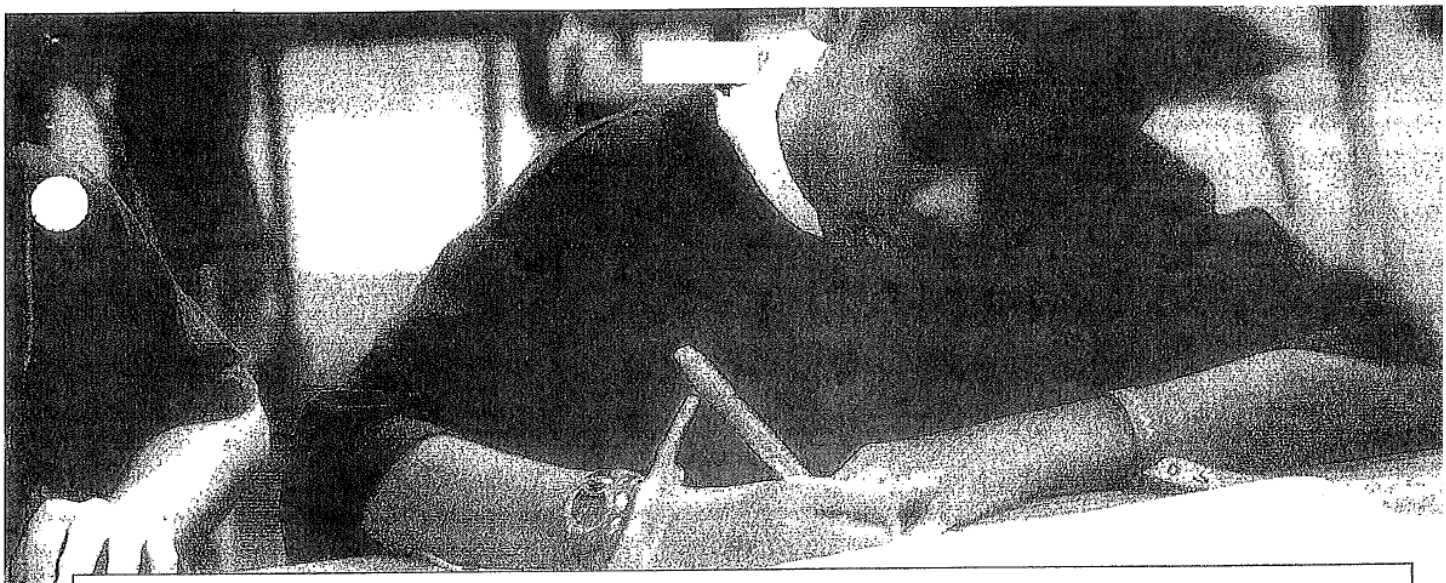
This report provides a set of proposals that maps out the next steps that the state must take to improve education for all students and make our public schools the best in the nation. Among the proposals are four that should be of special current interest to state policymakers.

The first is a new system of "earned flexibility." This proposal calls for strengthening our system of performance accountability for schools and school systems. This proposal would provide the state with far greater authority to guarantee the accountability and effectiveness of school spending in low performing schools and districts. At the same time, it would still retain the principle of "local control" by allowing local school officials to choose from a menu of specific options that are proven strategies for raising student performance. Schools and districts that perform at consistently high levels would receive increased flexibility with their budgets. (See Strategy Six)

The second is a school funding proposal that would provide new resources for at-risk students. The proposal calls for a new infusion of dollars through a single funding stream to school districts based on their share of students in poverty and students performing below grade level. The Task Force anticipates substantial resources to achieve this goal and not a redistribution among districts of existing dollars. (See Strategy Six)

The third is a "high school innovations fund." The fund is envisioned as a public-private partnership to spur the creation of smaller, workforce-focused high schools that reduce our unacceptably high drop-out rate, increase the college-going rate, and better prepare all students to meet the expectations of the workforce and our higher education institutions in North Carolina. (See Strategy Four)

Finally, the Task Force believes it is imperative that we modify our current accountability system to focus on eliminating the achievement gap. The Task Force recommends amending



the state's ABCs program and the performance bonuses for teachers to reflect the achievement levels of individual student groups in schools.

Recommendations of the Task Force

Along with these recommendations, the Task Force has identified six key strategies and 31 other recommendations that it believes the state must address to create a system of superior schools.

Strategy 1: Intensify the focus on reading.

- Help pre-K-12 teachers better address reading to ensure that children finish 3rd grade reading on grade level. Develop a massive training effort in reading instruction that begins with K-3 teachers and extends to all of the state's public school teachers.

Strategy 2: Ensure a high-quality and stable teacher corps.

- Focus on retaining good teachers and ensure that school leaders are trained and evaluated on teacher retention efforts.
- Expand existing recruitment programs such as the NC Teaching Fellows Program and NC TEACH for mid-career professionals.
- Create pay incentives to attract teachers to the places and subjects where they are most needed.

Strategy 3: Develop superior leaders for superior schools.

- Better prepare the next generation of school leaders by expanding the Principal Fellows Program and local leadership development efforts.
- Make quality professional development more accessible to principals by expanding the Principals Executive Program and other key efforts.

Strategy 4: Reform high schools.

- Establish a public-private High School Innovation Fund to create small and workforce-focused high schools.
- Create "early college" opportunities in new collaboratives between high schools and the state's community colleges and four-year institutions.
- Develop the next generation of high school assessment and refocus the NC High School Exit Exam on entrance needs for post-secondary and workplace institutions.

Strategy 5: Strengthen the home-community-school connection.

- Create a State Cabinet for Children and Youth bringing together the governor, heads of major state agencies, and other state-funded initiatives focused on the needs of young people and families.
- Put a home-community-school coordinator in high-poverty schools and develop high-quality parent training resources for all schools.

Strategy 6: Invest more resources, demand more accountability.

- Implement a system of graduated or "earned flexibility" for local schools and school systems that would restrict low-performing schools and districts to a menu of spending options based on research-backed strategies for improvement. For schools performing well above state performance standards, greater local flexibility would be granted.
- Create a funding stream for at-risk students that would provide more resources based on poverty and performance to districts and schools.
- Prepare to put another school facilities bond on the ballot to cope with $6.2 billion in school facility needs over the next five years.
- Make eliminating gaps a priority by revising the ABCs performance bonus structure.

In conclusion: Short run opportunities and long term investments

The recommendations in this report cannot be implemented in one or two years. What they represent is a strategy for addressing North Carolina's educational needs over an eight-year time frame. The Task Force has designed a funding and implementation strategy that enables schools more time to prepare for, and absorb, the impact of changes and helps ease the annual impact on the state's budget.

These recommendations are not without cost. The set of proposals amount to an average of just over $90 million a year in new spending for eight years. At the same time, the Education First Task Force has also included 16 recommendations that do not call for new expenditures of funds. Rather, they call for new or strengthened policy efforts or programs that can be delivered with alternative sources of funds. The Task Force believes that those recommendations should be acted on immediately.

For two decades, North Carolina has focused on school improvement and is now a leader in education progress. By the end of the next decade, North Carolina must finish its journey from the nation's educational basement to its top floor. The Education First Task Force believes that the state has the foundation, the vision and the leadership to accomplish this. Improving education for all North Carolina's young people is an economic imperative and the gatekeeper to the strong communities and quality of life this state's citizens deserve.

It is time to finish the job.

Building On Our Progress

North Carolina's school improvement story has attracted national attention. Emerging from the lowest rungs of educational achievement, North Carolina has risen to become an acknowledged leader in teacher quality, progress in student performance, and standards and accountability.

North Carolinians have long subscribed to the belief that education is the key to economic development, a strong economy, healthy communities, and individual economic opportunity. That belief has translated into a zeal for school improvement that led the state to adopt numerous reform models through the eighties and nineties. From the Career Ladder Program to the Basic Education Program to the Charter School Movement, North Carolina has been on the leading edge of reform.

Driving the state's educational progress through the nineties was a relentless focus on improving student performance. The effort began in 1989 with the introduction of statewide curriculum standards, testing, and public accountability. In 1995, the focus became even sharper when the State Board of Education, at the direction of the General Assembly, developed the ABCs of Public Education. The ABCs focused on basic skills and subject matter, provided greater flexibility to local districts, and held schools accountable for results. Today, the state's ABCs program is a national model.

Following the ABCs, the state invested its efforts and resources into building an early childhood program and improving teacher quality. Smart Start, an early education program that funds health care, childcare and other early educational needs, began in 1993 and has since expanded to each of the state's 100 counties and become a national model for early childhood initiatives. In 1997, the Excellent Schools Act dramatically boosted teacher pay and raised standards for entering and remaining in teaching.

The state's efforts have led to an impressive record of educational progress and achievement. Consider the following:

- The 2000 National Assessment of Educational Progress (NAEP) exams in 4th and 8th grade math showed that NC made the most gains of any state in both grades in the 1990s.
- NC now leads the Southeast on NAEP math tests and is ranked eighth and thirteenth respectively out of participating states on the 4th and 8th grade math exams.
- NC was one of only two states to close the gap between white and non-white students on the NAEP 4th grade math exams in the 1990s.
- NC ranked second in the nation in the achievement of 4th grade African-Americans on the 2000 NAEP math tests.
- NC ranked second in gains on the NAEP reading exam during the 1990s.
- NC's state testing results show gains in reading and math. Students scoring above grade level in reading increased from 63% in 1992-93 to 77% in 2000-01. During that same time period, math scores rose from 61% to 81%.
- NC has made more progress on the SAT than any state in the nation over the course of the 1990s.
- NC ranks eighth in the country in the percentage of public schools with advanced placement courses and in the number of advanced placement exams taken.
- NC leads the country in the number of National Board certified teachers, with roughly a quarter of all nationally certified teachers in the nation.
- NC has been first in improving teacher quality in the *Quality Counts 2001* and *Quality Counts 2002* rankings by *Education Week*.
- NC has, for the first time in its history, reached the national average for percentage of people attending college.

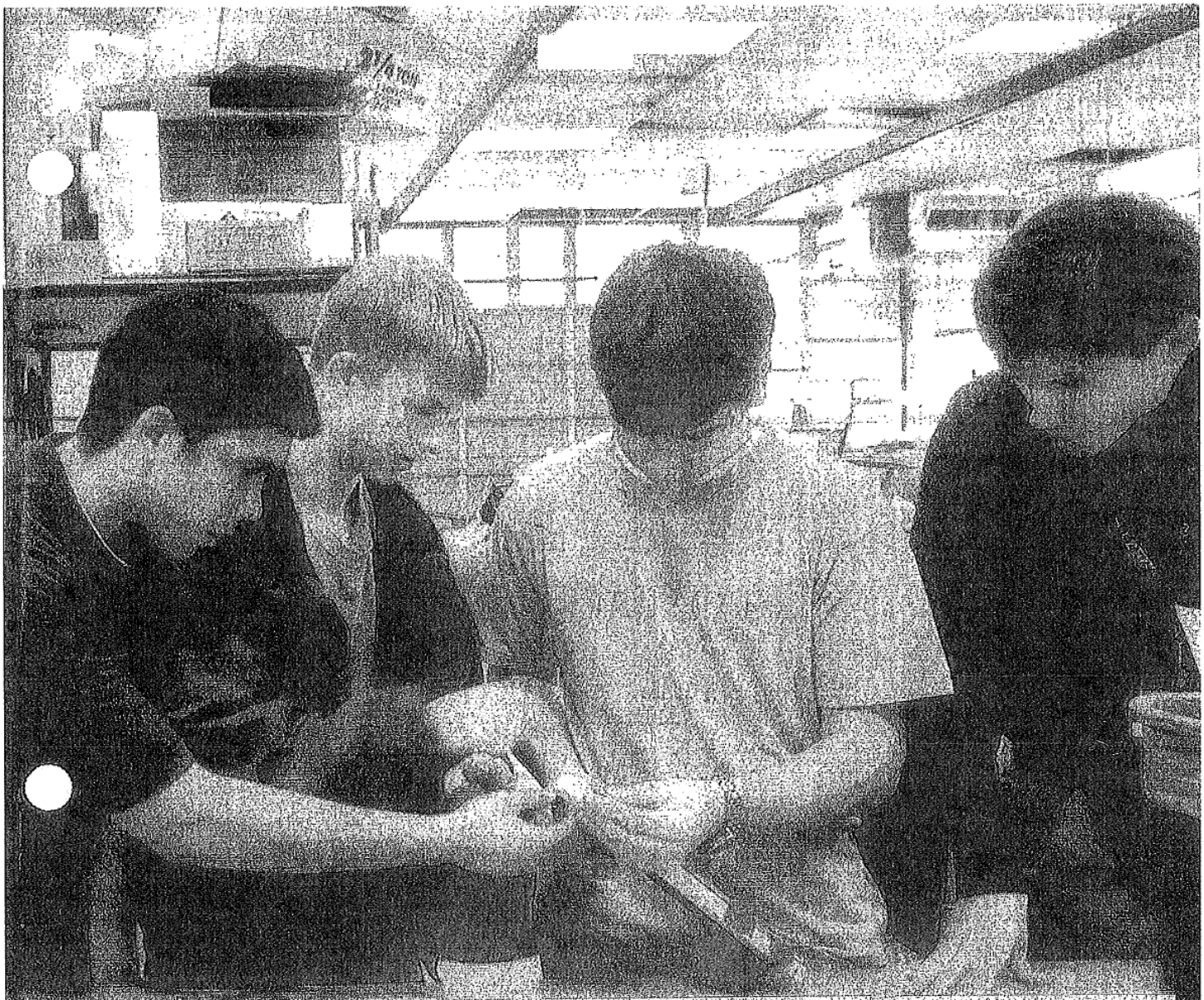
Finishing the Job

While a national recession, the events of September 11, and unique financial situations in North Carolina have placed the state in the worst sustained fiscal crisis since the Great Depression, the state can ill-afford to falter, much less roll back, its drive for an even better system of schools. Even after a decade of progress, young people in North Carolina have moved only from near the bottom of educational rankings to just above average. Barely above average, however, is not where North Carolina young people belong.

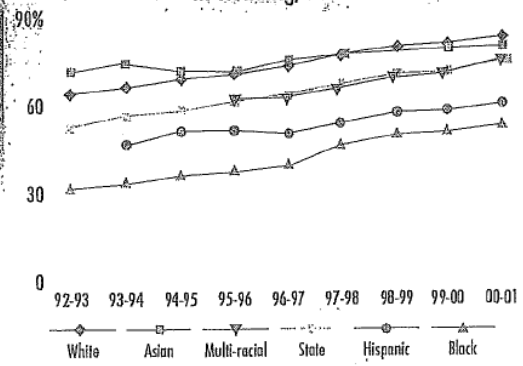
It is time for the state to finish the job that it started in the eighties. The drive for superior and competitive schools must continue unabated. Consider the following:

- Achievement gaps persist.
- Our drop-out and high school completion rates are at unacceptable levels.
- Under-prepared, unqualified, or out-of-field teachers teach too many children in our least advantaged counties and towns.
- Our teacher attrition rate is growing worse.
- Many of our high school graduates are ill equipped to meet the challenging workforce demands of the new economy.
- Too many students must enroll in remediation courses upon entering our community colleges and four-year institutions.

Rather than resting on past achievements, it is time for North Carolina to accelerate its drive for school improvement. Eliminating the achievement gap, preparing all graduates, making all schools "Hallmarks of Excellence," and creating a system of schools that is first in American education by 2010 should be the state's overarching goals through the first decade of this millennium.

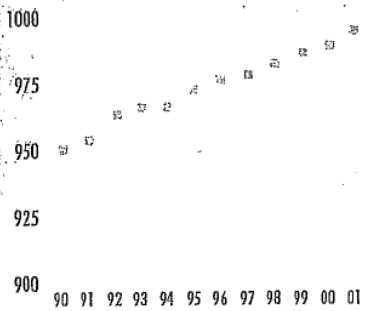


NC Students At or Above Grade Level in Reading/Math



Student performance in North Carolina reflects consistent improvement but significant gaps among student racial groups.

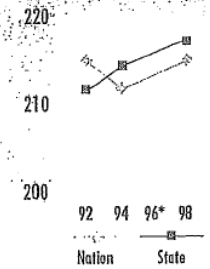
North Carolina SAT Scores



Source: College Board

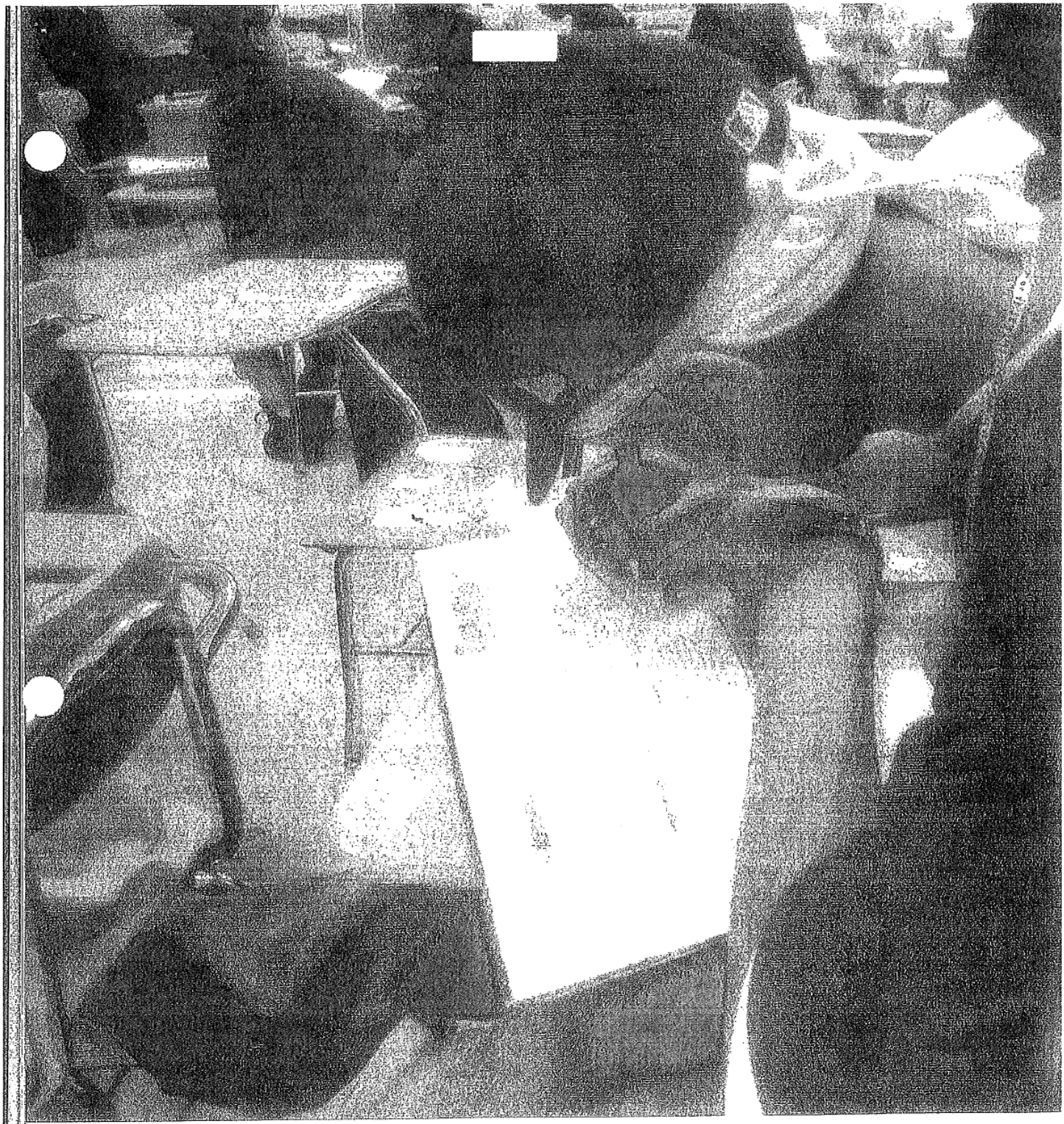
North Carolina had the largest gain – 40 points – of any state that tests more than 12% of its students for the period of 1991-2001. The nation gained only 21 points during this same time period.

NAEP Grade 4 Reading Scale Scores



North Carolina's 4th grade NAEP reading performance has risen from below the national average in 1992 to above the national average in 1994 and the state maintained its progress on the 1998 results.

* test not given



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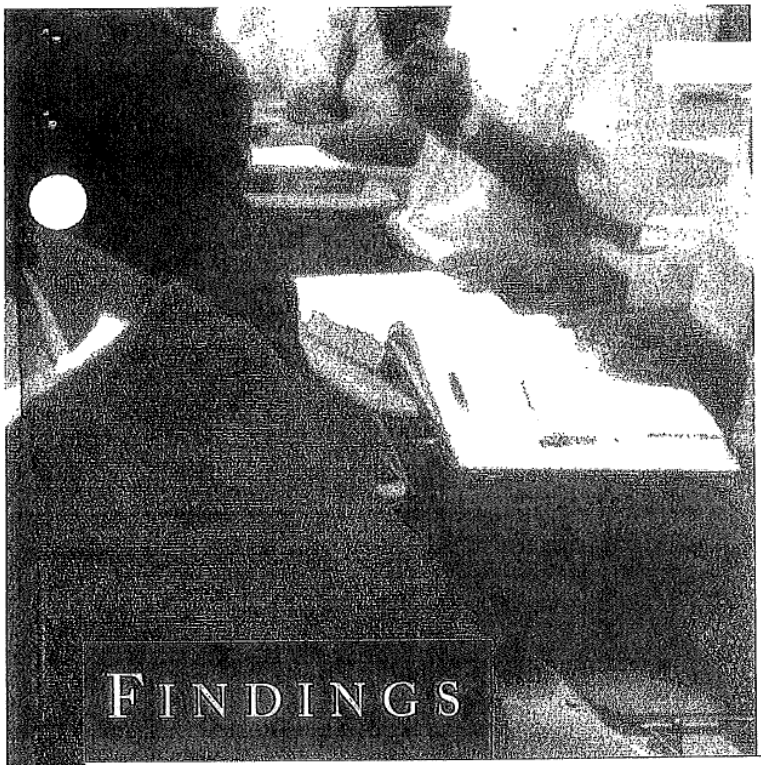


FINDINGS

Working in three committees for the better part of eight months, the Task Force studied a host of issues related to school improvement. Task Force members met as a full group or in committees 20 times. They conducted site visits at 12 Hallmarks of Excellence Schools, so named because they have consistently registered high levels of student performance, even while serving diverse, and in many cases, at-risk student populations. They heard from a total of 44 educators, researchers, business leaders, college officials, and others from North Carolina, from neighboring states, and from regional and national organizations, ranging from the RAND Corporation to the Education Commission of the States. They pored over educational research and recommendations from recent studies, especially those of the Progress Board, the State Board of Education's Commission on Raising Achievement and Closing Gaps, the General Assembly's Commission on Improving the Academic Achievement of Minority and At-Risk Students, and the Standards and Accountability Commission.

The findings that evolved out of that process contributed greatly to the final Task Force recommendations. Key findings of the Task Force were:

Finding 1: Strong state leadership and a focus on results has led the way.

In assessing factors that contributed to the state's educational progress, it quickly became apparent that the gains were not the result of happenstance. Through the eighties and nineties, the state put in place major building blocks that laid the foundation for improvements now being registered. Among the more significant were the following:

Basic Education Plan
In 1985, the Basic Education Plan (BEP) set out to guarantee a minimum level of educational program support for all schools.

School Excellence and Accountability Act
In 1989, the School Improvement and Accountability Act (SB2) introduced statewide testing and system-level accountability for results.

ABCs Program
In 1995, the School-Based Management and Accountability Act directed the State Board to create a program of standards and accountability and led to the current ABCs for Public Education program.

Excellent Schools Act
The 1997 Excellent Schools Act initiative dramatically boosted teacher pay, raised standards for entering and remaining in the teaching profession, established incentives for National Board certification, created a formalized mentor teacher program, and instituted an accountability plan for schools of education.

Smart Start and More at Four
From 1993 to 2001, Smart Start and *More at Four* brought early educational opportunities to thousands of at-risk young people across the state.

Class Size Reduction and the High Priority Schools Act
In 2001, in addition to beginning the effort to reduce class size in K-3 to 18 or below, Governor Easley and the Legislature enacted the High Priority Schools Act, which focused state resources on the state's highest-poverty and lowest-performing elementary schools and continually low-performing middle and high schools.

More than any of the new initiatives, however, the state's decision to relentlessly focus on increased student performance appears to be the factor that has contributed most to the gains of the nineties.

Finding 2: Progress is good but insufficient.

While the educational gains of the nineties have been impressive, they are not sufficient. In the last ten years, North Carolina has moved up from the bottom of the educational ladder to average or slightly above average

on most national indicators but remains below average on others. For a state that aspires to be a national educational leader, there is much left to be done. Consider the following:

Persistent performance gap between students
NC is recognized as a national leader in closing performance gaps. A recent National Education Goals Panel report shows North Carolina as one of only two states to have closed gaps in NAEP math at the 4th grade level and one of only a handful in the 8th grade. That said, the gap on state testing between black and white students is 30 points. While minority students have registered solid learning gains, barely one-half of them are performing at or above grade level in basic areas like reading and math.

Despite the increase across the board for numbers of students testing at or above grade level, the 30-point gap remains steady between black and white students.

An unacceptable high school completion rate
National studies looking at the graduation rates of cohorts of 9th graders find that over 40% of North Carolina's 9th graders do not complete high school four years later. In absolute terms, the state's figures show that one quarter of students drop out and never return. Last year, the number of dropouts recorded was over 21,000.

College-going rate increasing, but still low
Just as North Carolina's student achievement rate has exceeded national averages for the first time, so has its percentage of young people going on to college. North Carolina has historically lagged behind other states on the percentage of its population with college degrees. The upswing in college enrollment is encouraging, but not enough.

NC must do more to serve high achieving students
Even for the highest performing 10% of students in North Carolina, there is a performance gap with their peers across the country. Using SAT score data, one of the few sources of national comparisons for high school students, the performance gap is stark. While the advent of student testing and accountability predictably turned the spotlight on at-risk young people, North Carolina will become a national educational leader only if it focuses on the needs of all of its young people – at-risk, average, and high performing.

Finding 3: Teachers are the linchpin to student success.

A growing body of research confirms the correlation between student performance and the quality of teaching to which young people are exposed. Two or three years of excellent teachers, especially in the critical elementary years, can give a child a sound foundation for success in school; conversely, two or three years of mediocre or poor teaching can scar a child for a lifetime.

Those findings are troubling for two reasons. First, North Carolina, like other rapidly growing states, is facing a teacher shortage that is reaching critical proportions. While the state has long suffered from teacher shortages in hard-to-fill areas like science or special education, as well as geographic shortages in rural and low-wealth counties, today's shortage is much more widespread. Second, it is increasingly difficult to attract and retain high-quality educators in what are termed "hard-to-staff" schools (i.e., schools serving high numbers of at-risk young people and/or located in areas with few social amenities). At the same time research is confirming the importance of teacher quality, it is apparent that the students who need the state's very best teachers are least likely to have them.

The number of dropouts remains high though it has declined from 24,452 in 1998-99 to 21,368 in 2000-01. The fact remains that close to 70,000 students have dropped out since 1998-99.

Finding 4: NC must focus as much on teacher retention as on recruitment.

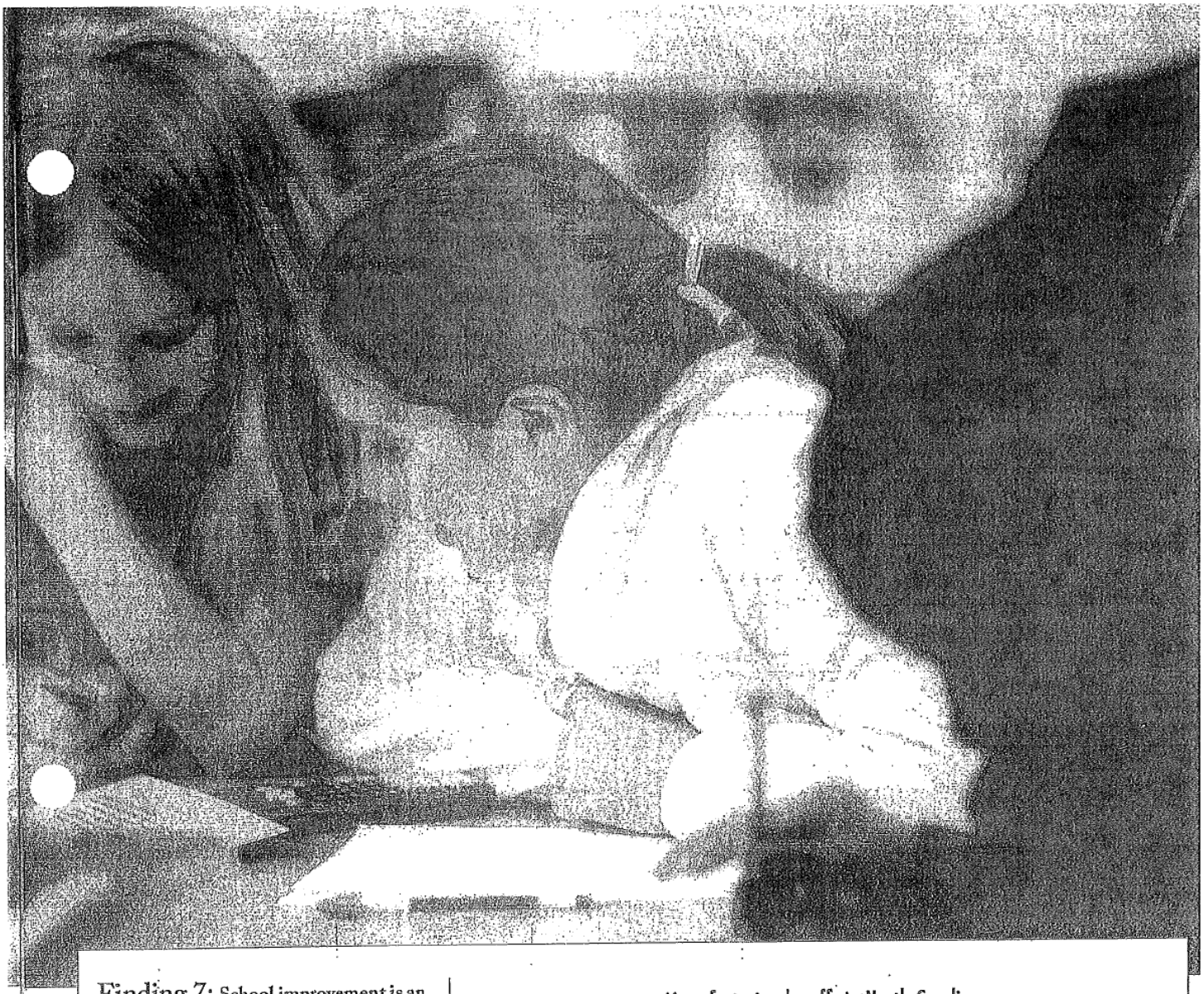
For the foreseeable future, North Carolina will need to hire 9,000-12,000 teachers each year. Driving the demand for new teachers is a population growth rate that results in 15,000-20,000 new students being added to school rosters each year coupled with a teacher turnover rate of nearly 14% per year. A disturbingly large number of teachers who leave the profession are unlikely to return, especially those who leave in their early years of teaching. The state has launched many new initiatives to recruit teachers into the field. It must, however, place an equal focus on retaining teachers already on the job.

Finding 5: Leadership is an indispensable factor in superior schools.

School leadership matters a great deal. Research finds that strong, effective, results-oriented and caring school principals can transform mediocre schools into high performing schools. Predictably, in many of the "Hallmarks of Excellence" schools, principals set the tone. They were student-oriented and results-driven; they had the capacity to motivate their faculty members; they created a team or family environment. In other buildings, leadership appeared to emanate largely from groups of committed teachers or from district leadership, especially superintendents. Whatever the source of leadership, it is an essential part of the school improvement equation.

Finding 6: Successful schools reflect some enduring principles.

The educators, business leaders, elected officials, and parents who participated in visitations to the "Hallmarks of Excellence" schools found that these schools did a small number of things very well – and those things were different in different schools. They found most of all that those things were not as much unique innovations as they were based upon enduring educational principles. The schools typically were focused on shared goals, were results-driven, were well led; they were schools in which teachers and administrators believed that all children could learn. Task Force members also found that these schools did not make excuses for their students. Because a student was labeled "at-risk" did not give Hallmarks schools an excuse for low performance.

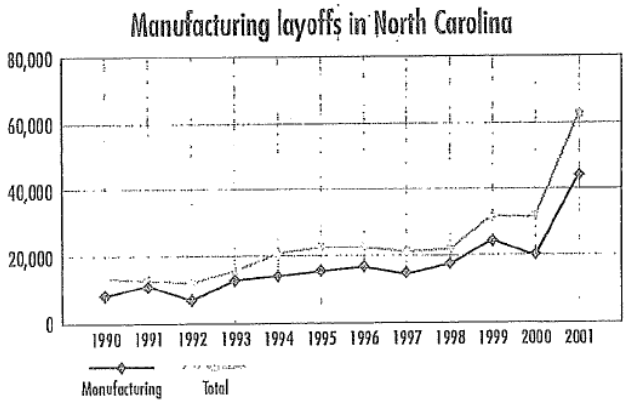


Finding 7: School improvement is an economic imperative.

Looking to the future, groups like North Carolina's Progress Board and former Governor Hunt's Rural Prosperity Task Force have demonstrated that for the state to thrive and survive in the future, it must strengthen its educational system at all levels. Low-skill manufacturing jobs are leaving the state.

It is increasingly apparent that jobs and job creation in the future will go to states that have a large pool of educated workers who are capable of learning and relearning through a lifetime of work. North Carolina must focus on becoming a "knowledge state" where citizens are prepared to think for a living in a more demanding, complex economy.

The Task Force took to heart this data and the grave warnings that North Carolina



North Carolina ranks in the top three on dependence on manufacturing jobs, and was second to Michigan in the number of manufacturing jobs lost.

Though NC shows improvement in its average SAT scores, it still lags 28 points behind the national average of 1020.

could lose its competitive edge if its educational system is not strengthened. While the recommendations that follow are ultimately about young people and their well-being, they are also about the long-term competitiveness of North Carolina and its economy.

Finding 8: NC must break with tradition in its drive for superior schools.

The weight of tradition hangs heavily upon the schools of North Carolina and, indeed, the nation. Social commentators frequently point to schools as one of the most change-resistant institutions in America.

For North Carolina schools to move from merely average to superior, it is going to require taking risks and breaking with long-held traditions. In an era where change occurs more rapidly than ever before, schools remain on a 180-day calendar created in an age when young people were needed to help out on farms. All teachers are paid on the same salary schedule, based on years of experience.

In this age of change, new options and approaches are needed. Learning opportunities before- and after-school, coursework that can be delivered on-line, new financial incentives for teachers, and new relationships among NC's K-12 and higher education systems are emerging efforts that are important and should expand.

If North Carolina's young people are to reach a new and higher level of performance, North Carolina's policymakers and educators must dare to break with tradition and approach schooling in new and different ways.

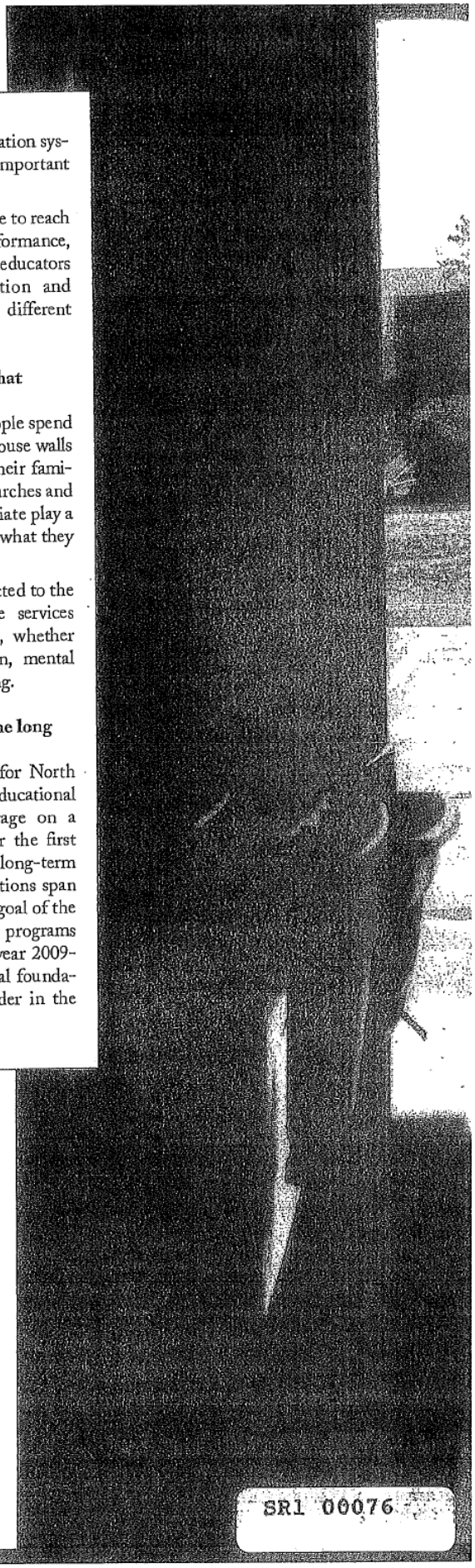
Finding 9: NC must realize that schools can't do it all alone.

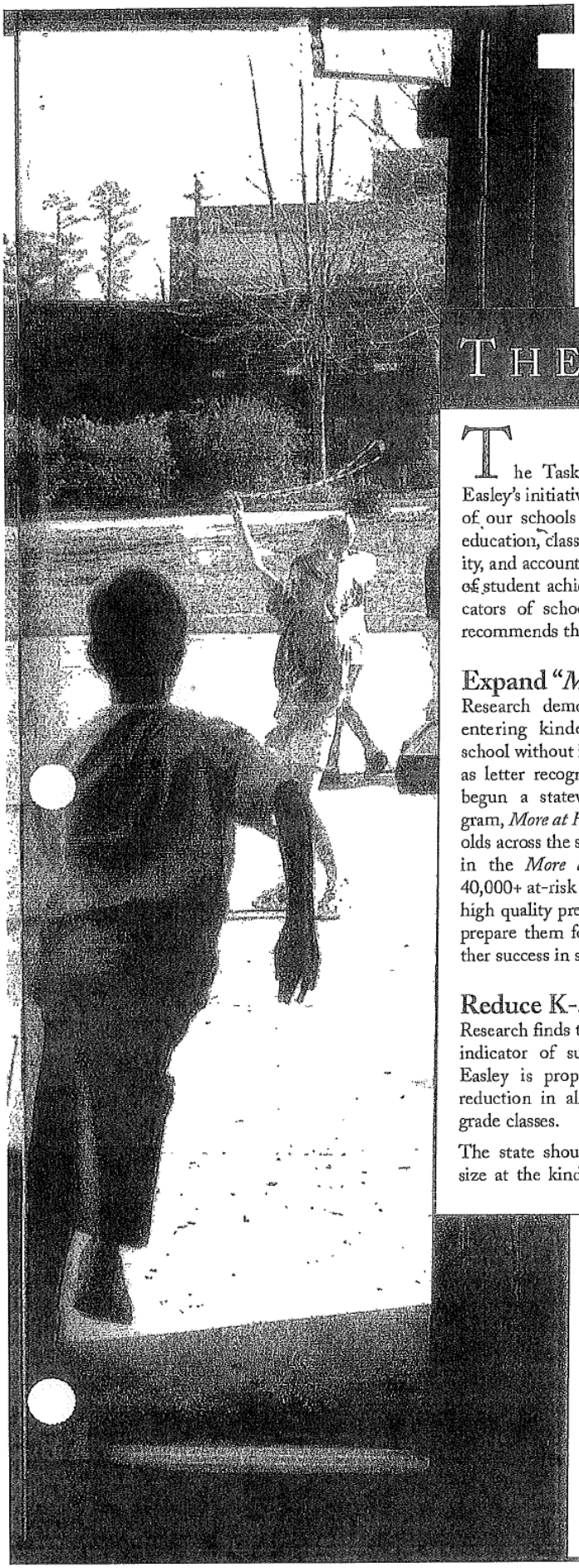
From birth until age 19, young people spend more of their lives outside schoolhouse walls than inside them. Their friends, their families, their communities, and the churches and organizations with which they affiliate play a profound role in shaping who and what they ultimately become.

Schools must become more connected to the communities they serve and the services their students and families need, whether they are in the area of nutrition, mental health, adult literacy, or job training.

Finding 10: NC must take the long view on school improvement.

It has taken nearly two decades for North Carolina to move out of the educational basement and climb above average on a growing number of indicators for the first time in its history. Reflecting that long-term view, the Task Force recommendations span the remainder of the decade. The goal of the recommendations is to have the programs and resources in place by school year 2009-10 to give the state the educational foundation needed to be a national leader in the decades ahead.





The Easley Agenda

The Task Force endorses Governor Easley's initiatives for dramatic improvement of our schools through his focus on early education, class size reduction, teacher quality, and accountability to the public on issues of student achievement and other key indicators of school success. The Task Force recommends that the state:

Expand "*More at Four*"

Research demonstrates that one-third of entering kindergarten children come to school without important literacy skills, such as letter recognition. Governor Easley has begun a statewide pre-kindergarten program, *More at Four*, serving 1,600 four-year-olds across the state. The state should phase-in the *More at Four* Program until all 40,000+ at-risk four-year-olds have access to high quality pre-kindergarten programs that prepare them for kindergarten and for further success in school.

Reduce K-3 Class Size

Research finds that smaller class size is a key indicator of success in school. Governor Easley is proposing significant class size reduction in all kindergarten through 3rd grade classes.

The state should continue to reduce class size at the kindergarten through 3rd grade levels. Class size reductions should be gradual to minimize facility-need problems and teacher recruitment needs. In High Priority schools serving large numbers of at-risk young people, class sizes should be reduced to 15 or below.

Strive to Exceed National Teacher Salary Averages

Governor Easley has made national average salaries for North Carolina's teachers a goal and worked with the General Assembly to secure modest raises in the 2001-03 biennium budget to continue the state's record of progress since 1997. The state should continue its commitment to exceed national average salaries, while providing a range of additional strategic incentives to attract and retain teachers.

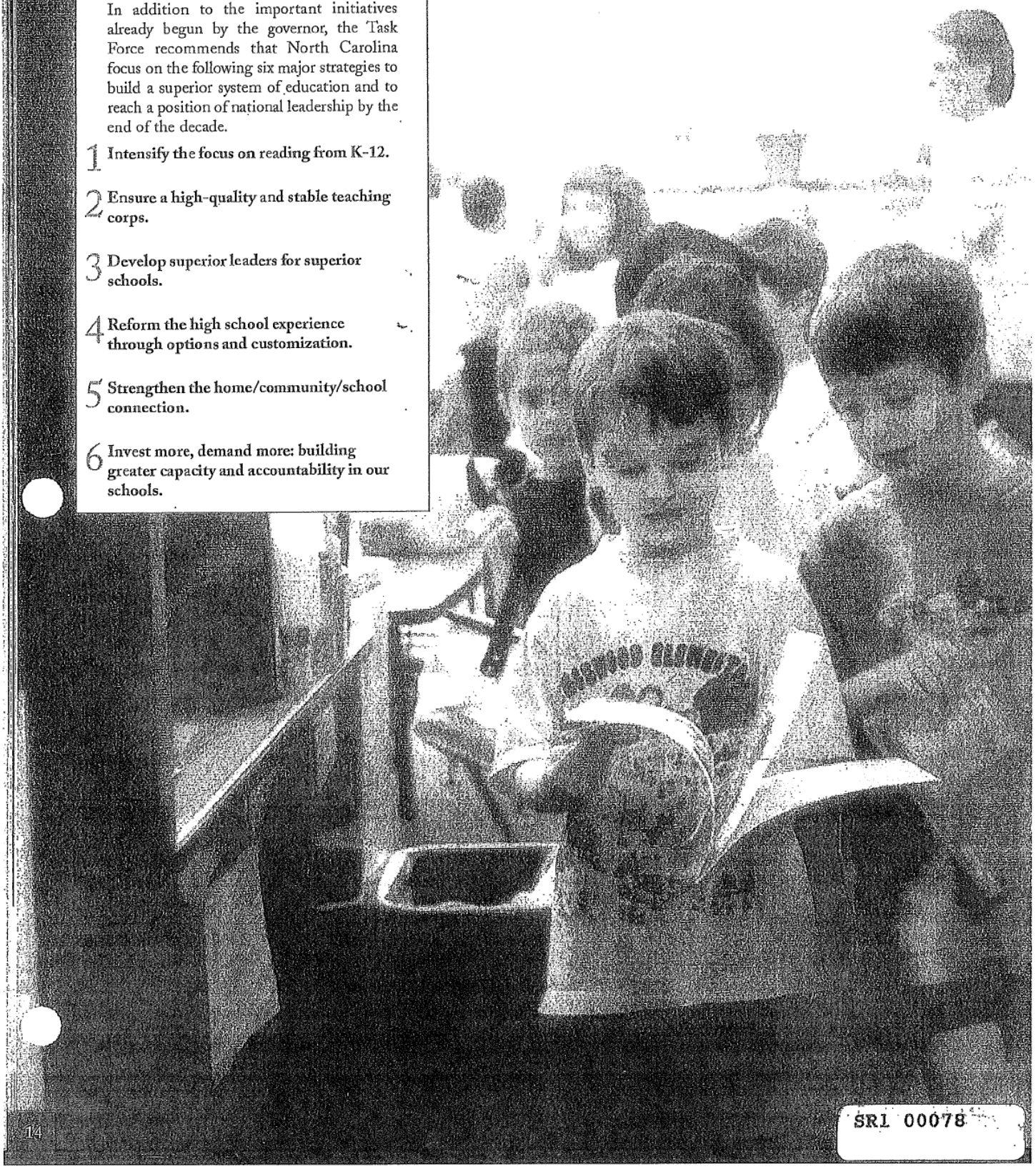
Publicize School Quality Information

Parents deserve to have key information about their child's school. Governor Easley secured funding for the development of school accountability report cards, the first of which was made available this spring. This effort must be continued to hold schools accountable for school improvement and to assist parents and communities as they work to support improvement efforts.

Strategies and Recommendations

In addition to the important initiatives already begun by the governor, the Task Force recommends that North Carolina focus on the following six major strategies to build a superior system of education and to reach a position of national leadership by the end of the decade.

1. **Intensify the focus on reading from K-12.**
2. **Ensure a high-quality and stable teaching corps.**
3. **Develop superior leaders for superior schools.**
4. **Reform the high school experience through options and customization.**
5. **Strengthen the home/community/school connection.**
6. **Invest more, demand more: building greater capacity and accountability in our schools.**



STRATEGY ONE

Intensify the focus on reading throughout K-12.

Researchers agree that reading and reading comprehension are essential to eliminating performance gaps between students. If young people are reading at or above grade level by the 3rd grade, the prospects of their successfully finishing high school increase dramatically. Conversely, if they are below reading levels upon entering middle or high school, the chance that they will fall by the wayside soars. Reading and reading comprehension are "gatekeepers" – critical factors in determining who will succeed and who will fail in education.

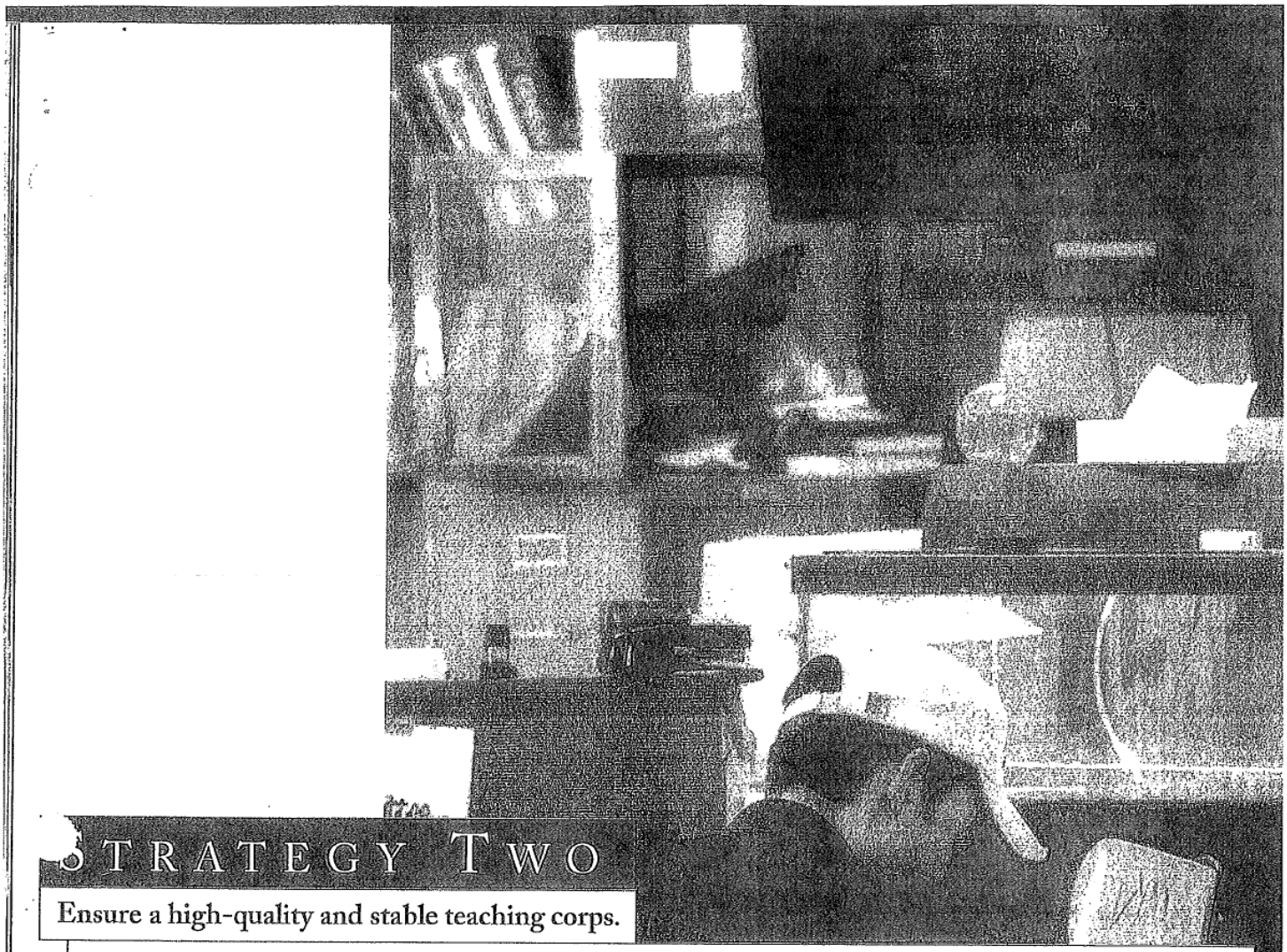
Build a training and support program to help all teachers better teach reading.
The Task Force recommends that the state Board of Education marshal the resources of existing groups including, but not limited to, the Teacher Academy, Learn NC, SERVE, in-place distance learning centers, like Cumberland County's Web Academy or the long-established community college distance-learning program, to launch a high-quality, easily accessible statewide training program focused on reading strategies at all levels of schooling.

The Task Force envisions a six-year training initiative that, in future years, would be available to new teachers on an ongoing basis. Year One would focus on the development and identification of training materials and training delivery systems. Training would begin in Year Two at the elementary level and begin with faculties working in the state's lowest performing schools. The ultimate goal of the initiative would be to provide advanced research-based strategies for more effectively teaching reading to all of the state's elementary teachers.

Teacher training would begin in middle and high schools in the third year of the initiative. As with the elementary teacher reading training program, staff development would first be offered to faculties in low-performing middle and high schools.

Span of the initiative:
- *2002-03 to 2008-09*

Projected cost:
- *New federal dollars available*



STRATEGY TWO

Ensure a high-quality and stable teaching corps.

A growing body of research finds that the quality of teachers a young person has over his or her learning lifetime is the most important educational variable in determining whether he or she will succeed or fail in school.

At the moment, that research underscores what may be the Achilles Heel of school improvement in North Carolina. The young people who need the state's very best teachers are least likely to have them. The communities and schools most in educational need are the least likely to attract and retain highly qualified teachers.

And the problem is worsening. Each year North Carolina is in search of 9,000-12,000 new teachers. Nearly 14% of the teaching workforce turns over annually. In some systems that number is as high as 27%. Over half the men and women who enter teaching will have left the field within five to seven years, many within the first three years of their abbreviated teaching careers.

While the state has created programs that are national teacher recruiting models – the North Carolina Teaching Fellows Program, NC TEACH, and the Teacher Cadet Program – it has done little to "stop the bleeding" that comes from high teacher turnover rates.

This has led the Task Force to conclude that the state must place teacher retention on a par with teacher recruitment. If today's turnover rate could be reduced from 14% to merely 10%, today's demand for new teachers would be reduced by 3,500 annually. Thus, the Task Force calls for making teacher retention efforts a priority while increasing recruiting efforts.

Create quality standards and guidelines for teacher mentoring.

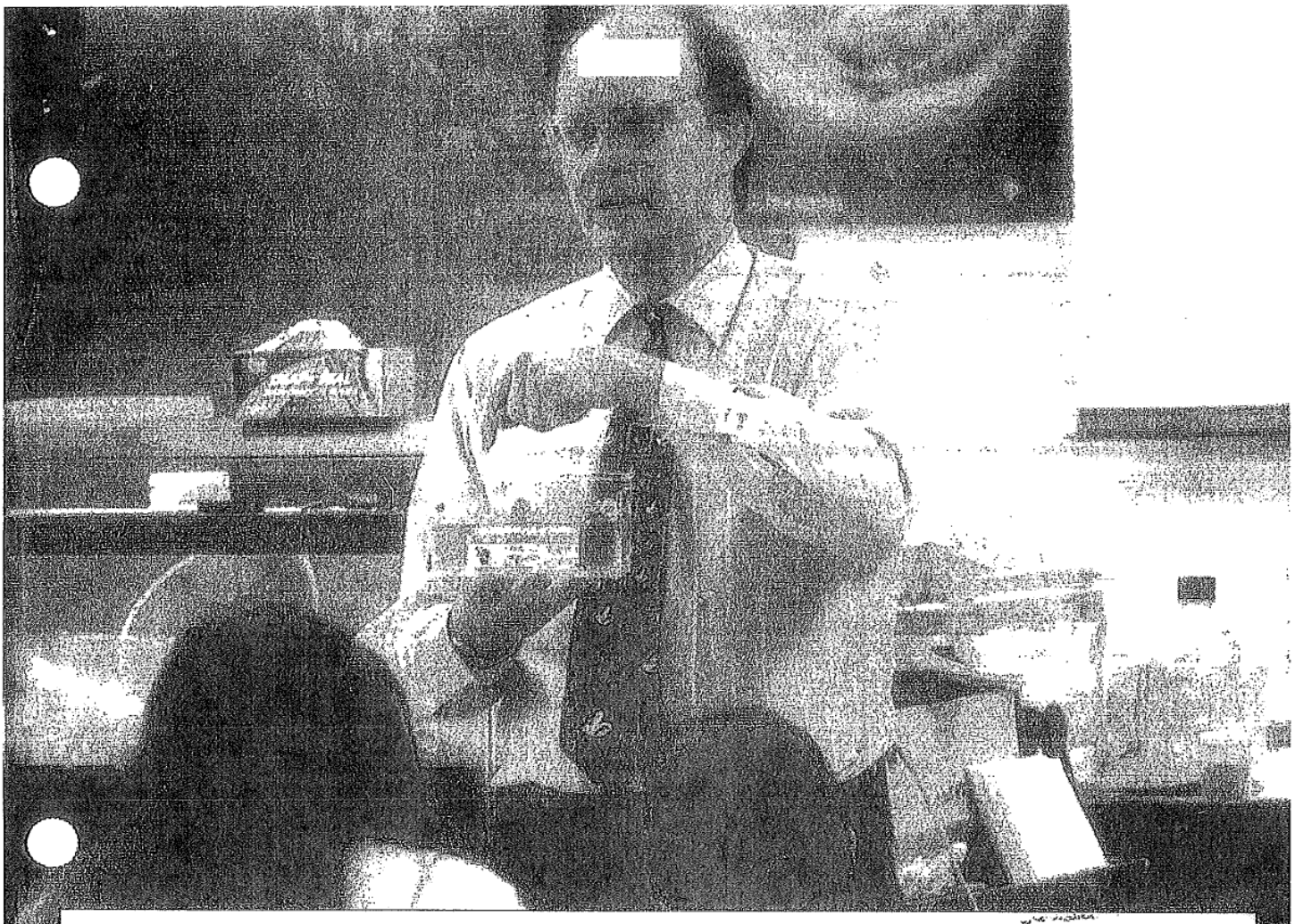
Upon passage of the Excellent Schools Act, North Carolina became a national leader in providing support programs for new teachers. Each new teacher in the state is provided a mentor teacher who is reimbursed $1,000-$1,100 per year for assuming that responsibility. The state provides additional days of employment for new teachers and their mentors to begin working together before the school year begins.

However, the otherwise ground-breaking legislation lacked standards for teacher mentors and requirements that mentor teachers undergo training to prepare them for their new roles.

The Task Force recommends that the State Board and the General Assembly establish minimum requirements for teacher mentors and require state-designed training programs for all mentors. Schools would be required to comply with these requirements by 2004-05.

The State Board of Education should also grant school systems the flexibility to fully reimburse mentors responsible for more than one new teacher and to employ part-time, retired educators to assume mentoring roles.

The General Assembly should not authorize state funding for any teacher mentor who



does not meet its minimal requirements and who has not completed state-designed training by 2004-05.

Projected cost:
- *$150,000 per year starting in 2003-04*

Develop a one-stop shop for teacher recruitment.
To meet the statewide demand for new teachers, the Task Force believes the state must strengthen existing teacher recruiting programs. Toward that end, the Task Force recommends expansion of three recruiting initiatives. First, the newly created Center on Recruitment and Retention housed in the Department of Public Instruction (DPI) needs resources to match those that will be generated by the NC Business Committee on Education to create a new "one-stop" internet-based clearinghouse center for individuals wishing to teach in North Carolina.

As envisioned, the clearinghouse would not only provide a one-stop center for any teacher candidate, whether they are straight out of college, relocating from another state or entering teaching through lateral entry routes. It also would work to streamline existing rules and regulations, create "user-friendly" application procedures, and aggressively market teaching as a career.

Projected cost:
- *$300,000 per year*

Expand the Teaching Fellows Program.
Second, North Carolina needs to expand the number of scholarships awarded through the nationally-recognized North Carolina Teaching Fellows Program by 100 per year, as recommended by Governor Easley in his proposed 2001-02 and 2002-03 budgets, and, at the same time, charge the Teaching Fellows Commission to continue its efforts to attract minority and male candidates. The program has already generated over 2,000 teachers who are working from one end of the state to the other. Moreover, it is generating high quality teachers. For example, in the 2000-01 school year, both the North Carolina Teacher of the Year and the national Walt Disney Teacher of the Year were graduates of the Teaching Fellows Program.

Projected cost:
- *$205,000 per year in 2002-03 through 2005-06 to add program support and 25 additional Teaching Fellows scholarships, increasing the total number of awards to 100 per year in 2005-06*

Ensure continuation of NC TEACH program for mid-career professionals.
Third, North Carolina needs to replace federal dollars that have supported NC TEACH, a recruitment program targeting individuals in the private sector who might be attracted to the teaching profession. Federal support is ending and, without state support, this promising initiative could come to an end.

Projected cost:
- *$850,000 per year beginning in 2002-03 and thereafter to sustain NC TEACH when federal funding ends this year*

Make it easier for retired teachers to return to the classroom without penalty.
Recent legislation has made it possible for retired teachers to return to the classroom six months after retirement and resume full-time teaching while drawing their retirement benefits. The six-month gap in service requirement means that many cannot return to teaching or school building leadership at the beginning of the school year.

The Task Force recommends that the required time between retirement and resuming service be reduced to two months to enable a teacher or principal to retire at the end of a school year and resume teaching, while receiving retirement benefits, at the beginning of the next school year.

Projected cost:
- *No cost to the state*

Create incentives to attract educator teams to hard-to-staff schools.
Of the state's 2,300 schools, roughly 200 have high percentages of young people unable to perform at or above grade level; of those, approximately 100 could be considered critically low-performing. Based on five years of experience with state-provided Assistance Teams, it is clearly possible to turn low-performing schools around and show immediate, and in some cases, significant improvements. However, when Assistance Teams are reassigned to other buildings, many of these schools quickly slide back into low-performing status.

The state should experiment with a package of incentives to teams of educators willing to make a four-year commitment to work in low-performing, hard-to-staff schools. The state would make available, to certain school districts, ten teams of five educators each to assume the leadership in ten buildings with a long-term pattern of low-performance and/or high faculty turnover. Each team would consist of a qualified principal, no fewer than one National Board certified teacher and three other teachers with appropriate certification. School systems opting to participate in the program would turn over the leadership of the school to the teams. The goal of the teams would be to change the school culture and develop leadership to sustain improvements over time.

The state will provide moving expenses for the teams, pay them at a level equal to the highest paying system in the state, and provide a deferred compensation package equivalent to $10,000 per year for principals and $8,000 for teachers on the teams. The deferred compensation would count toward their final average retirement pay; however, no portion of the deferred compensation would be paid to any team member not serving the entire length of the four-year contract. The DPI would be responsible for screening and identifying team members and for tracking student performance in the ten buildings and evaluating the pilot project.

Projected cost:
- *$343,000 for relocation, salary, and deferred compensation in 2003-04*
- *$271,000 salary and deferred compensation in school years 2004-05 through 2007-08*

Pay bonuses to qualified math, science and special education teachers.
The 2001 General Assembly, for the first time, created salary incentives for qualified special education, science, and math teachers working in hard-to-staff, low-performing middle and high schools. Certified math, science, and special education teachers remaining or entering one of these schools qualify for a $1,800 bonus. This is an important step in a state where special education, math, and science areas experience annual shortages. The governor and the General Assembly should maintain this commitment and expand its scope as the fiscal climate allows.

Projected cost:
- *Pilot funding is currently included in the state budget; if incentives prove effective retention tools, they should be expanded.*

Create a salary schedule that reflects the state's teaching needs.
North Carolina has two challenges when it comes to pay and to teaching. First, it must compensate all teachers in such a way that teaching is viewed as a valuable and respected profession. Second, it must throw off the yoke of tradition and factor in supply and demand equations that will, of necessity, lead to paying some teachers more based on what subjects and the kinds of schools in which they teach. In today's economy, for example, the state must pay advanced math and science teachers more to prevent them from leaving for greener pastures. In today's education environment, there must be incentives to attract and keep teachers in low-performing and hard-to-staff schools.

The 2001 General Assembly established a study commission that is charged with examining wage comparability of teachers compared to other occupations. That study could give the state direction for reforming today's salary schedule.

Projected cost:
- *Unknown at this time*

Develop a two-year certification program leading to master's for lateral entry teachers.
Retention rates for lateral entry teachers (i.e., college graduates who enter teaching without formalized training in education) are encouraging, especially in an era where the economy and business mergers are increasing the pool of well-educated professionals willing to consider teaching as a career. To make career switches to teaching even more attractive, the Task Force recommends that the state should work with a statewide consortium of public and private schools of education to design and offer streamlined two-year programs of certification leading to a master's degree. Not only would such programs allow more lateral entry teachers to earn certification more quickly, it would also arm them with a master's degree. This program would have to ensure that master's level work was done in a content area relevant to their area of certification. Teach for America participants are an excellent example of high-quality teachers who would benefit from such an opportunity.

Projected cost:
- *No cost to the state*

Upgrade the quality of staff development through a quality control clearinghouse. Currently, millions of staff development dollars are spent on what studies frequently find to be limited-value teacher training or staff development opportunities. Much of today's training is not subject-specific, lacks follow-up, and varies dramatically in terms of quality.

The Task Force recommends that the State Board of Education establish a program that will grant a "seal of approval" to providers, consultants, or companies offering staff development. Drawing on the growing ranks of National Board certified teachers, the state should have teams of master teachers evaluate commonly used staff development providers and materials and determine which meet high-quality standards. When the quality rating system is in place, school systems wanting to access state funds for staff development would be required to use programs that meet the state's quality standards.

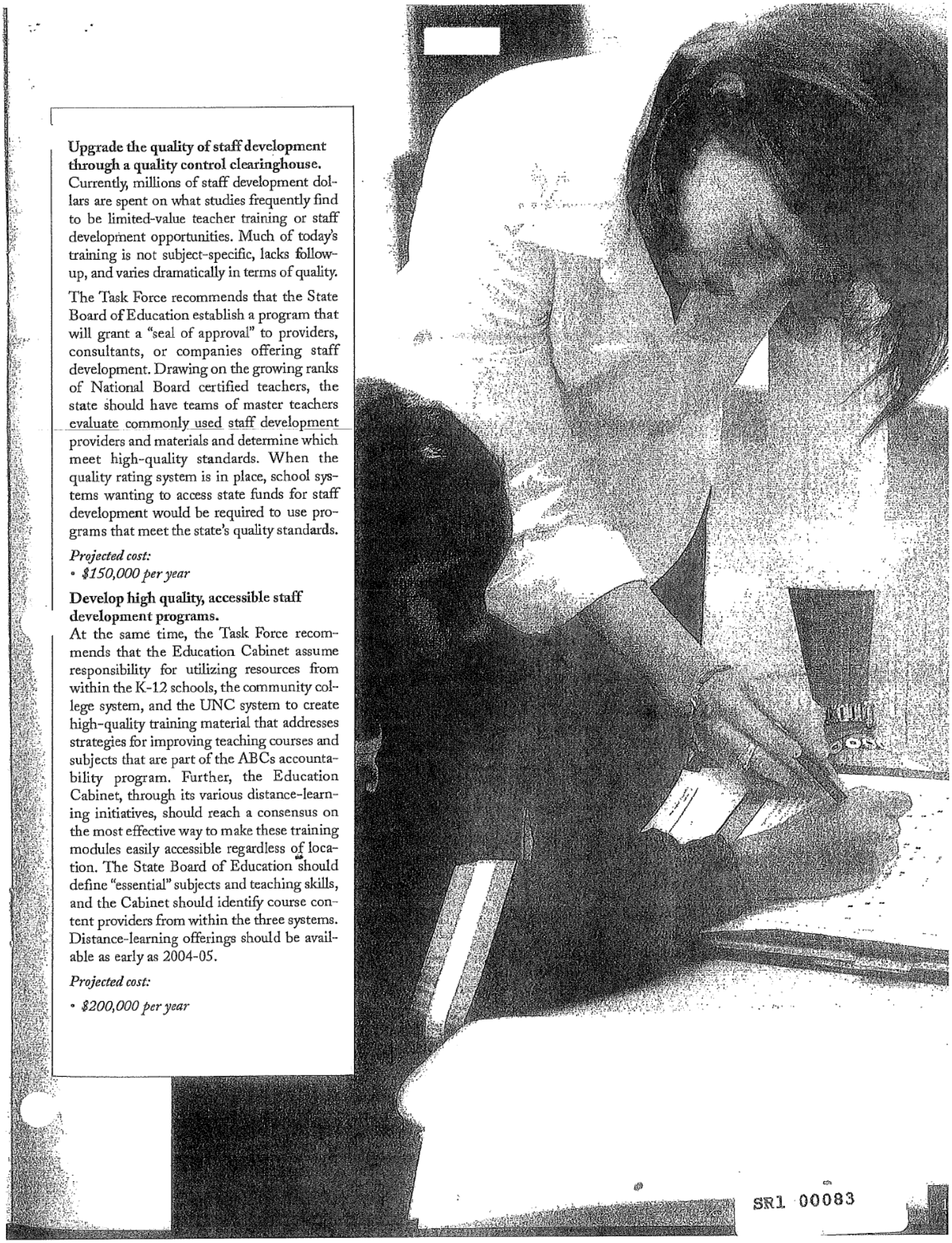
Projected cost:

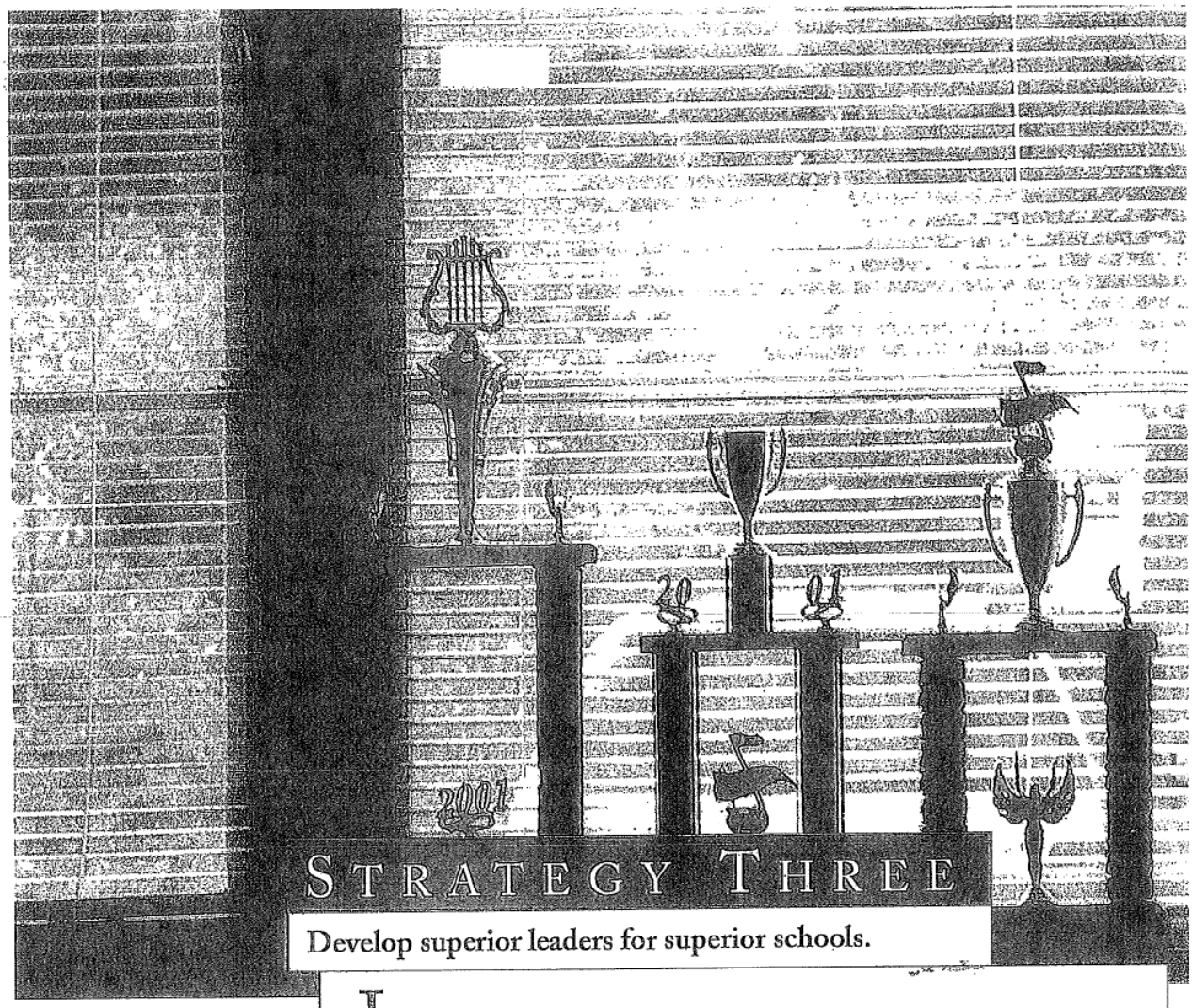
- *$150,000 per year*

Develop high quality, accessible staff development programs. At the same time, the Task Force recommends that the Education Cabinet assume responsibility for utilizing resources from within the K-12 schools, the community college system, and the UNC system to create high-quality training material that addresses strategies for improving teaching courses and subjects that are part of the ABCs accountability program. Further, the Education Cabinet, through its various distance-learning initiatives, should reach a consensus on the most effective way to make these training modules easily accessible regardless of location. The State Board of Education should define "essential" subjects and teaching skills, and the Cabinet should identify course content providers from within the three systems. Distance-learning offerings should be available as early as 2004-05.

Projected cost:

- *$200,000 per year*





STRATEGY THREE

Develop superior leaders for superior schools.

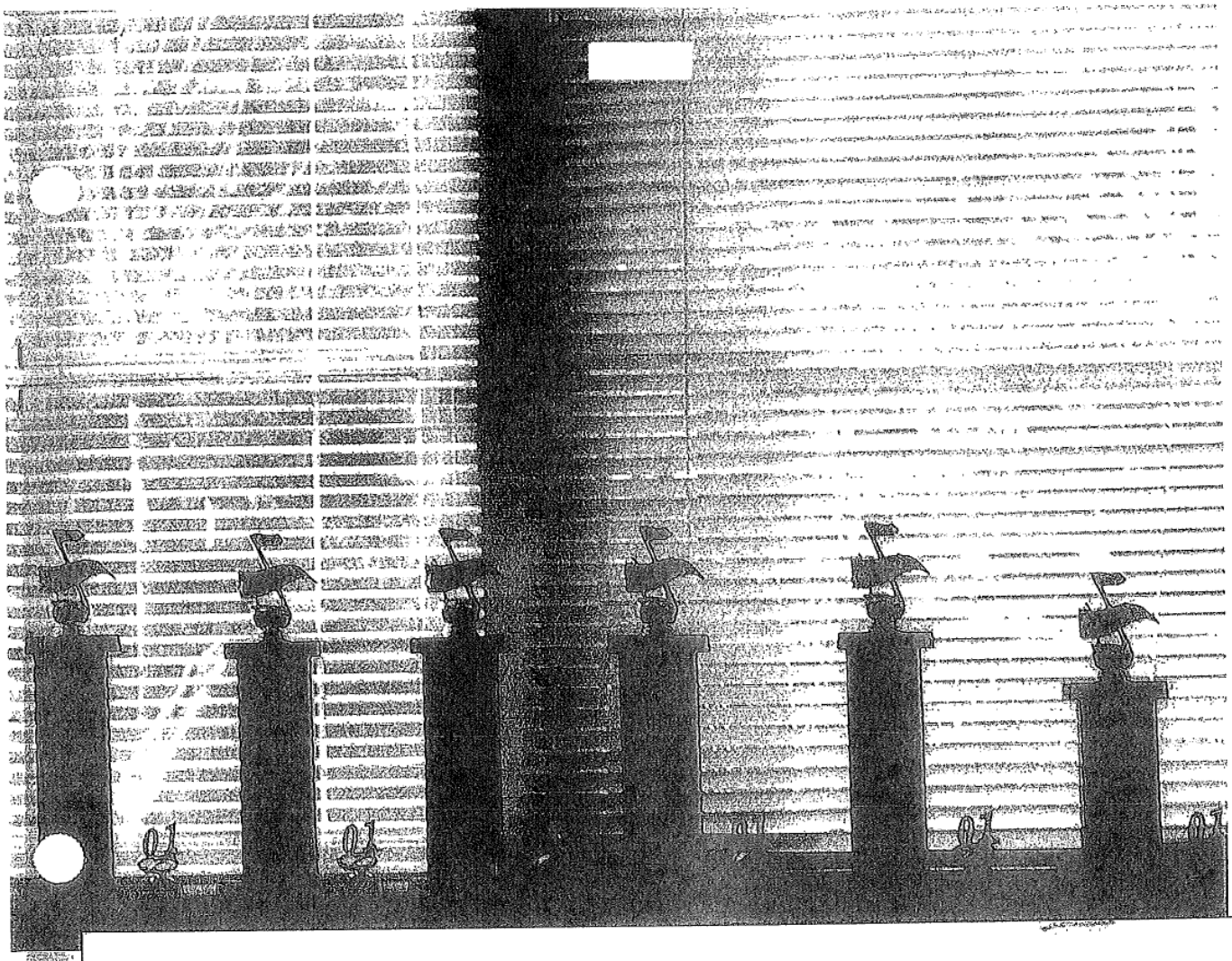
Job demands that are heavier than ever before are contributing to a growing concern about how large a pool of qualified principals is available to staff the schools of North Carolina. Currently, over 76% of North Carolina school principals have 20 or more years of experience, and retirement rates are expected to climb dramatically. As a result of those projections, the Task Force focused heavily on recommendations that will both expand the pool of prospective principals and groom and develop those principals currently on the job.

Develop internal training programs in school systems to groom future principals. There is a fierce competition across the state in the principal recruitment arena. Unfortunately, the competition is one that only a few systems can win. Counties that offer higher pay, more social amenities, advantaged students, good facilities, and ample resources have, and will continue to have, a recruiting edge.

One solution to the question of finding and keeping high-quality school leaders is for school systems to groom the very best from within their schools, to develop an internal pool of high-potential leadership candidates likely to remain within their communities.

The Task Force recommends that the State Board of Education broadly publicize strategies to identify and develop leadership from within the ranks of educators. Such strategies would include adding leadership potential to the annual evaluation of all professional staff, creation of staff development programs for staff with high leadership potential, and inclusion of potential leadership candidates on committees and task forces. The recommended strategies should also include ways to increase the pool of minority candidates for administrative posts.

Projected cost:
- *No cost to the state*



Increase number of Principal Fellows scholarships.
As an incentive for school systems to create programs to identify and build potential leadership, the Task Force recommends an expansion of the number of scholarships awarded through the North Carolina Principal Fellows Program, a program which makes financial awards to prospective principals in exchange for a fixed number of years of educational service.

The Task Force recommends expanding the number of scholarships from 180 to 300 over a period of four years. It further recommends that the program be required to give additional consideration to candidates who have successfully come through local leadership training programs.

The following cost projections envision funding an additional 30 scholarships per year with a modest increase reflecting the additional programming support that will be required as the program grows to a total of 300 recipients per year.

Projected cost:
- *$625,000 in 2002-03*
- *$625,000 in 2003-04*
- *$625,000 in 2004-05*
- *$625,000 in 2005-06*

Make high-quality training more accessible to school administrators.
The Task Force recommends that the state's administrative training institution, the Principals' Executive Program, expand its capacity and offer training for principals in the best management practices from both the private and the public sectors. The state needs to offer local and regional one-day or two-day training programs on a much larger scale than is currently possible, especially for principals who are new to the job.

Projected cost:
- *$250,000 in 2003-04 and thereafter*

Provide research tools and support to school leaders.
More and more data on student performance is available. Yet, many schools and many school systems do not have the means to provide and interpret the data for those who most need research-based solutions – teachers and principals at the school building level.

The Task Force recommends that the State Board of Education create a research task force that would draw together existing educational researchers from within DPI, from the North Carolina Education Research Council, and from public and private schools of education to focus on designing easily used material and software that would make it possible for teachers and school administrators to maximize the potential usefulness of available student performance data.

Projected cost:
- *$150,000 in 2002-03*
- *$75,000 in 2003-04 and thereafter*

Require principal training in teacher retention strategies.
North Carolina needs to send a signal that it values new teachers who could devote their entire careers to working with young people, as well as seasoned teachers who have gained experience and expertise. There is no better way to send this signal than to require that school principals undergo intensive training on ways to retain teachers through creating more supportive school climates. The Task Force recommends that the Principals Executive Program assemble a design team composed of exemplary school principals, respected human resource coordinators, and private sector human resources professionals from companies recognized for "employee friendly" practices to design three-to-five day training sessions for school principals.

Beginning with principals of schools with high teacher turnover rates, the training should be offered at college campuses across the state, with the goal of training all of the state's 2,292 plus school principals at summer sessions held over four years.

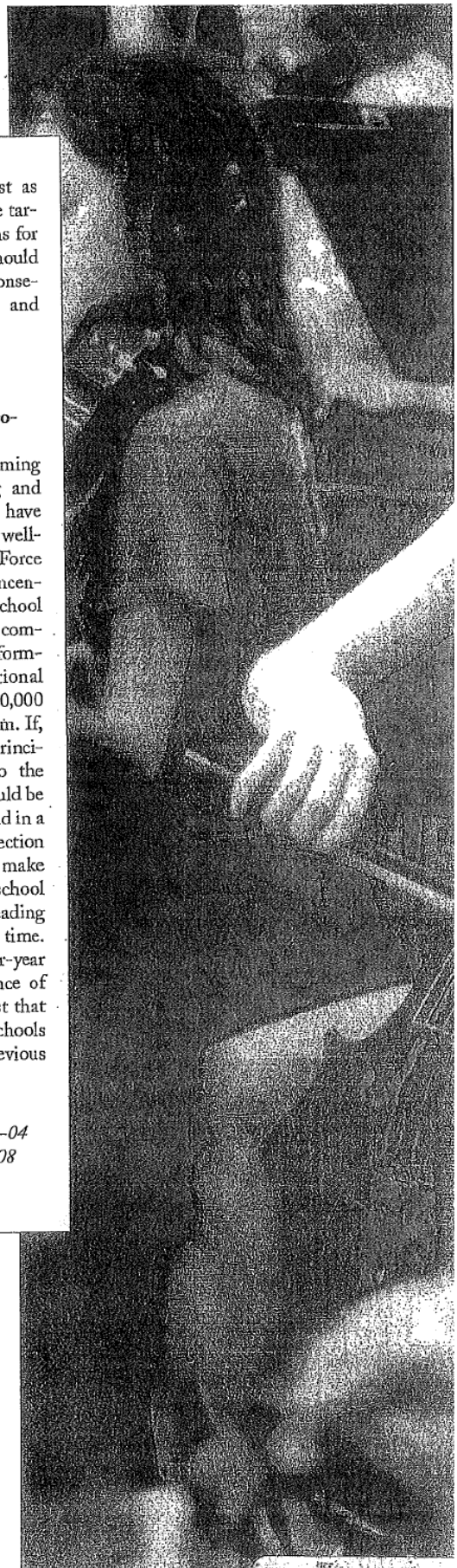
Projected cost:
- *$125,000 in 2002-03 for program design*
- *$114,800 in 2003-04 for training*
- *$114,800 in 2004-05 for training*
- *$114,800 in 2005-06 for training*
- *$114,800 in 2006-07 for training*
- *$50,000 in 2007-08 and thereafter for training new principals and retraining of principals in high turnover buildings*

Establish retention goals and factor retention into principal evaluations.
For improved teacher retention to become a priority across North Carolina, local school systems must join the effort. The most direct way to do that is for local systems to incorporate retention as part of their school system and school building strategies and establish retention improvement targets just as they now establish student performance targets. Where possible, evaluation systems for school principals and superintendents should incorporate a system of rewards and consequences based on teacher retention and development.

Projected cost:
- *No cost to the state*

Attract top-notch principals to hard-to-staff schools with an incentive plan.
Just as hard-to-staff and low-performing schools have difficulties in recruiting and retaining capable teachers, so do they have difficulties in attracting and keeping well-qualified school principals. The Task Force recommends that the state develop an incentive plan that would give up to ten school principals willing to make a four-year commitment to move to and lead low-performing, hard-to-staff schools an additional $10,000 salary supplement and a $10,000 per year deferred compensation program. If, at the completion of four years, the principals had fulfilled their obligation to the schools, the deferred compensation would be added to their retirement credit and paid in a lump sum. The DPI would devise a selection process, identify the principals, and make them available on a voluntary basis to school systems willing to entrust them with leading a building for a four-year period of time. DPI would also, at the end of the four-year period, evaluate the school performance of the buildings in the experiment against that of other similar schools as well as schools receiving teams of educators (see previous item).

Projected cost:
- *$250,000 per year beginning in 2003-04 and continuing each year until 2007-08*



Strategy Four

Reform high schools through options and customization.

When one quarter of North Carolina's students drop out altogether from high school and over 40% fail to successfully complete high school in the traditional four-year time span, it is clear that the state's high schools are not meeting the needs of all of their young people. When those who remain under-perform their peers across the country, there is even more cause for alarm.

To the Task Force, the challenge for North Carolina is much larger than the challenge of constructing more effective drop-out prevention programs. It is the challenge of rethinking the high school experience as it is currently conceived.

As the Task Force committee charged with examining high schools delved into the subject, two things became apparent. First, thousands of the young people who fail to complete traditional high school programs enroll immediately, and often successfully, in community college programs leading to a diploma or a GED certificate. It is not that they do not want to complete their education; rather, they do not want to complete it in the confines of traditional high schools.

Second, unlike high schools in most developed nations, American high schools, for the most part, do not distinguish between academic and occupational high schools. Large, comprehensive high schools attempt to be all things to all students.

The increasing popularity of "theme" schools (i.e., high schools with a unique focus like technology or banking), other nations' records of successfully keeping students enrolled in occupational high schools and the marketplace's increasing demands for more highly skilled workers gave the Task Force the reason to study new schools and look at options better tailored to the diverse needs of high school students.

Over a four-year period, 103,578 high school aged students enrolled in community colleges to take basic skills classes.

Tailor programs to offer students more options.

The state has a handful of high schools that are creating unique programs designed to both engage and motivate students. In Charlotte, the banking community is supporting a finance academy housed within a high school. Several large and small school systems, in counties as diverse as Wake and Granville, house Cisco Networking Academies that give high school students immediate employability on graduation. Pitt County is planning to establish the state's first Health Career academy.

Additionally, several pioneering community colleges, most notably, Guilford Technical Community College, have created innovative programs that enable students to take

much of their course work at community colleges through their "Middle College" program.

The Task Force recommends that the state establish a High School Innovation Fund to foster the creation of "theme" or "occupational" high schools. Such schools will be collaborative efforts between high schools and community colleges and/or local businesses. Between now and 2010, the state should seek to have at least five such schools created within each of the state's seven economic development zones.

Working with the Department of Commerce and officials from the state's seven economic development regions, the DPI should determine which occupational focuses or themes would most bolster regional competitiveness and lead to meaningful employment opportunities for graduates. Planning and start-up implementation grants would be awarded for three years and they would range between $500,000 and $700,000 in the first year; between $250,000 and $350,000 in the second year; and between $125,000 and $175,000 in the final year.

Funding for seven schools would be awarded in the 2003-04 school year and seven additional awards would be granted each year until the number of schools reaches a total of 35, or five per each of the state's economic development regions by school year 2007-08.

During school year 2009-10, the state should conduct an assessment of the value and response to the schools and determine if the grant program should be continued, reshaped, or brought to an end.

Projected cost:
- *$4.2 million in 2003-04*
- *$8.4 million in 2004-05*
- *$12.5 million in 2005-06*
- *$12.5 million in 2006-07*
- *$8.4 million in 2007-08*
- *$4.2 million in 2008-09*

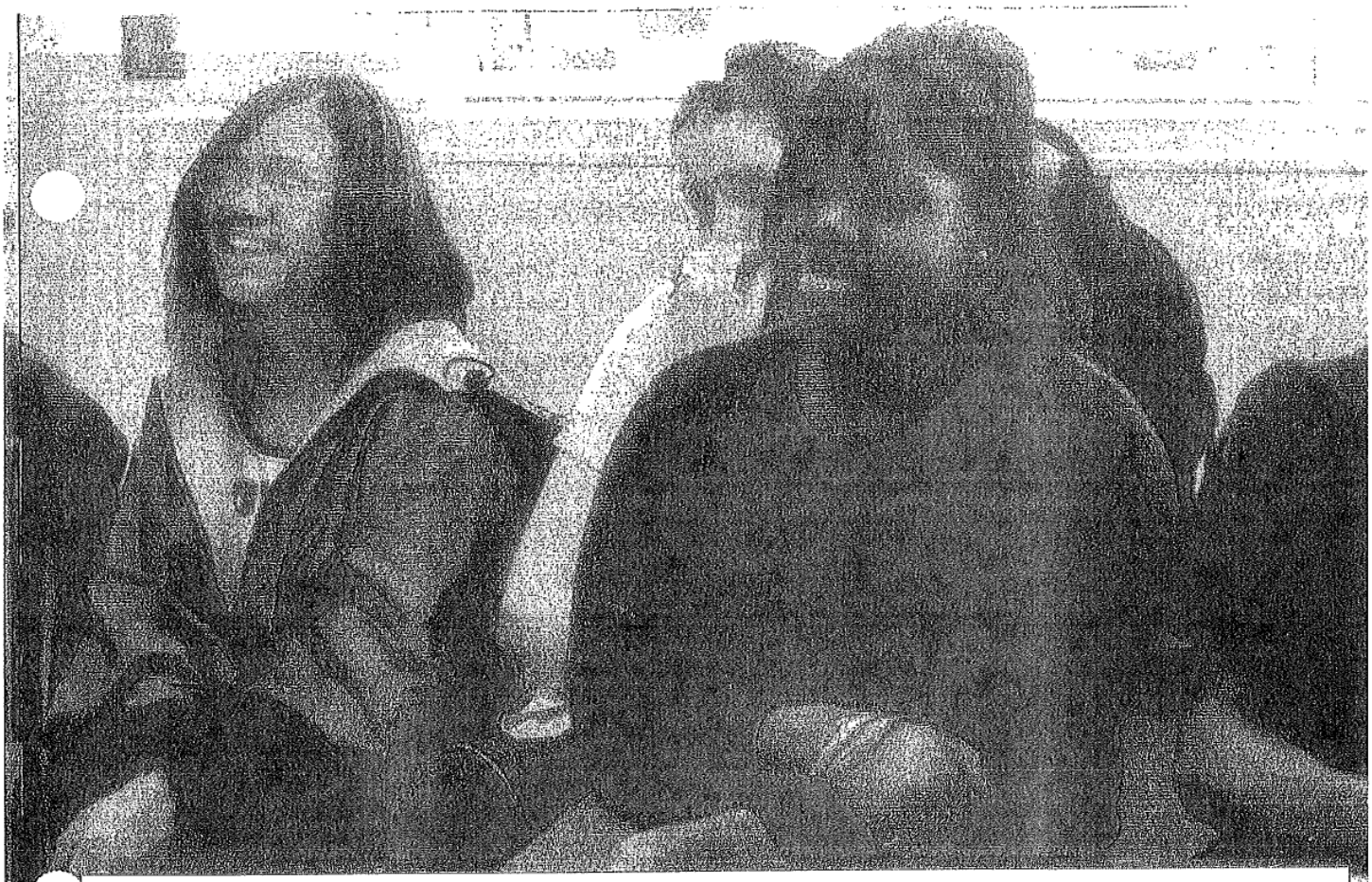
Embrace small schools and schools-within-schools.

Economic considerations have largely dictated the trend toward large, comprehensive high schools. Policymakers concluded it was far less expensive to build, operate, and maintain one large building than it would be to build and maintain two or three smaller facilities.

Largeness, however, has brought unintended consequences. Researchers studying differences between large and small high schools find that in small schools, teacher and student morale is better, attendance rates are higher, discipline problems are fewer, dropout rates are lower, and student performance is higher.

Based on those findings and the large numbers of students leaving today's comprehensive high schools, the Task Force recommends that the High School Innovation Fund (see previous recommendation) also be used to spur the creation of small high school settings, either through creating smaller communities of learning within schools or through collaborative agreements with community colleges to expand programs, such as the Guilford County Middle College Program.

Up to 14 of the grants awarded through the High School Innovation Fund (i.e., up to two in each of the seven economic development regions) will be awarded to high schools attempting to create small learning communities.



Projected cost:
All costs would be covered through the creation of the High School Innovation Fund (see previous recommendation).

Encourage early entry of motivated students into four-year college programs. The Task Force recommends that the State Board of Education work with local school systems and the University of North Carolina college system to provide additional motivation and counseling for young people wanting to accelerate the pace of their education. Additionally, the State Board and the UNC system should encourage four-year colleges to create opportunities for academically talented high school students to get an early start on college course work, either at nearby colleges and universities or through distance learning. Guidance counselors should make 9th graders aware of the potential to complete college-required high school coursework in a three-year period to give motivated young people additional educational options and opportunity to accelerate their learning.

Projected cost:
- *No cost to the state*

Encourage community colleges to create programs for high schoolers. To offer high school students more options, the State Board of Education and the community college system should work together to encourage replication of such promising programs as Guilford County's Middle School Program and to provide policy changes that would serve as incentives to create such programs.

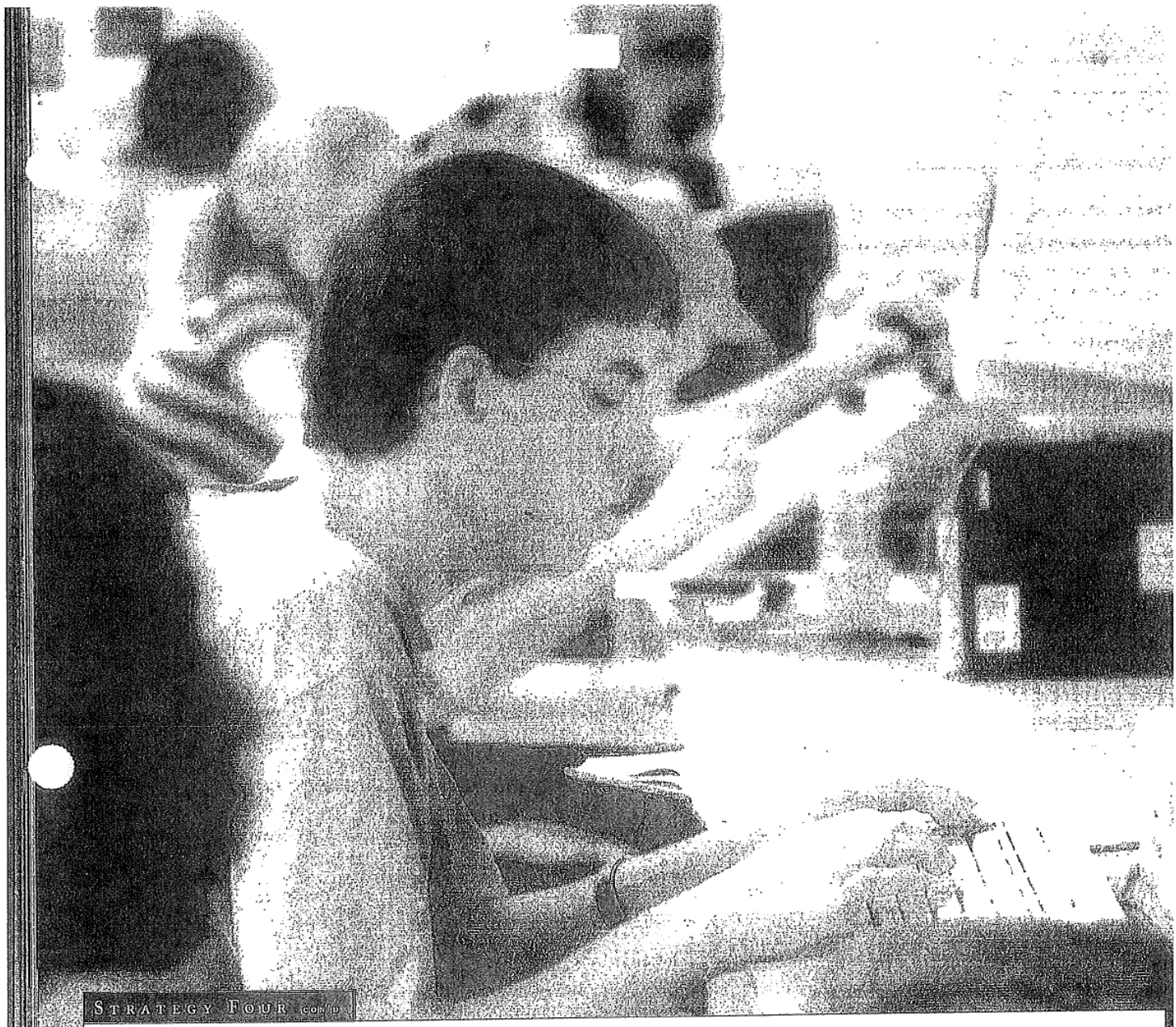
Specifically, the state should provide a financial incentive for community colleges to develop collaborative programs aimed at high school-aged young people. Funding for high school students enrolling in such programs should "follow the child" in the same way funding for charter school students does. That would provide a financial incentive for community colleges to expand the number of collaborative programs across the state.

Further, community colleges should be given the latitude to accept or deny candidates to these programs, as a safeguard to prevent collaborative efforts from becoming "dumping grounds" for students with chronic behavior or learning problems. In return, community colleges would accept the responsibility for tracking and monitoring the progress of high school-aged children enrolling in their programs, and the General Assembly should assess five years worth of performance data in 2008-09 to determine if the results merit continuing financial incentives.

Projected cost:
It is conceivable that the state would incur additional costs if such programs curb current drop-out rates, but it is impossible to project the financial impact, if any, at this time.

Harness distance-learning technology to ensure quality high school course offerings. A quality divide now separates high schools in North Carolina. In large, wealthy counties, schools typically offer students a wide array of courses, including advanced placement and international baccalaureate (IB) programs. In smaller, low-wealth counties, such courses are often not available.

Working with the Education Cabinet, the State Board of Education should establish a distance-learning task force charged with identifying content providers that could bring high-quality coursework to high schools across the state at reasonable prices.



The task force should begin by conducting a cost/benefit study of existing distance-learning providers with the goal of creating a clearinghouse and a resource center that will enable all high schools to broaden their choice offerings through long-distance technology.

Projected cost:
$350,000 per year in 2002-3 and thereafter

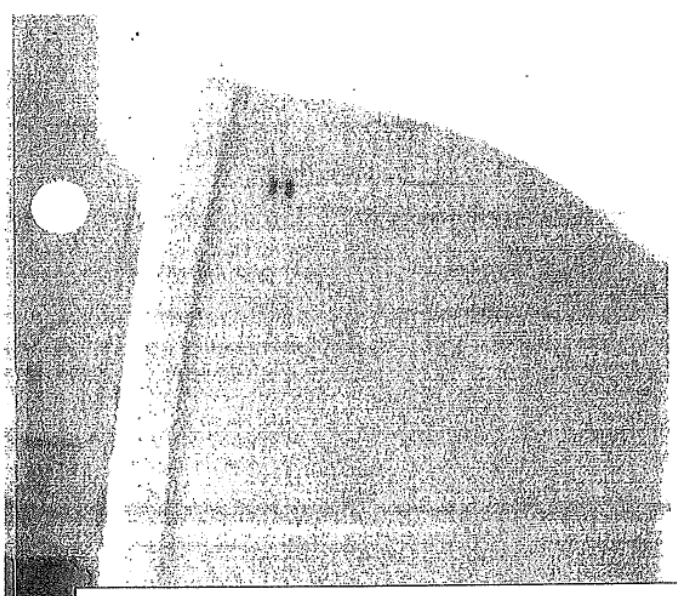
Train guidance counselors to find programs that best suit and motivate students.
A recent study conducted by the State Board of Education's "North Carolina Commission on Raising Achievement and Closing Gaps" found a large disparity between the numbers of minority and non-minority students enrolled in advanced placement offerings or course work that leads to college admission. With proper counseling, this disparity could be lessened.

Quality counseling at the high school level appears to rest on two factors: first, giving young people options that are likely to keep them engaged and motivated through their high school years; second, motivating all young people, regardless of race or background, to aspire to reach as high as possible.

School systems should ensure that high school guidance counselors have access and encouragement to participate in professional development offerings focused on both of those factors. Further, high school principals should analyze student coursework placement and drop-out rates to determine if there are disparities between racial groups that must be addressed.

Projected cost:
- *No cost to the state*

Provide middle and high school students with more academic and personal support.
Research shows that students reach important conclusions about their future, including college as early as 8th grade. At the same time, many students who have the interest and ability to pursue post-secondary oppor-



tunities, lack the personal and academic supports needed to complete high school and move on to community college or four-year colleges and universities.

Programs such as the federal GEAR-UP initiative, now in 22 North Carolina counties, the New Century Scholars program in western North Carolina, and AVID in Chapel Hill, Charlotte, and Asheville have impressive track records of providing academic and personal support and challenge that move students towards college.

The Task Force recommends that the Education Cabinet should develop a plan to provide more personal and academic support programs for targeted middle and high school students, especially for minority students who could become first-generation college students. Building on UNC's Pathways program, the Cabinet should design efforts to inform middle and high school students of important information about college, provide academic and personal support and enrichment, and push post-secondary institutions to take an active role in student support in the middle and high school years.

Projected cost:
- *No cost to the state*

Reassess the high school testing program. In 2004-05 the State Board of Education is slated to begin the administration of a "high school exit examination" that is envisioned as measuring whether high school students have acquired basic skills in such core areas as reading and mathematics. As planned, the exit exam would be administered in the 11th grade, giving students who do not meet the new standards additional opportunities to take the test again. If unsuccessful, however, students will not receive high school diplomas.

The new "No Child Left Behind" legislation enacted in 2002 by Congress injects a new element of complexity into the emerging debate on the exit exam. Beginning as early as 2003, the new federal legislation requires that states administer tests that examine student proficiency in core content areas such as reading, mathematics, and science.

The new federal legislation, however, does not make graduation dependent on achieving a certain level of proficiency. Rather, the federal government would use the data to measure the effectiveness of high school programs.

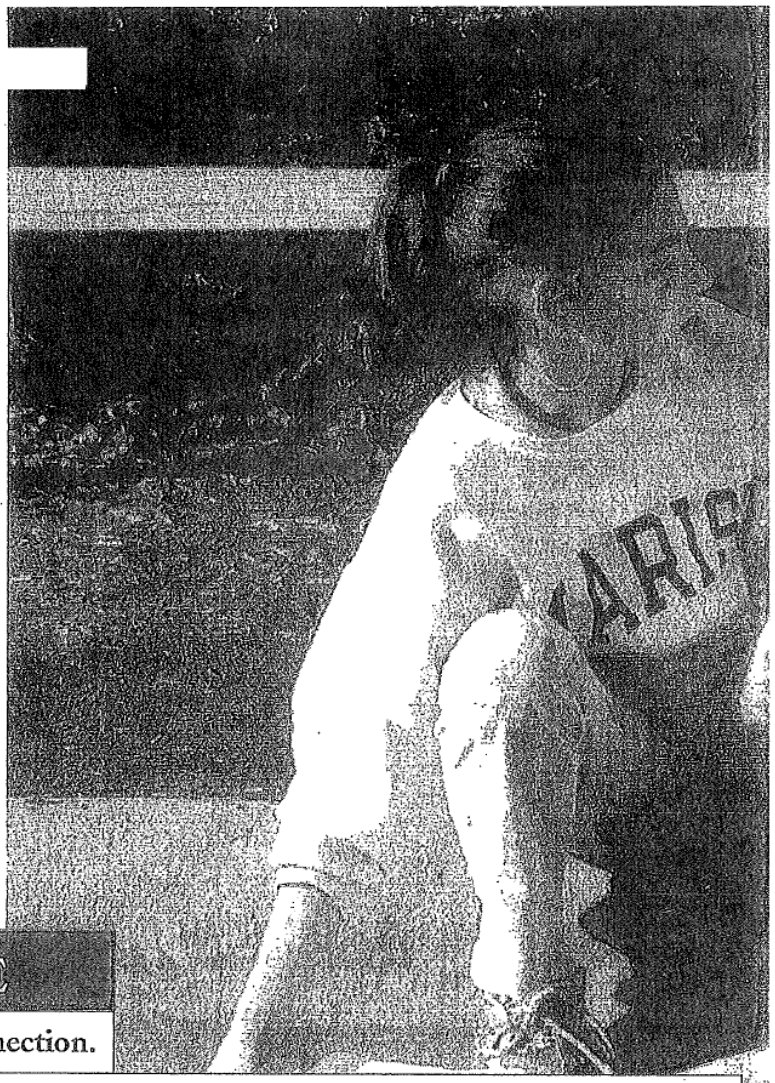
The Task Force believes that lingering questions about the envisioned exit examination coupled with new federal testing demands provide ample reason for the State Board of Education to re-assess the entire high school testing program with an eye toward devising a testing and accountability system that both provides teachers with usable diagnostic information in the 9th grade and eliminates the need for two- and four-year colleges to administer additional tests to determine remediation needs of entering freshman while continuing the drive for higher standards.

Specifically, if the State Board of Education, working with the community college system and the public and private colleges and universities, were to devise one instrument that would replace today's college tests used to determine remediation needs while satisfying the federal government's requirements for measuring proficiency, such a test could be administered in the 9th and 12th grades, giving teachers usable diagnostic information about student deficiencies early in high school and giving colleges usable information about remediation needs post-graduation.

With that, the Task Force recommends that the State Board of Education consider using one of several existing tests that assess occupational preference tests as well as mastery of basic skills and also administer that test in both the 9th and 12th grades, both to give teachers and counselors usable information that would guide student course assignment and to provide usable occupational preference information to students and to employers. One such test, the Armed Forces Vocational Battery, widely used across the nation, is available at no cost through the U.S. Army, which administers, scores, and interprets the test.

At a minimum, the new federal legislation will require the State Board to rethink its high school testing program and to conform it to new federal guidelines. Beyond that the Task Force believes such a reassessment offers the State Board the opportunity to devise a stronger testing program that both continues the drive for higher standards while providing usable diagnostic information in 9th grade, when it is needed, as well as providing usable information to those who will work with high school students upon graduation.

Projected cost:
- *No cost to the state*



STRATEGY FIVE

Strengthen the home-community-school connection.

The needs of children in vulnerable families call out for a comprehensive, coordinated, integrated human and educational service system that can address the wide range of issues for children and their families. Fortunately, a number of state and local agencies and community-based organizations focus solely on families in need. A growing number of communities also have the benefit of involved business leaders who partner with schools and community organizations. Unfortunately, in most communities these organizations work in isolation and are not linked together with schools and social service agencies.

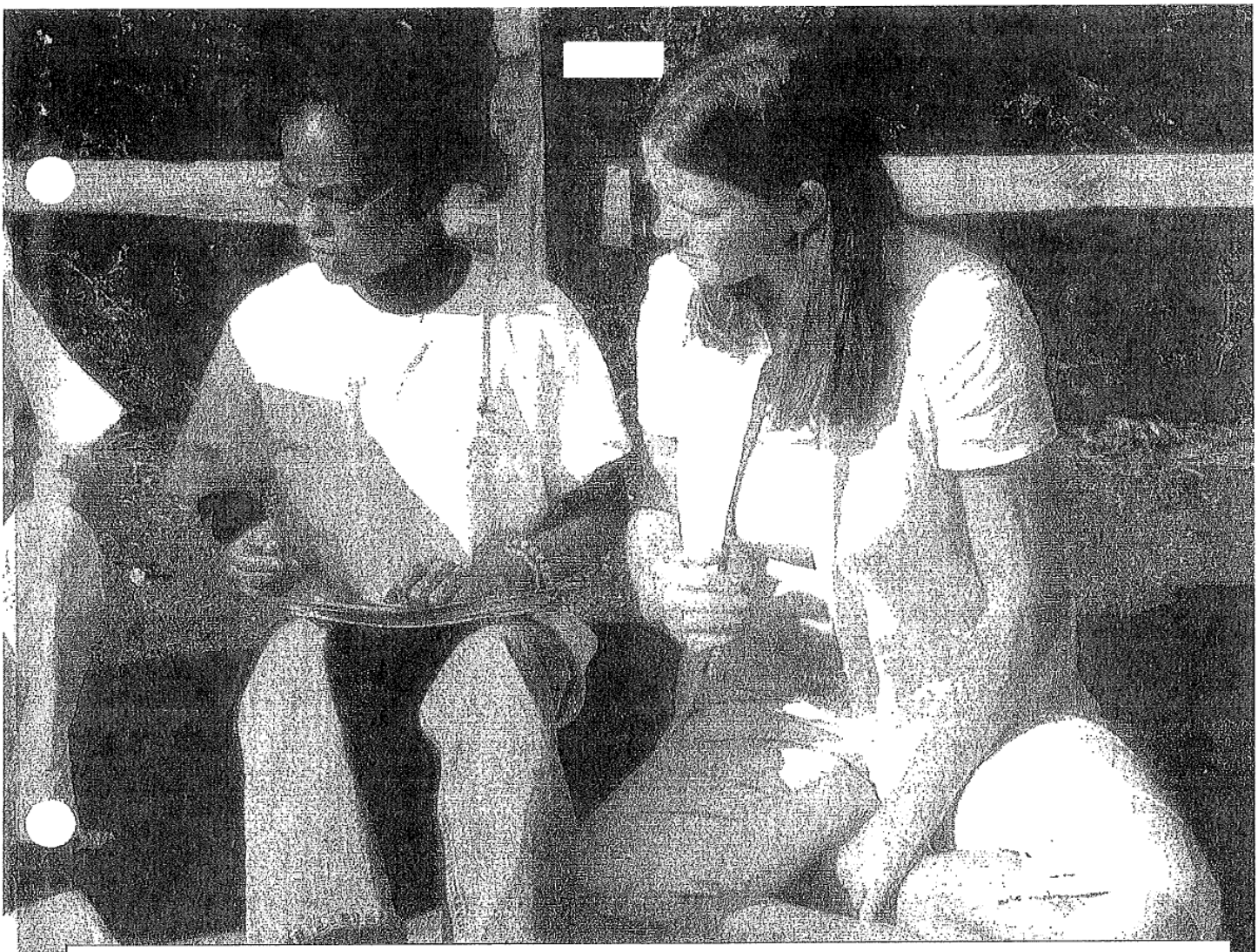
Working together, business leaders, schools, community organizations and city and state agencies have the potential to make a huge impact on the lives of North Carolina's young people. To foster more collaboration:

Create a Cabinet for Children and Youth. The Task Force recommends that the state create a Cabinet for Children and Youth to better integrate services for children. The Cabinet, like the Education Cabinet, should be convened by the Governor's Office, meet on a regular basis and work to align the work of the major state agencies charged with serving families and young people - DPI, the Division of Human and Health Services, the Juvenile Justice Department. It should also include the leaders of state-funded initiatives touching young people - SOS, Smart Start, *More at Four*. Finally it should include representatives from the Business Committee for Education and community-based organizations with statewide reach focused on children and youth.

The Cabinet should build on the work of the State Advisory Cabinet on Juvenile Justice and Delinquency Prevention to develop a coordinated system of care to all in need. The Cabinet should attempt, at the state level, to model collaborative programs aimed at focusing state resources on young people and families in need. It should also seek to strengthen and leverage the work of local Juvenile Crime Prevention Cabinets that exist in each of the state's 100 counties.

Projected cost:
- *$175,000 in 2002-03 and thereafter*

Promote stronger parent involvement. The State Board, in partnership with the PTA, the NC Business Committee on Education, Parents for Public Schools, local education foundations and other groups, should provide a resource base of high-quality materials and programs that could easily be adapted and used in schools, in businesses and in communities. Widespread use of these materials should be promoted for on-site parent training at businesses and for teacher



training programs in schools of education. Further, local PTA's should establish parental mentoring programs through which first-time parents could be teamed with more experienced parents and receive support on how to be a learning partner.

Projected cost:
- *$175,000 in 2003-04 and thereafter*

Develop a data system to support agency collaboration.
North Carolina's children, educators in public schools, and human service providers would benefit from a comprehensive, integrated data system with proper safeguards for confidentiality to inform decisionmaking. Currently, each state agency keeps separate, and often multiple, databases with important, but disconnected, data on children and families. A more coordinated system would enable agencies to better collaborate to devise and monitor comprehensive solutions for the needs of children and their families. This will also help policymakers determine where services need to be placed and where additional resources are needed.

Projected cost:
- *Existing state funds should be adequate to fund this initiative.*

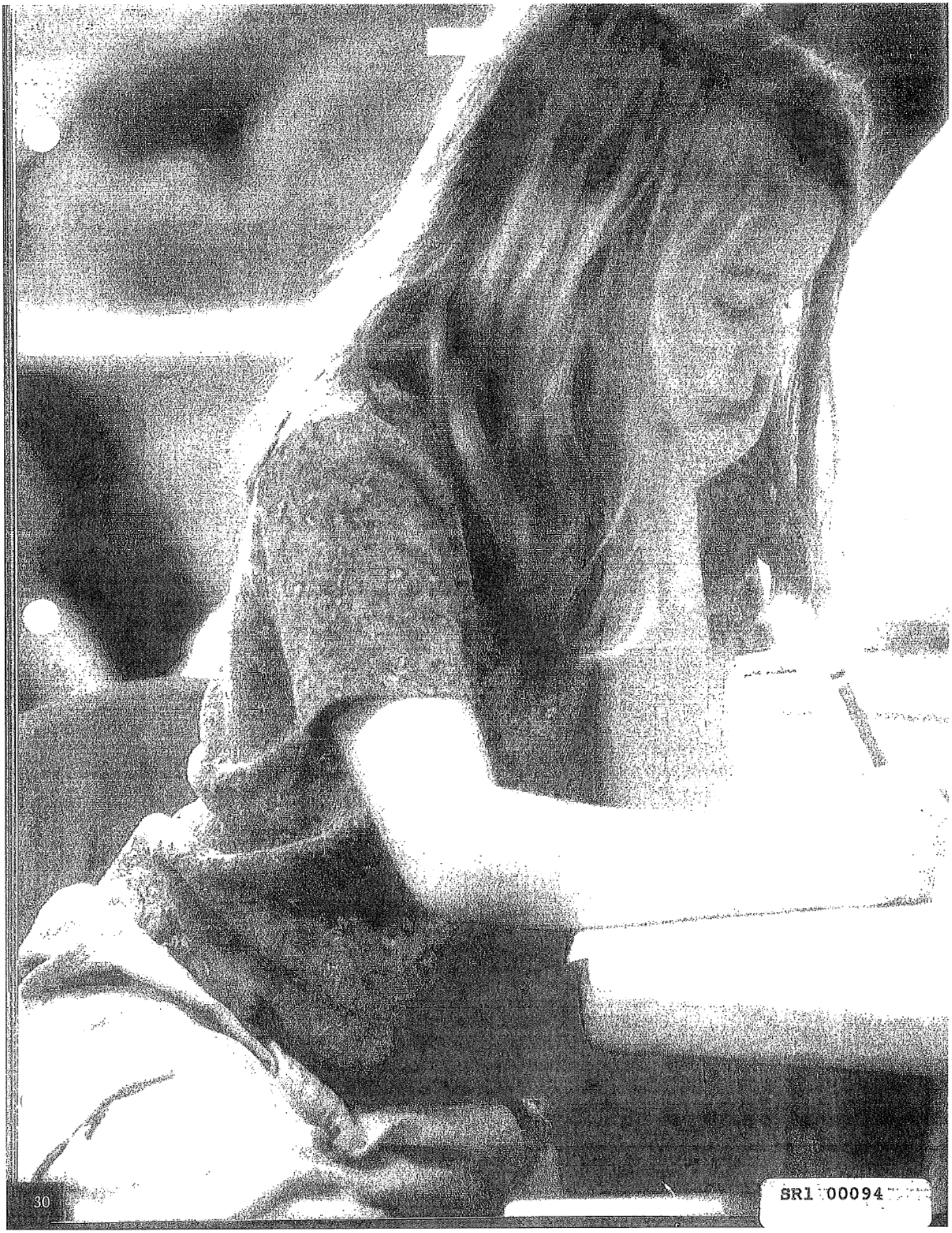
Strengthen linkages between education, business partners and foundations.
North Carolina schools are the beneficiaries of school/business partnerships in large and small communities across the state. They are also the beneficiaries of private foundations that have made education a funding priority.

The Task Force recommends that the State Board of Education more formally develop linkages between business and foundation partners. The Task Force recommends that the State Board sponsor annual briefings of business and foundation partners and that it maintain a regular flow of information to its external partners.

Projected cost:
- *No cost to the state*

Create a Family/Community Outreach Coordinator
To better connect schools to families and community resources needed to support the needs of at-risk students, the Task Force recommends placing a Family/Community Outreach Coordinator in the schools with the highest number of at-risk students. The coordinators would strengthen parent and community engagement with the schools and help connect children and families to needed human services. The Task Force suggests beginning this effort with schools that have 85% or higher of their children on free and reduced-price lunch.

Project cost:
- *$4.4 million*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STRATEGY SIX

Invest more, demand more: building greater capacity and accountability.

In North Carolina, and in over half of the states across the country, battles continue over what a "sound and basic" education is or what an "equal educational opportunity" should be. Whatever the outcome of these cases, the Task Force believes that several school funding issues are key to guaranteeing the creation of a superior and a globally competitive education system.

Implement a system of "earned flexibility" based on student performance.
The Task Force believes that the state should apply greater restrictions to schools and districts not meeting standards and greater flexibility to those schools and districts performing well above standards. It also believes that with additional resources, schools should have to assume greater accountability for how funds are spent.

The Task Force proposes that the state move to a system of "earned flexibility" that would require low-performing schools to conform to stricter accountability guidelines governing their expenditures. With discretionary dollars, schools would have a "menu" of options from which to choose – options backed by research to contribute to school improvement. Likewise, the state would award greater flexibility with state dollars to districts making consistently high gains in student performance.

Generally, the Task Force's concept for "earned flexibility" is to divide all of the state's schools into one of three categories – those not making marked improvement, those showing average gains, and those showing marked improvement. Schools that are in the low or no improvement category would be required to spend new state dollars on items specified by the state – extended day programs, summer schools, or lower class size, for example. Schools making average or expected gains would be given a larger menu of expenditure choices from which they could choose. High performing schools could spend new dollars as they saw fit.

For policymakers and for the public, this system of "earned flexibility" would provide a guarantee that new monies would be well spent in ways likely to improve schools and that taxpayers would be assured greater accountability for greater investments in school improvement.

Projected cost:
- *No additional costs*

Make eliminating gaps a priority by revising the ABCs performance bonus structure.
The Task Force recommends that the State Board of Education expand the current five system-pilot program and revise the current ABCs method of rating schools based on student performance to include a component that provides rewards and consequences to schools based on their ability to narrow achievement gaps between low and high income students and between minority and non-minority students. Eliminating the gap targets or disaggregated student performance measures should become a formal part of the formula through which ABCs performance bonuses are awarded to teachers.

Proposed implementation:
- *School year 2003-04*

Projected Cost:
- *No state funding required*

Make more instructional time available to meet remediation and enrichment needs.
Far too often, at-risk youngsters enter school with far fewer resources than other children – less language skill, less exposure to the world, less reading material at home and parents with less educational background to help them at home. Research finds, not surprisingly, that these students can significantly benefit from additional educational time.

Time, or the lack of it, is a problem for more advantaged young people as well. Those students also suffer from the shortness of the American school calendar. Unlike their counterparts in Germany or Japan or a plethora of other developed countries, they do not have the luxury of a long school year, time to work in groups, or days spent on hands-on experimentation.

The Task Force recommends that the state phase-in additional instructional time to meet a variety of needs. The state should establish flexible funding to allow schools the latitude to meet the unique needs of their students. For example, in some schools that will mean adding before- and after-school programs for remediation. In other schools it will mean expanded summer or Saturday programs for enrichment. In still others it might mean a blend of both approaches. In some schools the flexible funds could be focused on elementary years to give students

a stronger grounding in basics; in others the funds could be used to accelerate learning in the middle and high school years.

The state should phase in the equivalent of an additional month of employment for 5% of the teachers in the state over a four-year period of time, or until 20% of the teachers are being paid for extra hours of teaching, regardless of whether those hours are before- or after-school, on Saturday, or in the summer.

Projected cost::
- *$9 million in 2003-04*
- *$18 million in 2004-05*
- *$27 million in 2005-06*
- *$36 million in 2006-07*

Augment support of special education.
Federal mandates on providing full educational opportunities for all children, including those with special educational needs, has been one of the largest points of contention in school funding for decades. The federal government took a gigantic step in mandating special services for all children, including those with handicaps and disabilities. The federal government, however, has not provided the necessary dollars to meet those mandates.

North Carolina has a large population of children with special needs – ranging from those who are mildly attention deficit to those requiring full-time nursing care. Neither federal funding nor state aid adequately addresses the needs of those children.

The Task Force recommends that the state establish as a goal increasing today's formula for funding special education to 2.3 times the funding level.

Congress is about to take up what may be the most significant debate about special education funding since it was enacted in 1975. It is highly probable that federal support will increase dramatically. The Task Force recommends that state action be deferred until the federal government acts, but in the meantime, the Task Force feels that it is imperative that state policymakers realize that the gap between current funding levels and needs is a large one and, if the federal government response is insufficient, the state will need to take action.

Projected cost:
- *No costs at this time*

Create a new, single funding stream targeted to at-risk students.
The educational needs of children differ dramatically and it takes far more resources to educate at-risk children than it does to educate other children. Today's school funding largely ignores that point.

The Task Force recommends revising school funding policies in North Carolina to provide the state's most vulnerable young people additional resources – whether those young people live in the center of Charlotte or in Halifax County.

The Task Force suggests creating a single, new funding stream focused on the needs of at-risk students. The new stream would be created by collapsing the current "At-Risk Students Services" and "Improving Student Accountability" funding streams into a single funding stream and doubling the current amount of funding. Dollars would be sent to school districts based on their share of students in poverty and students performing below grade level.

Two-thirds of the money would be allotted based upon the count of students in poverty and one-third based upon students performing below grade level. The Task Force recommends maintaining the current base funding for school resource officers out of this new fund. Simply put, a weighted formula provides additional funds to students who most need additional resources.

This funding proposal would be an integral part of the "earned flexibility" recommendation. Schools could use the additional resources to provide additional time, whether after school or in the summer; or to hire additional teachers to lower class size or provide specialized instruction.

Projected costs:
- *$62.4 million in 2003-04*
- *$62.4 million in 2004-05*
- *$62.4 million in 2005-06*
- *$62.4 million in 2006-07*

Prepare to put another school facility bond on the ballot.
A funding gap of major proportions is developing due to school construction demands. Recent projections estimate that schools face an unfunded backlog of nearly $6 billion worth of renovation and new construction needs.

Even with the boost provided by the $1.8 billion school facilities bond in 1996, local communities are faced with staggering construction costs, largely due to the swelling student population in North Carolina – 15,000-20,000 new students per year. More pressure on building needs will be felt due to new programs such as *More at Four* and class size reduction initiatives that will exacerbate the facilities question, especially in fast-growing counties.

The Task Force recommends that planning begin for passage of a new school construction bond initiative, to be on the ballot in either 2004 or 2006. Armed with the knowledge that a bond would be on the ballot at a certain date, school officials could better plan for long-term construction needs.

In the meantime, the facility backlog is growing. The Task Force calls for an infusion of $100 million dollars into the ADM Construction Fund which currently provides funding for K-12 school construction and renovation needs.

Projected cost:
- *$15 million annually 2003-04 through 2008-09*
- *$10 million in 2009-10*

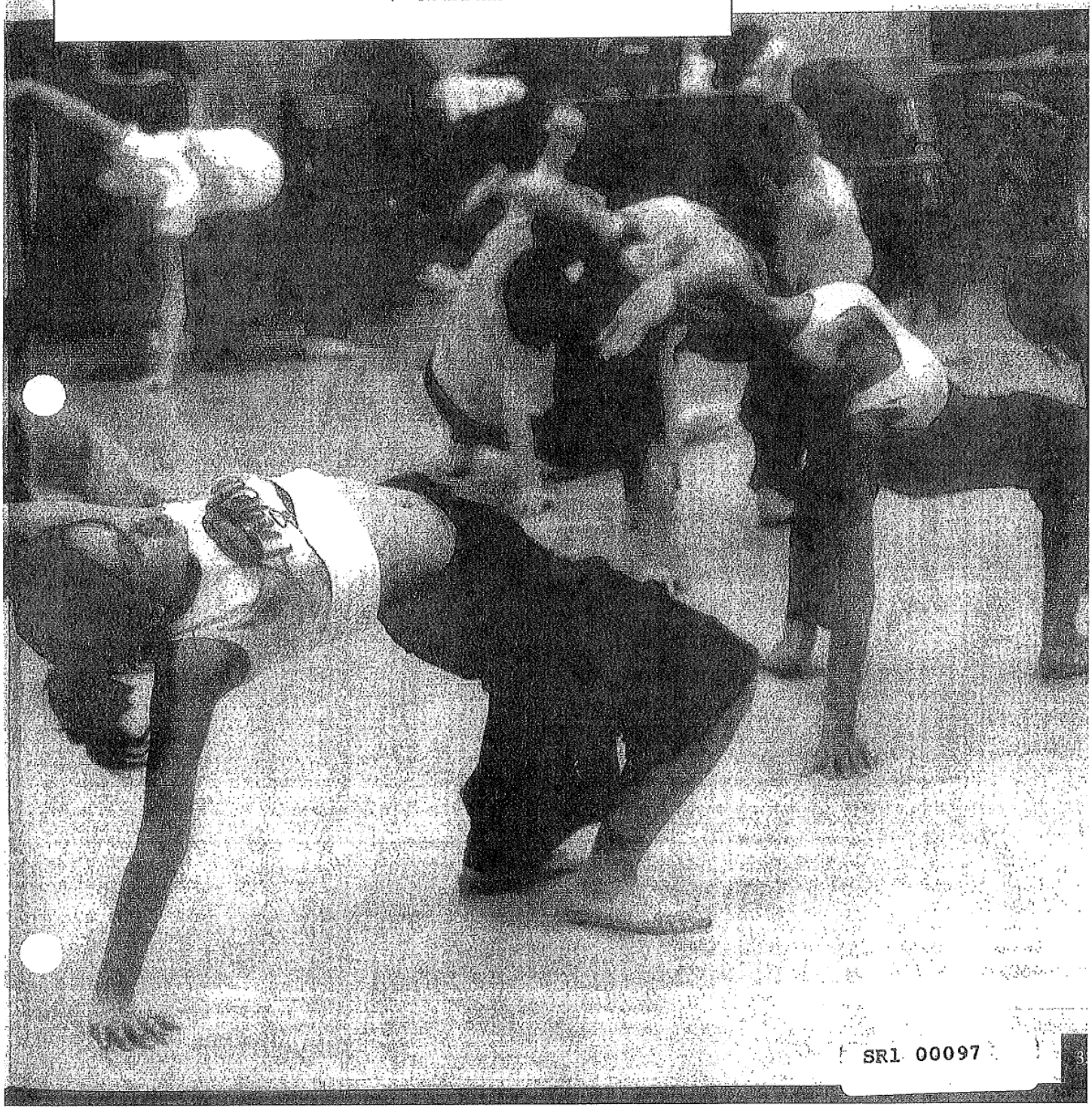
Provide greater flexibility with existing personnel dollars.
In the short term, especially given the current recession economy, schools are under great stress to do more with existing dollars. Recognizing that over 90% of school funding is dedicated to personnel costs, the Task Force recommends that the state grant school systems more flexibility in redirecting those dollars to priority needs.

For example, the current funding formula provides approximately one full time teacher assistant for each K-3 classroom. School officials can only re-direct those teaching

assistant dollars when assistants opt to retire or leave. Some school districts, Burke County being a notable example, have received waivers allowing them to convert teaching assistant position dollars into dramatic class size reductions and have shown significant learning gains.

The Task Force recommends the state allow greater flexibility with these funds. It suggests funding a teacher assistant position for every three K-3 teachers and allowing the balance of funding to be used for other school improvement priorities.

Projected cost:
- *No new costs*



Initiatives Time Table

It is one thing to frame ambitious recommendations. It is all together another thing to translate recommendations into reality.

The recommendations in this report cannot be implemented in one or even two years. They can be, however, systematically phased-in over a multi-year period of time – between 2002 and 2010.

The impact of spreading the recommendations over that period of time is to dramatically lessen the annual impact from new expenditures. It also enables schools more time to prepare for, and absorb, the impact of changes.

It should be noted that 16 recommendations in this report do not call for new expenditures of funds. The Task Force believes that those recommendations should be acted on immediately.

Ten of the new recommendations call for expenditures of $400,000 or less. The Task Force believes that those recommendations should also be addressed as quickly as possible.

The recommendations for *More at Four*, class size reductions, extended employment for some teachers, additional school construction funds, and weighted funding for at-risk young people, represent major investments. The Task Force has designed a phase-in plan that would spread those investments between now and 2010.

What follows is a timeline that the Task Force offers to the governor, to the members of the General Assembly, and to the State Board of Education - the policymakers who can transform North Carolina schools for the future.

No or low-cost initiatives

2002: Establish a Cabinet for Children and Youth and seek modest funding to support the work of the Council. see p. 28

2002: Provide school systems greater flexibility in the area of teacher assistant positions by allowing full flexibility with teacher assistant positions. see p. 32-33

2002: Enable retired teachers to resume full-time teaching with no loss of retirement benefits beginning 60 days after their retirement date. see p. 18

2003: Approve placing a school construction bond issue on the 2004 ballot. see p. 32

2002: Direct the Education Cabinet to initiate a campaign to disseminate models of effective collaborative programs through which public schools and community colleges are providing early entry and access to community colleges and encourage replication of similar programs across the state. see p. 25

2002: Direct the Education Cabinet to establish a distance-learning task force and use the resources of all three systems to dramatically increase distance course offerings to high schools across the state. The task force should determine what start-up financial support, if any, is required and work together in the 2003 Session of the General Assembly to gain support for the initiative. see p. 25-26

2002: Revise and strengthen the ABCs accountability plan by making two changes:

- Include an "eliminate the gap" measure in the portion of the ABCs program that establishes goals determining cash awards for high performance. see p. 31
- Reassess the high school testing program and ensure that the high school exit exam provides diagnostic information for teachers and usable entrance information for colleges and employers. see p. 27

2002: Establish quality standards for mentor teachers by establishing the following policies:

- Re-establish a required training program for teacher mentors. see p. 16-17
- Set minimum standards for teachers receiving state-paid compensation for teacher mentoring. see p. 16-17
- Give school systems the flexibility to hire retired educators who meet new state standards as teacher mentors. see p. 16-17
- Reimburse mentor teachers $1,000 per teacher mentored. see p. 16-17
- Beginning in school year 2004-05, withhold teacher mentor compensation to school systems employing mentors who do not meet minimal standards and/or who have not undergone state-required training. see p. 16-17

2002: Establish a system of "earned flexibility" that will grant greater or lesser financial flexibility to school systems, based on their ability to show measurable student performance gains over time. This policy should go into effect in the 2003-04 school year. see p. 31

2002: Launch an initiative aimed at training and retraining teachers at all grade levels on more effective strategies for teaching reading. This initiative will require modest financial support in 2002-03 for developing training packages and it will require additional General Assembly support in the following years for delivery of the training. see p. 15

2002: Initiate regional briefings of potential partners, especially those from corporations and private foundations, in an effort to keep them abreast of state priorities and in an effort to align partnerships to the goals of higher student performance. see p. 29

2002: Direct the State Board to actively promote or, where appropriate, require local school systems to take the following actions:

- Create "grow your own" programs aimed at identifying teachers with leadership potential to undergo formal developmental programs created within school systems. see p. 20
- Include teacher retention data as a formal part of the evaluation process for assistant principals, principals, personnel directors, and school superintendents. see p. 22
- Offer locally provided training to all middle school counselors on working with all students to raise their aspiration levels and to register for courses that will give them the widest range of educational options upon completion of high school. see p. 26
- Include a broad range of quality indicators in the building-level report cards that state law now requires to be given to the public on an annual basis; such indicators should include, but not be limited to, data on performance gaps, qualifications of teachers, teacher and administrator turnover data, suspension rates, incidents of student violence, and the clearest possible explanation of student performance overall. see p. 13

Initiatives requiring legislative action/funding

The recommendations listed in the chart on the following page require both the approval of the General Assembly and either a new appropriation or a reallocation of money. The chart is offered as an example of how the initiatives could be phased in enabling the state to spread the cost of new initiatives over the years between now and 2010. Such a phase-in approach will enable the state to have an educational infrastructure in place by 2010 – the year in which the state aspires to be a national educational leader.

It should be noted that a phase-in plan reflects, at most, an average of 1.52% per year over today's level of educational spending. Because of the budget shortfall confronting the state, the first year of the sample phase-in schedule is the smallest.

Initiatives Phase-in Plan

Making North Carolina The Nation's Education Leader by 2010

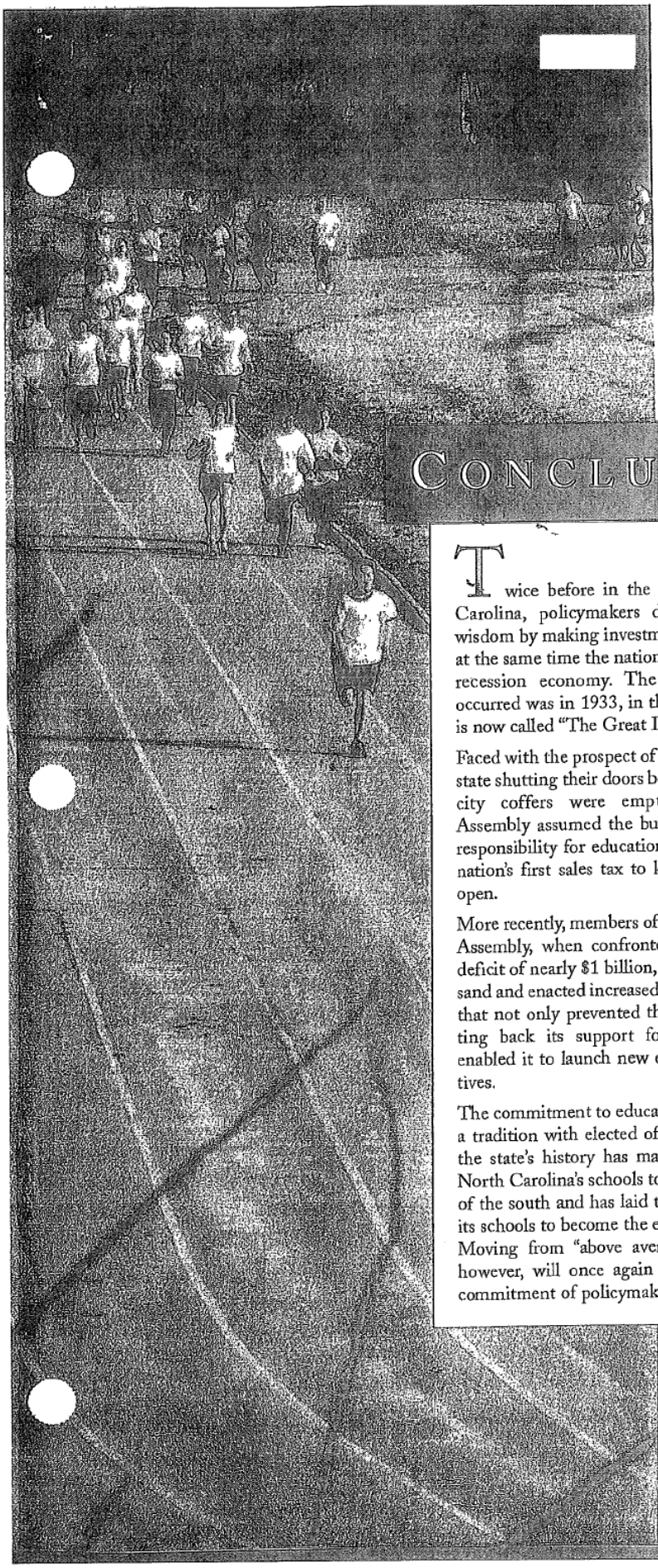
The proposals in this report amount to a total of $720,792,738. These programs would either be offset by budget reductions or call for an average increase in spending of no more than 1.52% per year.

	Year 1 2002-03	Year 2 2003-04	Year 3 2004-05	Year 4 2005-06	Year 5 2006-07	Year 6 2007-08	Year 7 2008-09	Year 8 2009-10
The Easley Agenda								
Expand *"More at Four"*	$28,100,000 R	$62,146,811 R	$50,696,975 R	$56,157,552 R				
Reduce class size gr.1-3 (1:15 in needy schools)	$26,200,000 R	$25,400,000 R	$49,100,000 R					
Strategy 1: Intensify reading focus								
Strategy 2: Ensure High Quality Teacher Corps								
Require and provide teacher mentor training		$150,000 R						
Create a "one-stop" teacher recruitment center	$300,000 R							
Expand number of Teaching Fellows awards	$205,000 R	$205,000 R	$205,000 R	$205,000 R				
Fund NC TEACH when federal funds end	$850,000 R							
Attract educator teams to low-performing schools		$343,000 NR	$271,200 NR	$271,200 NR	$271,200 NR			
Quality clearinghouse for staff development	$350,000 R							
Strategy 3: Develop Superior Leaders								
Increase number of Principal Fellows scholarships	$625,000 R	$625,000 R	$625,000 R	$625,000 R				
Increase principals training programs		$250,000 R						
Research tools and support	$150,000 NR	$75,000 R						
Principals' training in retention	$125,000 NR	$114,800 R				($64,800)*		
Attract principals to low-performing schools		$250,000 R						
Strategy 4: Reform High School Experience								
Spur creation of smaller and more focused high schools		$4,200,000 NR	$8,400,000 NR	$12,600,000 NR		($4,200,000)**	($4,200,000)	
Expand high school offerings through distance learning	$350,000 R							
Strategy 5: Strengthen School/Community Ties								
Create a State Cabinet for Children and Youth	$175,000 R							
Promote stronger parental involvement		$4,575,000 R						
Strategy 6: Invest More, Demand More								
Create more time for instruction		$9,000,000 R	$9,000,000 R	$9,000,000 R	$9,000,000 R			
Create a weighted funding formula for at-risk youth		$62,400,000 R	$62,400,000 R	$62,400,000 R	$62,400,000 R			
Increase school construction fund		$15,000,000 R	$15,000,000 R	$15,000,000 R	$15,000,000 R	$15,000,000 R	$15,000,000 R	$10,000,000 R
ANNUAL TOTAL	$57,430,000	$184,734,611	$195,698,175	$156,258,752	$86,671,200	$15,000,000	$15,000,000	$10,000,000

* represents a reduction in funding to reflect the completion of the initial training. The $50,000 remaining in recurring funds is for principals in low-performing schools and others who were not part of the initial training.

** represents a decrease of $4.2 million in funding in years 2007-08 and 2008-09.

NR = Nonrecurring (one-time cost)
R = Recurring



Conclusion

Twice before in the history of North Carolina, policymakers defied traditional wisdom by making investments in education at the same time the nation was gripped by a recession economy. The first time that occurred was in 1933, in the depths of what is now called "The Great Depression."

Faced with the prospect of schools across the state shutting their doors because county and city coffers were empty, the General Assembly assumed the bulk of the funding responsibility for education and enacted the nation's first sales tax to keep school doors open.

More recently, members of the 2001 General Assembly, when confronted with a budget deficit of nearly $1 billion, drew a line in the sand and enacted increased revenue measures that not only prevented the state from cutting back its support for education, but enabled it to launch new educational initiatives.

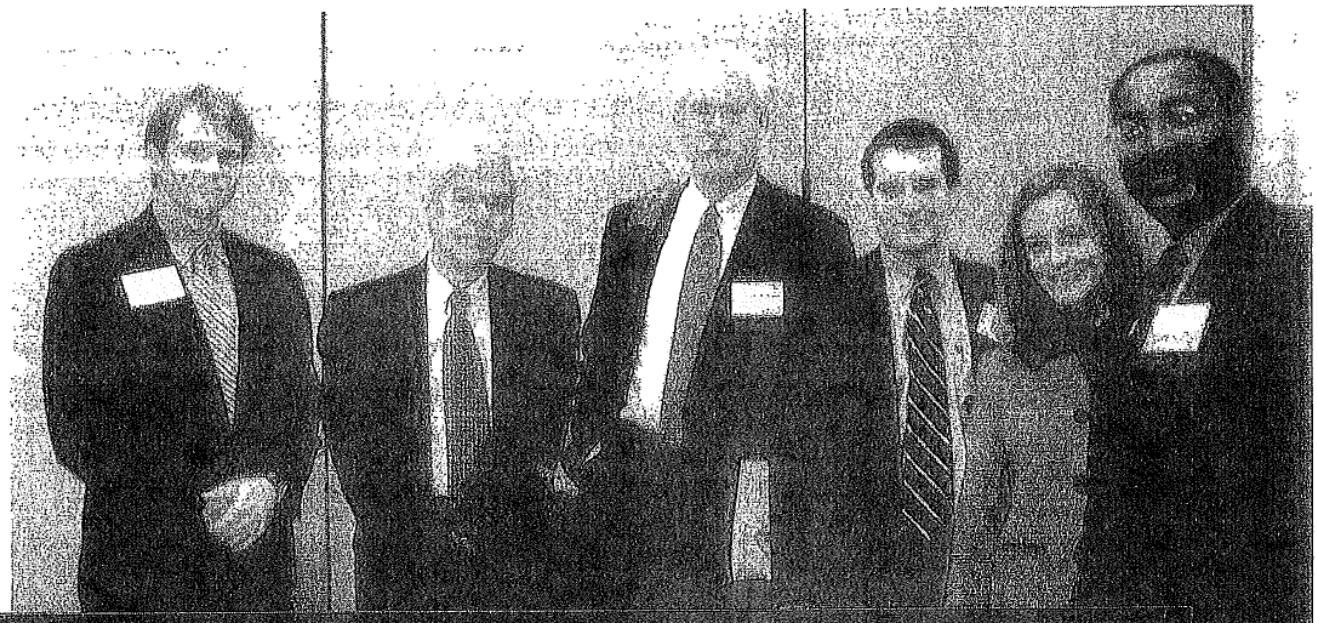
The commitment to education that has been a tradition with elected officials throughout the state's history has made it possible for North Carolina's schools to become the envy of the south and has laid the foundation for its schools to become the envy of the nation. Moving from "above average" to superior, however, will once again test the will and commitment of policymakers.

The report of the Education First Task Force is not the first report that views education as the key to North Carolina's future. It echoes the findings of a flurry of recent studies conducted by North Carolinians – the Progress Board, the Rural Prosperity Task Force, the Commission on Raising Achievement and Closing Gaps, to name but a few.

In issuing these recommendations, the Task Force is mindful of the short- and long-term economic challenges facing lawmakers. It is equally mindful, however, that recessions end and North Carolina has the opportunity to position itself to compete with states across the country for high quality industry and jobs by creating a highly skilled workforce.

In closing, the Task Force would remind policymakers that the drive to make North Carolina a national leader is not a drive to improve the image of the state. It is not a contest. It is about North Carolina's children. It is about the future of the state.

Leadership has made North Carolina schools stronger than they have been at any time in its history. North Carolina's young people, however, are merely performing above average for the first time in the state's history. It is up to this generation of policymakers to take the final steps to create an educational legacy that will live on for generations. It is time to finish the job.



Special Thanks

The scope of the work of the Governor's Education Task Force was enormous. Task Force members came together on 20 occasions; they visited schools from one end of North Carolina to the other; they heard from educational experts from Washington, Denver, and Georgia. Our work would not have been possible without the generous support of three businesses and one foundation who share the Task Force's commitment to education. The Task Force gratefully acknowledges these organizations for their support of education in North Carolina.

- GlaxoSmithKline
- IBM
- Progress Energy (CP&L)
- The Z. Smith Reynolds Foundation

The work of the Governor's Education First Task Force was also made possible through the support of a number of organizations that donated their time and energies to supporting the work of the Task Force. Providing the primary staff support to the effort were:

- The Public School Forum of North Carolina
- The North Carolina Education Research Council
- The Department of Public Instruction
- The Regional Education Lab at SERVE

Other associations, state agencies, and regional and national organizations played an invaluable role in providing data to the Task Force, meeting with committees of the Task Force, and serving on visitation teams as part of the examination of Hallmarks of Excellence schools. Lending additional support to the Task Force were:

The North Carolina Community College System

The University of North Carolina

The North Carolina Association of School Administrators

The North Carolina School Boards Association

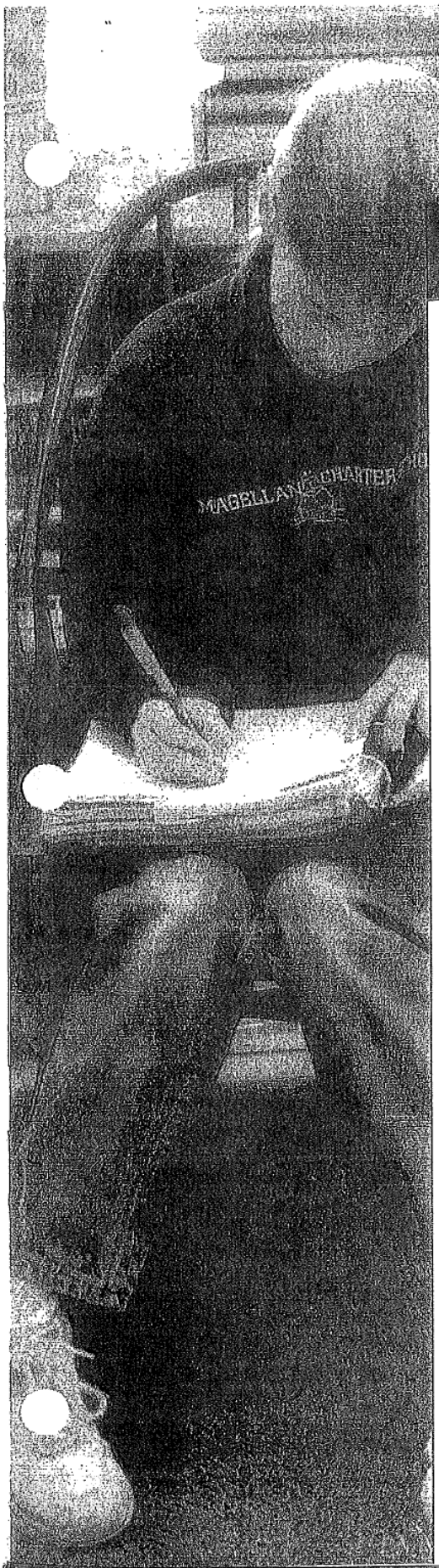
The Principals' Executive Program

The Southeast Center for Teaching Quality

The Education Commission of the States

The Georgia Partnership for Educational Excellence

The RAND Corporation



PRESENTERS

Michael Allen, *Program Director for Teacher Quality, Education Commission of the States*

June Atkinson, *Director, Instructional Services, Department of Public Instruction*

Jim Barber, *Executive Director, Learn NC*

Jennifer Bennett, *Director, School Business Services, Department of Public Instruction*

Barnett Berry, *Executive Director, Southeast Center for Teaching Quality*

Tom Blanford, *Executive Director, North Carolina Professional Teaching Standards Commission*

Joan Celestino, *National Board Certified Teacher, Mineral Springs Middle School, Winston-Salem/Forsyth County Schools*

Tom Covington, *Director, North Carolina Progress Board*

Harriett Davis, *Hillside High School, Durham Public Schools*

Ann Denlinger, *Superintendent, Durham Public Schools*

Willie Gilchrist, *Superintendent, Halifax County Schools*

George Goldbeck, *Lowes*

David Grissmer, *Senior Management Scientist, RAND Corporation*

John Grubb, *Food Lion*

Darlene Haught, *Director of Distance Learning, NC School of Science and Math*

Richard Haynes, *Professor, College of Education, Western Carolina University*

Major Clifford Hoppman, *United States Army*

Sharon Horn, *Program Officer, Office of Research & Education Improvement, US Department of Education*

Hank Hurd, *Associate Superintendent Financial & Business Services, Department of Public Instruction*

David Ingraham, *IBM Professional Facilitation Services*

Ron Jackson, *Director, Planning, Research and Evaluation, Office of Planning and Budget & Lead Staff, Accountability Committee of the Governor's Education Reform Study Commission (Georgia)*

Dylan Johnson, *Research Associate, Southeast Center for Teaching Quality*

Allan Jordan, *Principal, Web Academy Cumberland County Schools*

Elizabeth Kolb Cunningham, *Attorney and Research Associate, The North Carolina Education Research Council*

Edith Lang, *Coordinator, Math/Science/ Developmental Education, NC Community College System*

Elsie Leak, *Director, School Improvement Department of Public Instruction*

Jack Lenahan, *United States Army*

Joan Myers, *President, NC Electronics & Information Technologies Association*

Jane Norwood, *Vice-Chair , State Board of Education*

Charles Payne, *Professor, Departments of African American Studies and History, Duke University*

Jeff Sain, *Lowes*

Missy Sherburne, *Executive Director, North Carolina Teach For America*

Kathy Sullivan, *Director of Human Management Resources, Department of Public Instruction*

Parks Todd, *Director, Telecommunications Services, North Carolina Community College System*

Mitch Tyler, *Superintendent, Hoke County Schools*

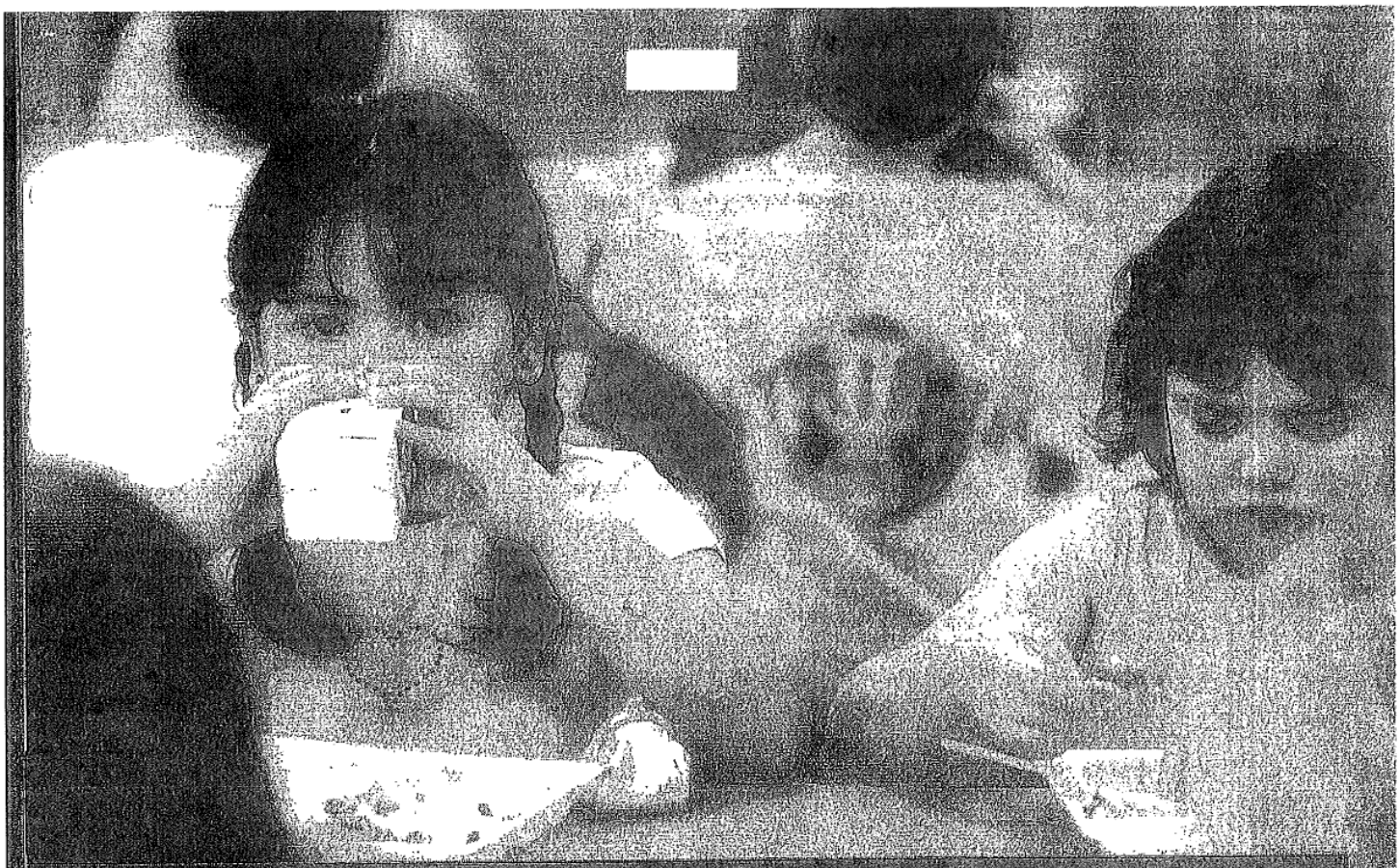
Tom Upchurch, *President, Georgia Partnership for Excellence in Education & Chair, Accountability Committee of the Governor's Education Reform Study Commission*

Jean Williams, *Deputy Executive Director for Programs, SERVE*

Leanne Winner, *Director of Government Relations, NC School Boards Association*

Jane Worsham, *Executive Director, State Board of Education*

Gongshu Zhang, *Research and Evaluation Consultant, Accountability Services Division, NC Department of Public Instruction*



Hallmarks of Excellence Schools

Elementary Schools

Amay James Montessori School, *Mecklenburg County*

Baskerville Elementary School, *Nash County*

Kingswood Elementary School, *Wake County*

Pollocksville Elementary School, *Jones County*

Rock Ridge Elementary School, *Wilson County*

South Hoke Elementary School, *Hoke County*

Middle Schools

Brawley Middle School, *Halifax County*

Brevard Middle School, *Transylvania County*

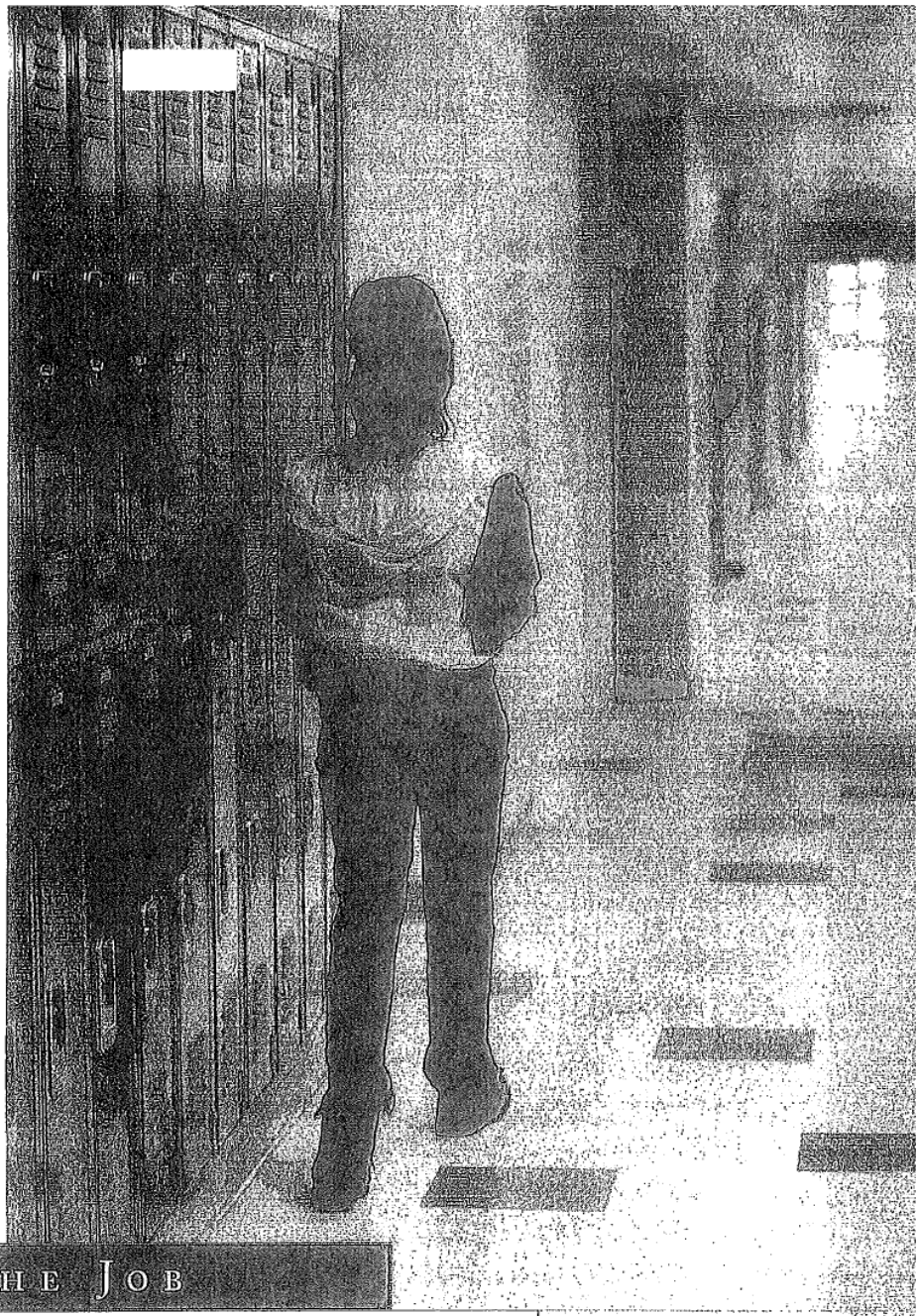
Magellan Charter School, *Wake County*

High Schools

William G. Enloe High School, *Wake County*

Emsley A. Laney High School, *New Hanover County*

Murphy High School, *Cherokee County*



Let's Finish the Job

Building a System of Superior Schools

A Report from the Governor's
Education First Task Force
Spring 2002

basis of relative student need instead of ADM, but it does not. (Defs' Reply Brief, p 12, 2/18/02)

Despite these representations to the Court, on the record, and the State's obvious knowledge of how to educate at-risk children within the "resources currently available to North Carolina public schools" there has been no evidence of any efforts by the State, at least in the materials submitted, to directly assist HCSS, or for that matter any other plaintiff or plaintiff-intervenor LEA, with any assessment, analysis or the reallocation of available resources to help them better meet their constitutional obligations, as agents of the State.

Again, let there be no mistake. The North Carolina Constitution, as interpreted by the Supreme Court, holds the State of North Carolina responsible for providing all children with the equal opportunity for a sound basic education.

Further, as the North Carolina Constitution so clearly creates the likelihood of unequal funding among the districts as a result of local supplements, we see no reason to suspect that the framers intended that substantially equal educational opportunities beyond the sound basic education mandated by the Constitution must be available in all districts. Leandro, p 350.

To accomplish this mandate and provide the equal educational opportunities required, there has to be remedial action, communication, and cooperation between the State and the LEAs, its statutory agents, to carry out the constitutional mandate and the Orders of the Court. The State of North Carolina, through its educational agencies, the DPI and Board of Education know full well how to provide assistance.

The Final Judgment was filed on April 4, 2002. School starts on August 7, 2002, and from the State's report it appears that nothing concrete has been done whatsoever to assist HCSS or any other school system in need of assistance from the State, with implementing a plan for the cost-effective allocation of available resources to innovative programs to improve the educational opportunities for at-risk children.

Before finally deciding what action to take, and to make sure that there has been no "miscommunication" or "omission" of relevant facts in the State's Report, I am going to deal with the July 5 Report by letter at this point and make the following requests:

Public Schools of North Carolina

State Board of Education
Phillip J. Kirk, Jr., Chairman

www.ncpublicschools.org

Department of Public Instruction
Michael E. Ward, State Superintendent

July 29, 2002

The Honorable Howard Manning, Jr.
Superior Court Judge
Wake County Courthouse
Post Office Box 351
Raleigh, North Carolina 27602-0351
Fax (919) 715-4046

Re: *Hoke County Board of Education v. State*

Dear Judge Manning:

We have read the Court's letter to Special Deputy Attorney General Tom Ziko dated July 19, 2002.

As Mr. Ziko stated in his cover letter to the report that the State of North Carolina filed with the Court on July 5, 2002, that report was intended to "document some of the actions that the State has taken since the last hearing to expand pre-kindergarten educational programs for at-risk children and to improve performance, instruction, administration and accountability in North Carolina public schools." To that end, the report included a selection of materials that described a variety of activities intended to demonstrate that the State of North Carolina, and the State Board of Education and the Department of Public Instruction in particular, were developing and implementing programs to improve educational opportunities for all at-risk students across the State.

The Court's letter of July 19, 2002, indicates its concern that the State Board of Education and DPI did not document the "concrete" actions they have taken to assist the Hoke County School System or other plaintiff-party LEAs. We want to take this opportunity to put those concerns to rest and assure the Court that the State Board of Education and DPI are taking concrete actions to improve educational opportunities for at-risk students in the plaintiff-party LEAs along with their similarly disadvantaged peers across the State.

The State Board of Education and DPI have always understood that this case was about whether the State was fulfilling its constitutional obligation to provide a "general and uniform system of free public schools" in which every student has the opportunity to obtain a sound basic education. That understating

The State responded to the Court's order on July 5 and July 29, 2002, but failed to describe concrete actions as contemplated by the Court's order. Instead, the State described existing programs and plans for future studies. See Exhibit 1 (letter of August 7, 2002 from Robert W. Spearman to the Honorable Howard E. Manning Jr.). On August 15, 2002, the Court informed the parties by letter that the State's response was unacceptable. Exhibit 2 (letter of August 15, 2002).

The Court criticized the State's efforts "to avoid responsibility" for its failures and to blame individual LEAs. Id. p. 5. As the Court pointed out, "the State of North Carolina, through its lawyers, have constantly beat HCSS over the head and constantly criticized HCSS for failing to implement cost-effective methods and available resources in defense of its claim that the State was not responsible and that it was HCSS's fault – a defense that has been clearly found without merit by this Court." Id. p. 8.

The Court also noted that the State had represented that it had identified the shortcomings of the Hoke County schools and had offered twenty-eight suggestions to address those supposed shortcomings. Id., pp. 12-14. In spite of the State's prior representations that "it knows very well the keys to improving student performance in HCSS," the Court found that "[t]he State of North Carolina has taken no 'remedial action' in HCSS." Id. at 16-17.

The State responded by letter on August 26, 2002. Exhibit 3. In that letter, the State said, "We will immediately appoint a district assistance team comprised of experts in school administration, teacher quality, curriculum, testing, accounting and other appropriate areas" to investigate Hoke's practices. Id. The August 26th letter said, "The team will conduct an on-site investigation and assessment . . . with respect to . . . each of the twenty-eight areas identified in the

STATE OF NORTH CAROLINA
COUNTY OF WAKE

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

HOKE COUNTY BOARD OF EDUCATION, et al,

Plaintiffs,

and

ASHEVILLE CITY BOARD OF EDUCATION, et al,

Plaintiff-Intervenors,

STATE OF NORTH CAROLINA; STATE BOARD OF EDUCATION,

Defendants.

FILE NO. 95-CVS-1158

Transcript of proceedings in the above-mentioned case heard before the Honorable Howard Manning, August 10, 2004, reported by Carrie E. Rice, RPR, at the Wake County Courthouse.

A P P E A R A N C E S

ROBERT W. SPEARMAN
MS. DUBIS
Parker Poe
Counsel for Plaintiffs

AUDREY J. ANDERSON
Hogan & Hartson, L.L.P.
Attorney for Plaintiff-Intervenors

THOMAS J. ZIKO
LAURA CRUMPLER
North Carolina DOJ
Attorneys for State

ANN L. MAJESTIC
Tharrington Smith
Attorney for CMS

CARRIE RICE, RPR
Wake County Courthouse
(919) 835-3492

-- the issue before our clients left is simply about an appropriate remedy for the students in the low wealth counties.

And we would suggest if you're inclined to grant intervention, that either our claims be severed off completely or that that you sever us off and allow the intervention so that the urbans and the State and the interveners would litigate separately from us.

In other words, it's not that we are unsympathetic to any of these issues, your Honor, we just are very much hoping that we will not get tied up in something that is not directly germane to us.

THE COURT: No matter what happens, Mr. Spearman, this case is going forward on the remedy stage without a blip. Nothing is going to change the course of where we have to go, whether it's big city school or not. I use the term sever, but I use the term bifurcating. Both minds have arrived -- I arrived at that a long time ago, that that's where we had to go, that's where it would go.

MR. SPEARMAN: Right.

THE COURT: Because this case needs to move on. There are bad things happening all over the state. Great things happening all over the state, but there are bad things happening all over the state.

The focus has got to be on taking care of wherever the problem is, not just one -- one -- one particular district.

MR. SPEARMAN: Right. I have nothing else, your Honor, unless you have some questions for me on this aspect.

THE COURT: No. I'd just like to know how the folks down in Robeson seem to be making steady progress in their high school. I just did another -- I did a four-year look at -- at them, and I'm -- I just can't tell you how impressed I am when they take a school at 46.8 and take it to 64 in four years, 46.6 to 72. I mean, they are making steady progress with what they had.

MR. SPEARMAN: Well, during the course of the proceedings, whenever your Honor wants to deal with that, Ms. Dubis is actually planning to give a little report on our five different districts as you asked to the progress of the districts. But there is some good progress there, and we don't even have the final DSSF report from them, and I think we'll have it in the next couple of days and we'll supply it to the Court.

They were indicating to us the other night, among many other things, that the DSSF funding seems

year-olds in all 100 counties. Research has documented that bringing students to school ready to learn increases academic achievement and educational attainment over time.

- **K-3 Class Size Reduction** that reduced the teacher-student ratio to 1:18 in grades K-3 between 2001 and 2004, funding the reductions one grade level at a time over the past four years. Research shows that smaller classes in grades K-3 leads to increased student achievement, decreased behavioral problems, and increased high school graduation rates. Smaller classes are a particularly powerful strategy for raising the achievement of at-risk students. Class size reduction has also been shown to be an important tool in attracting and retaining teachers in the early grades.

- **The High Priority Schools** initiative reduced class size to 15 in the 36 highest-poverty and lowest-performing elementary schools in grades K-3 and added five additional days for teacher professional development and five additional days schools days for students

The State also implemented a number of other important initiatives since 2001 to improve educational opportunities and achievement across the state:

- **The Local Educational Agency Assistance Program**, which provided school district-level assistance teams to work with low-performing districts. The teams work with the school district to review data, resource allocation, strategies, and challenges. The first effort began in Hoke County and has expanded to additional school districts.

- **The Teacher Working Conditions Initiative**, which launched in 2002 a statewide survey of teachers and administrators on working conditions in the schools. The survey was repeated in 2004. In 2004, the survey generated detailed reports on teacher working conditions for 90% of all schools and each of the 115 school districts. Research has been completed recently on this data which shows that the working conditions data is predictive of teacher turnover and student performance outcomes, making this data extremely valuable as a tool for improvement at schools.

- **The New Schools Project to reform high school.** Supported initially by an $11 million grant from the Bill and Melinda Gates Foundation, the New Schools Project is focused on improving high schools in order to dramatically improve the dropout, high school graduation, and college-going rates in North Carolina. Based on research that shows that smaller schools lead to higher graduation rates and better preparation for college and jobs, the initiative is focused on creating smaller high schools with deeper connections to higher education and workplace skills. The project focuses on students whom traditional high schools are not serving well.

  The Project has begun by investing in the creation of 8 health science-themed smaller schools and schools-within-schools, and 15 Learn and Earn high schools where students graduate from high school and earn both a high school diploma and an associate's degree or two years of university credit. Learn and Earn high schools are done in conjunction with local community colleges and four-year institutions. The next phase of the New Schools Project is the implementation of proven small school models in districts in northeastern North Carolina.

  In addition to the $11 million granted by the Gates Foundation, the state is investing $2.2 million on a recurring basis to begin the Learn and Earn high schools.

exercise the right to the opportunity for a sound basic education. This motion is also supported by the affidavits of Superintendents Colin Armstrong (Robeson), Norman Shearin (Vance), Allen Strickland (Hoke) and Willie Gilchrist (Halifax).

2. The Plaintiffs suggest to the Court that our Supreme Court has already upheld this Court's determination that Defendants must both identify and provide for the needs of at-risk children. Hoke County Board of Education v. State, 358 N.C. 605 at 641-642. Defendants may not permissibly proceed with "all deliberate speed" because our Supreme Court has already recognized that a solution is needed that "... will prevent existing circumstances from remaining static or spiraling further ..." Id at 643.

3. Plaintiffs' Plan has the following five components.

a. **Expansion of the Disadvantaged Student Supplemental Fund ("DSSF").**

This program was initially proposed by Defendants in June, 2004 in response to the decisions and orders of this Court, to begin to meet the need of at-risk students for a sound basic education and to satisfy constitutional requirements. Defendants proposed the creation of a new education annual allotment of approximately $223 million. Defendants' June 7, 2004 90 Day Report, Attachment 8.

Under Plaintiffs' Plan, the DSSF would operate with the same formula for identification of at-risk students that was proposed by DPI and the State Board of Education and approved by this Court at the hearing in this case on January 11, 2005. All North Carolina LEAs could seek State Board approval for funding from the DSSF to support recommended intervention programs for at-risk students which have been approved by the Defendant State Board. Many such approved intervention programs have been identified in Defendants' October 25, 2004 filing with this Court, and Defendants' filings themselves state those programs are "grounded in

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

HOKE COUNTY BOARD
OF EDUCATION, et al.,
Plaintiffs,

And

ASHEVILLE CITY BOARD OF EDUCATION, et al.,
Plaintiff-Intervenors,

Vs.

STATE OF NORTH CAROLINA;
STATE BOARD OF EDUCATION,
Defendants.

ORDER RE: HEARING SCHEDULED FOR WEEK OF MARCH 7, 2005 TO INITIALLY ADDRESS THE PROBLEM OF POOR ACADEMIC PERFORMANCE IN HIGH SCHOOLS THROUGHOUT NORTH CAROLINA AND TO RECEIVE EVIDENCE ABOUT POLICIES, PRACTICES AND PROGRAMS THAT WORK IN HIGH SCHOOLS THAT CAN BE USED AS SOLUTIONS FOR THE POOR ACADEMIC PERFORMANCE IN HIGH SCHOOLS THROUGHOUT NORTH CAROLINA and ORDER RE: MOTION EXPEDITED DISCOVERY BY UNC CENTER [illegible]

THIS MATTER is before the Court with regard to the evidentiary hearing scheduled for the week of March 7, 2005, for the Court to hear evidence relating to the "high school problem" which exists in a great number of high schools throughout North Carolina relating to poor academic performance in those schools.

The driving force behind the Court scheduling a hearing on the "high school problem" is that way too many of North Carolina's high schools had composite scores **below** 80 for 2003-2004. Only 117 out of 326 (36%) were at 80 or above.

107 high schools had composites between 70 and 79. (107/326) = 33%

Even more troubling were the number of high schools with composite scores that were below 70% for the past year (102/326) or 32%. Included in that number are 10 high

schools in CMS which make up 10 out of 15 CMS high schools. Nevertheless, the poor performance composites of high schools are scattered literally throughout North Carolina's LEAs.

As a result, the Court determined that it was necessary to hold an evidentiary hearing to learn more about the causes of such poor performance in the high schools in general and to learn about programs and policies and procedures which exist that can be used to create better performance for high school students throughout North Carolina, including CMS and other urban and rural districts where the high schools are struggling with poor academic performance.

The March 7, 2005 hearing was noticed on January 19, 2005. The Court and parties were to discuss an outline of the agenda for March 7 at the hearing on February 15, 2005.

On February 9, 2005, the UNC School of Law Center for Civil Rights, on behalf of four students presently in the CMS system, filed a Motion to Intervene in this case in a limited basis with the focus being the CMS student assignment policies and plans. The Motion to Intervene was opposed by the Urban School District Plaintiff-Intervenors Urban School Districts, which includes CMS.

At the regularly schedule hearing on February 15, 2005, this Court announced that it was not going to calendar a hearing on the motion to intervene before or during the March 7 hearing week and that Julius Chambers and UNC Center counsel could participate at the March 7, 2005 hearing and "sit at counsel table." The purpose of the March 7 week was to hear evidence on the high school problem and best practices and procedures to achieve better high school performance for students throughout the State as well as to hear from CMS and other large urban districts about the good and bad in high school performance. **A battle royal over CMS's attendance plan or CMS's low performing high schools was not, and will not be on the agenda during the week of March 7, 2005.**

There was no objection raised by any party to the Court's announcement on February 15, 2005. The Court and counsel for the parties met in chambers to discuss a tentative schedule for the hearings starting March 7, 2005.

The hearing schedule's format presently stands as follows:

Monday, March 7, 2005 at 10:00 a.m. - The Court will conduct a hearing on plaintiffs' motion to show cause filed on February 10, 2005.

Monday, March 7, 2005 at 2:30 p.m. - Tony Habit will provide information about the positive aspects and work of the NewSchoolsProject that is working to create better and more academically productive high schools.

Monday, March 7, 2005 at 3:30 p.m. - Urban Districts will provide information from Ann Denlinger, Superintendant of the Durham County Schools concerning the high school challenges and programs in Durham.

Tuesday, March 8, 2005 at 9:40 a.m. - Urban Districts will provide information from witnesses from CMS relative to CMS's challenges in its high schools, the bulk of which are performing well below par. This information is expected to take the day on Tuesday and perhaps into Wednesday morning.

Wednesday, March 9, 2005, - At the conclusion of CMS presentation, Superintendents, or their designees, from Craven and Onslow Counties will provide information on the high school programs in those counties and why they are succeeding academically. Craven has three high schools. The three high schools composite scores for 2003-2004 were 84,89 and 85, respectively. Onslow has seven high schools. The seven high schools composite scores for 2003-2004 were 84,83,88,83,82,83 & 84, respectively.

Thursday, March 10, 2005, at 9:40 or as reached, Urban Districts will provide information from Wake County Schools relating to the challenges and success of the high schools in Wake County, which has 2 of 10 statewide with performance composites above 90.

Friday, March 11, 2005 - Reserved for any overflow and to be determined.

On February 23, 2005, Julius Chambers and counsel for the UNC Center for Civil Rights ("UNC Center") filed a motion for clarification seeking to have this Court clarify their role as counsel for the hearing scheduled March 7, 2005. In that motion they sought an order authorizing them to participate fully, including, but not limited to: examination of witnesses, cross examination of witnesses, objections to evidence and testimony, introduction of documentary evidence and testimony through witnesses and to

finally, conduct limited, expedited discovery of CMS with responses from CMS by March 4.

On Monday, February 28, 2005, the Plaintiff-Intervenors ("Urban Districts") filed a Response in opposition to the motion for clarification. On March 2, 2005, Julius Chambers and the UNC Center served a response to the opposition raised by the Urban Districts.

Having considered the Motion for Clarification, Expedited Discovery and the Responses and Replies that are filed, it is apparent to the Court that there is a misunderstanding about the purpose and scope of the March 7 hearings. The hearings are for the benefit of the Court and to put on the record the information cleaned therefrom. The hearings are **not** for the purpose of litigating the issues relating to CMS's poor performing high schools, or for that matter, any other of the LEAs poor performing high schools scattered throughout North Carolina.

The hearings are to provide the Court and the record with information concerning the "high school problem" in performance, and with information about existing programs, policies and planned programs that can be utilized to correct the poor performance of high school students.

Until the Court hears and reviews this basic information, including CMS's stated explanations, as a large urban district party, as to the cause of poor performance and plans to correct the educational deficiencies suffered by too many of its high school students, the Court will not be in a position to decide on how best to proceed in this troubled area of high school performance.

The bottom line is that the hearing starting March 7 relating to high school performance problems and solutions is informational, not adversarial in nature.

Having said that, the Court is not going to vary from its intended mission for the week of March 7, 2005 and preside, during that week, over an adversarial contest focusing on CMS. Next week is not the time, nor the place, for such proceedings and that will simply not happen.

As a result, the UNC Center and its counsel, will not participate in this hearing as counsel for a litigant and the motion for expedited discovery will be denied.

IT IS, THEREFORE, ORDERED:

1. That the hearing to begin on March 7, 2005, will be conducted according for the purposes set forth in this order and will address and follow the agenda items and schedule set forth above. The schedule and agenda items may be changed only with the permission of the Court, depending on time and scheduling conflicts.
2. That counsel for UNC Center are **not**, for purposes of the hearing on March 7, 2005, authorized to participate as counsel for a litigant with full rights to examine, cross examine, put on evidence, or any other of those acts sought in the motion for clarification.
3. That the Motion for Expedited Discovery by counsel for UNC Center is denied.
4. That Counsel for UNC Center are welcome at the hearing, and in the Court's discretion, are permitted to sit at a counsel table during said hearing so that they can listen and learn from the various witnesses the same information that the Court seeks to learn. In addition, at the close of the hearing, counsel for UNC Center may have the opportunity to address the Court concerning the matters presented during the hearing together with counsel for other parties.
5. That in the event there is more evidence required as a result of the matters presented, the March 7 hearing may be continued so as to permit the Court to hear additional evidence and other matters related to the issue of poor high school performance.

This the 3rd day of March, 2005

Howard E. Manning, Jr.
Superior Court Judge

these State agencies can coordinate parent support, mental health services, health services, and delinquency prevention and other juvenile justice-related services to support children's health and school performance, and help parents to be actively involved in their children's education.

1 The Governor's budget and his Executive Order No. 80 provides $11.2 million to fund Child and Family Support Teams in 100 needy schools.

- In the schools, State will fund teams consisting of a school nurse and a school social worker to identify, provide services, and coordinate with mental health and social service professionals.

- In the community, the State will provide new regional mental health facilitators and county social service care coordinators to work directly with the school-based teams.

2 Teams are expected to be in place by the spring of 2006. A cross-agency group from the Office of the Governor, DPI, and DHHS is working to develop the program specifics and select the program sites.

3 The Governor's budget also provided funding for 65 additional school (separate from Child and Family Support Teams) nurses in low wealth school districts. The Senate's budget includes money to fund 50 additional nurses; the House budget did not include these funds.

III. ADDITIONAL COMMITMENTS AND ACTIONS

- **Fully Fund Low Wealth Supplemental Funding.**

  - Low Wealth funding is an important source for improving the capacity of low wealth schools and districts to attract and retain teachers.

    1 In addition to funding for DSSF, the Governor's budget proposed fully funding Low Wealth over the next two years. To accomplish this objective, the Governor's budget proposed $16.6 million for Low Wealth Supplemental Funding in 2005-06 and $58.5 million for 2006-07.

State of North Carolina

MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 80
ACCELERATING TEACHER AND OTHER PERSONNEL RECRUITMENT AND THE IMPLEMENTATION OF NEEDED ACADEMIC SUPPORT PROGAMS FOR AT-RISK CHILDREN IN LIGHT OF JUDICIAL MANDATES, BUDGET DEVELOPMENTS, AND IMPENDING SCHOOL OPENINGS

WHEREAS, the 2004 General Assembly enacted S.L. 124, "The Current Operations and Capital Improvements Appropriations Act of 2004" (hereinafter the Act), which was signed into law on July 20, 2004; and

WHEREAS, the 2005 General Assembly enacted H.B. 1631, which keeps state government operating through August 5, 2005, and which provides additional funding for enrollment increases and which was signed into law on July 19, 2005, and

WHEREAS, in the budget adjustments submitted to the General Assembly for the 2005-06 fiscal year, I recommended funding to meet the increased operation costs of our public schools while providing for the needs of disadvantaged students; and

WHEREAS, public schools across the state must plan now for their opening in a few weeks, and the state court monitoring of North Carolina's effort to ensure a sound, basic education for every student continues; and

WHEREAS, in the school funding lawsuit, known as *Leandro*, the Court stated that at a minimum every school must be provided the resources necessary to support an effective instructional program within that school so that the educational needs of all children, including at-risk children, can be met; and

WHEREAS, on May 24, 2005, the Court isolated the particular problems of meeting the needs of at-risk students in North Carolina's high schools and outlined the need for the state to bring together the "combined expertise, educators, resources, and money to fix the 'high school problem' so that the children attending those schools will be provided with the opportunity to obtain a sound, basic education;" and

WHEREAS, on July 11, 2005, the Court scheduled a hearing for August 9, 2005, for the state to show how in the upcoming school year it will address the problems associated with the "poor academic performance" of North Carolina high schools and an update on statewide *Leandro* compliance; and

WHEREAS, Senate Bill 622, "The Current Operations and Capital Improvements Appropriations Act of 2005," under consideration by the House and Senate has not been passed; and

WHEREAS, the Act allocated funds to support the More at Four Pre-Kindergarten program for at-risk children, the Learn and Earn program, and supplemental funding for LEAs in low-wealth counties; and these programs are necessary for improving educational opportunity and outcomes for children across North Carolina; and these programs are fundamental to addressing the needs of at-risk students, eliminating the achievement gap, reducing the state's persistently high dropout rate, increasing college enrollments, and meeting other education challenges; and

WHEREAS, the current proposed budget includes expanded funding for the Disadvantaged Student Supplemental Fund, Learn and Earn program, Specialty Schools Pilot program, supplemental funding for LEAs in low-wealth counties, teacher training, and child and family support teams; and

WHEREAS, while the General Assembly continues working to ratify a final budget I can approve, the school year for the majority of North Carolina's children is about to begin and preplanning, hiring, and facilities preparation must take place; and

WHEREAS, it is the intent that additional funds be used for low-wealth supplemental funding to recruit and retain high quality teachers; and

WHEREAS, by better connecting public schools with health, mental health, and social services the capacity for multi-disciplinary assessments, referral, and coordination of care for at-risk students and their families will be enhanced through the use of School-Based Child and Family Support Teams utilizing school-based nurses and social worker teams, Local Management Entities' Care Coordinators, and Child and Family Teams Facilitators.

NOW THEREFORE, in light of the factual circumstances set forth above, including the decision in *Leandro*, and under the legal authority vested in me as Governor by Article I, Section 15 of the Constitution of North Carolina (which states that "The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right."), Article III of the Constitution of North Carolina, and N.C.G.S. §143-23, I hereby **AUTHORIZE AND INSTRUCT**:

Section 1. The Director of the More at Four Pre-Kindergarten Program to recruit the teachers necessary to expand the program; and,

Section 2. The Superintendent of Public Instruction, working with and through local school system superintendents, to recruit and hire the staff necessary to

operate Learn and Earn high schools and economic development-themed high schools; and

Section 3. The Superintendent of Public Instruction, working with and through local school system superintendents, and the Secretary of the Department of Health and Human Services, working through local agencies, to recruit and hire the nurses and social workers necessary to operate child and family support teams in our public schools; and

Section 4. The Superintendent of Public Instruction, working with and through local school system superintendents, to put into place the additional teachers and academic support programs needed to support the achievement of at-risk students in districts eligible for Low Wealth Supplemental Funding and Disadvantaged Student Supplemental Funding; and

Section 5. The Presidents of the University of North Carolina and North Carolina Community College System to implement the 2+2 Teacher Education Initiative; and

Section 6. The President of the University of North Carolina to implement the program to improve the effectiveness of new principals; and

Section 7. The State Board of Education and Superintendent of Public Instruction to place accountability on existing funding for at-risk students from the At-Risk Student Services and Improving Student Accountability allotments to ensure these funds are invested in proven strategies for improving student achievement in the most cost effective manner.

This Executive Order is effective July 20, 2005.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh this the 20th day of July, 2005.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE
WAKE COUNTY COURTHOUSE
RALEIGH, N.C. 27602
835-3448

FAX ONLY MEMO

June 28, 2007

FROM: HOWARD E. MANNING, JR.

TO:
ROBERT W. SPEARMAN,	(919-834-4564)
TOM ZIKO	(919-716-6764)
ANN MAJESTIC	(919-546-0489)
JACK BOGER/JULIUS CHAMBERS At UNC Center for Civil Rights	(919-962-1277)

SUBJ: HOKE COUNTY BOARD OF EDUCATION V. N.C. ("LEANDRO")

Re: NOTICE OF HEARING focusing on Poor Academic Performance in Middle Schools - August 1 & 2, 2007

Lady and Gentlemen:

As I have gone through the past year dealing with the 17 low performing high school, talking with principals and others and looking as middle school scores for 2005-2006, especially math, it has become obvious that we not only have a high school problem, but one with middle schools as well. For 2005-2006, there were 117 out of 389 middle schools with performance composites of 65% or below. Out of this group there were 84 middle schools with performance composites of 60% and below. With the increased rigor required in math tests, many of these middle schools are sending children into the 9th grade with math skills below proficiency. I sent President Bowles a memo (copy enclosed) on June 19, 2007 outlining the problem and asking for assistance from UNC. Simply put, we need to find out why we are doing so poorly, what best practices are in place in the middle schools that are doing the best and why are we failing in those that are doing so poorly so we can do better. I have secured Courtroom 10-C and we can discuss the format if necessary. We would start at 10:00 a.m. I would appreciate it if Tom Ziko would see that a copy of this goes to Chairman Lee and Superintendent Atkinson. Thanks. Bowles Memo attached at 9 pages.

HOWARD E. MANNING, JR.
SUPERIOR COURT JUDGE
WAKE COUNTY COURTHOUSE
RALEIGH, N.C. 27602
919)755-4100/835-3448 (direct)
(919)715-4064 (f)

FAX ONLY MEMO

June 19, 2007

FROM: Howard E. Manning, Jr.

TO: President Erskine Bowles at UNC at 843-9695 c/o Janie/Jan

Subject: The Middle School Problem

Erv,

At the start of this memo on June 5, 2007, I find myself sitting in Courtroom 10-A during jury selection in a medical malpractice case which is anticipated to take from 4 to 6 weeks depending on whether or not the jury answers the first issue on liability yes or no. If no, the trial will end. If yes, the case will have a damages mini trial that will go on for a week or so. We have been in jury selection for three days and no end is in sight at this point.

As you know, I have been focusing on poor performing high schools for the last couple of years and in 2006 threatened to prohibit some 17 high schools from opening unless they were under new "management" based on their sorry performance composites over the previous 5 years.

Fortunately, the State of North Carolina, through its executive branch, responded. Although some principals in these schools retired, resigned or got moved to the central office, the State required the principals in those 17 high schools to go to your "day camp" at PEP/Kenan Flagler for additional training. I hope that these efforts and the scrutiny will lead to educational improvement among the students attending those schools this year.

Governor Easley has also required principals in high schools whose performance composite were 60 or below for two years in a row to start your PEP/Kenan Flagler program which has been attended by the 17 principals under my microscope since last summer.

During the past nine (9) months, I have managed to scratch out the time to go and personally visit all of "my" 17 high schools. I have toured all of the high schools and some more than once. I have also met with all of the 17 principals at their high schools as well as meeting with the group of principals in Chapel Hill on two occasions. I have also spoken to the second PEP cohort of principals of the twice 60 or below high schools which I will refer to as the "Easley" group.

One of the principals in the "Easley" group, a principal whose high school has been below 55% performance composite for 4 out of the past five years, advised me that if the "local politics" could be straightened out, that his high school might improve. Why this man remains in charge of any school year after year is unbelievable. His comment fails to reflect any perception of what is wrong under his watch.

In the course of these visits and discussions with the principals and some superintendents, the lack of quality of the academic preparation of too many of the children entering the ninth grades (9th) in these and other high schools is a matter of grave concern to the high school principals as well as to me.

This is of particular concern at the high school level in connection with the ABC end of course tests given to ninth (9th) grade students for many reasons, not the least being that an unprepared ninth grader has a higher probability of being unable to perform well on the ABC tests and most importantly, the child is not coming to the ninth grade in a sound position to obtain the opportunity to obtain a sound basic education in those courses because they are ill prepared coming from the middle schools.

I asked the LPHS principals to make suggestions for solutions about the influx of non-proficient 8th graders coming to the ninth grade after we met in February, 2007. The LPHS principals wrote me a letter which contained several common sense recommendations, including but not limited to a recommendation that 8th graders who are not

proficient in math and reading be required to attend a month long summer session at the HIGH SCHOOL to which they are assigned so that they receive intensive academic assistance before coming to the Ninth Grade Academy in the fall. A copy of that letter is attached for your information.

Keeping one ear open during jury selection, I have also been reviewing the ABC Performance Composites of Middle Schools and looking at selective schools' performance composites for 2005-2006 and previous years. The performance data was provided by DPI courtesy of Tonya Williams at Marc Basnight's office. Each middle school's performance composites for prior years are available on the NC School Report Cards which are found on line at www.ncpublicschools.org.

I was under the impression, prior to discussing the ninth (9^{th}) grade academic performance with the high school principals during the past nine months and prior to reviewing the 2005-2006 data, that the middle schools were on the upside of the scale overall. In short, I was under the impression that we had a problem with middle schools, but not a problem the size and scope of what is going on now.

For 2005-2006 there were 117 (30%) out of 389 middle schools with performance composites at 65% or below. There are 84 (21.5%) with performance composites of 60% and below in that group. These are designated as "priority" schools by the DPI according to the NC School Report Cards website.

Based on my review of several of the priority middle schools' past histories, it appears that the "drop" in scores for 2005-2006 was largely based on low end of grade (EOG) math scores. If I remember correctly, the State Board of Education increased the number of right answers in order for the math tests to meet better requirements for rigor in the subject matter.

A lot of the middle school math scores that I looked at were well below 50%. The reading scores seemed to remain somewhat stable but did not rise sufficiently to off set the drop in math scores. This is going to be another quagmire because the children are coming out of middle schools not proficient in math and that is a formula for disaster upstream in high school and Algebra I.

Some examples follow:

Broadview Middle School in CMS had a 56.5% composite for 2005-2006, a drop from 2004-2005. I looked at the eighth grade scores. Reading was 75.0 Math was 48.8 There were 213 math tests taken and 212 reading taken.

Assuming that the 8th grade Gateway (ie, the middle school principal passes them up to the high school despite their lack of proficiency in math - which will probably be the case based on what I have heard the past nine months visiting poor performing high schools) did not work for the 110 children in Broadview Middle School who were not proficient in 8th grade mathematics, the receiving high school would start out in the academic hole in mathematics with its 9th grade student population.

C G White Middle School in Bertie County had 2005-2006 percentage of eighth graders taking the EOG Reading test who scored at or above grade level was 84.8 and the percentage of eighth graders taking the EOG Math test who scored at or above grade level was 40.2. The previous year's math score (under the old, less rigorous EOG test scores) was 81.8%. Obviously, the increased rigor(more right answers on the EOG math test) on the EOG Math for the eighth grade caused a major decline in the performance composite for the eighth grade class. There were 92 tests given in 2005-2006. In the event that all of eighth graders were "passed" on to the ninth grade last fall, only 37 of 92 students had received a sound basic education in mathematics at the time they entered high school. 55 of the students were not proficient in mathematics at the end of 2006 and not ready to enter high school and take Algebra I successfully.

At Southwestern Middle in Bertie, a similar result occurred with the 8th grade mathematics EOG tests. In 2004-05, 77.1% of the 175 students taking the eighth grade EOG math tests scored at or above grade level. In 2005-06 only 53.8% of the 171 students taking the eighth grade EOG math tests scored at or above grade level. 78 out of 171 students, if they were "passed" to the ninth grade, were not proficient in mathematics when they started at Bertie high school last fall.

These examples serve to highlight the problem. These children are starting high school with a severe academic deficit in math that the ninth (9th) grade, in absence of extremely effective remediation, most likely cannot make up in terms of remediation in that year. Placed into algebra without a sound math basis, these children are in trouble. Likewise, the high school EOG testing will drop the performance composite for the high school in math for the ninth grade. It is a compounding problem as you can easily surmise.

There is no dispute that the influx of unprepared ninth graders into the high schools constitutes an educational drag on the high school's ABC scores. More importantly, there are way too many children coming into high school without having obtained a sound basic education in math and/or reading. Assuming that many eighth graders who are below grade level in reading are also below grade level in math, this is a untenable situation both for these children and for the high school that has to try to get them up to grade level academic performance and keep them from dropping out.

Suffice it to say, these children are at-risk of academic failure and further, that they have not obtained a sound basic education to this point in their educational journey. These children are also prime candidates for giving up, having little chance of success and dropping out of high school.

Why are these children tanking in mathematics? I had a long telephone discussion Friday afternoon week before last with a mathematics specialist at DPI about this. I asked for this discussion to confirm my general understanding that mathematic concepts are building blocks and that if a student fails to learn these math concepts as he or she goes through the math component of the standard course of study, the student will simply be unable to be successful in mathematics and algebra because of lack of proficiency in the building block concepts. This is in fact the case.

I asked the hard question. What's causing the problem? I was advised that many teachers are not very skilled (I would use the term not competent) at teaching elementary and middle school mathematics and this lack of teaching competence is compounded when the children are at-risk, low performing students. I do not know enough to put a

quantitative weight or number on how many weak math teachers are out there, but there must be a lot looking at the 2006 EOG scores in math once the baseline scores were raised by the State Board of Education.

Cutting to the chase, if the teacher is competent, as required by *Leandro*, the children in his/her class in elementary and middle school should not be scoring below grade level proficiency in spite of the increased rigor imposed on the EOG math tests by the State Board.

While there are some in the education community that would like to place a large part of the problem in the laps of the children and their parents, that's no excuse for a teacher's lack of competence in getting the children to understand the math concepts and become proficient as they move grade by grade towards high school.

What can the University do to help? I have given this question a lot of thought. Based on the lack of strength in middle school mathematics instruction, as evidenced by the 2006 EOG math scores, which had been "masked" by the "higher" math scores in previous years, I would look for help from the mathematics departments in the University system rather than the schools of "education."

Perhaps what the math departments could do is to look at the testing, look at results and devise an assessment system which would identify a student's "missing" math concepts and then devise a teaching protocol to fill in the missing concepts whether the child missed something in the 4th grade, 5th grade, or 8th grade math that is leading to the lack of proficiency.

If this could be done, then the next major obstacle is to get the professional development (ie, training) to principals and the teachers, who are not doing the job in the first place, so that the children are getting the quality of remediation and correct instruction necessary for them to be successful.

In the interim, I am considering dates and an order scheduling a hearing on the middle school problem which is compounding the high school problem so we can find out why these principals and teachers are not doing their jobs in the first place.

The bottom line is that I know that there are best practices that are well known in the field that, if the principals and faculty will use them in middle schools, just as in high schools, that will result in children actually scoring at grade level and above which is, after all, the whole purpose of public education and the constitutional requirement.

Anything you can do on this issue will be greatly appreciated, as usual. If we want our high school "graduates" better prepared to attend our great University system, we have got to do better downstream, especially in middle school mathematics.

6/19/2007

Cc: Governor Mike Easley c/o Franklin Freeman at 715-4239
Senator Marc Basnight, Speaker Joe Hackney & Lt.
Governor Perdue c/o Tonya Williams at 733-8740
Chairman Howard Lee & Superintendent Atkinson at 807-
[redacted] 807-3198

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

HOKE COUNTY BOARD
OF EDUCATION, et al.,
Plaintiffs,

And

ASHEVILLE CITY BOARD OF EDUCATION, et al.,
Plaintiff-Intervenors,

Vs.

STATE OF NORTH CAROLINA;
STATE BOARD OF EDUCATION,
Defendants.

NOTICE OF HEARING AND ORDER RE: HEARING

TAKE NOTICE that the Court will hold a hearing in this case during a special scheduled session of the Wake County Superior Court to begin on Wednesday, August 20, 2008 at 10:00 a.m. in Courtroom 10C, Wake County Courthouse.

Subject Matter of the Hearing:

A. Math instruction in elementary, middle and high schools – children not being required to learn the multiplication tables by heart, long division and fractions leads to their failure to become proficient in middle school math and algebra.

Without re-inventing the wheel, the Court has spent the last year delving into what first appeared to be a major problem in High School mathematics but which later devolved into both a major problem in Middle School and Elementary school mathematics which, of course, feeds the High School mathematics problem.

The Court learned early in 2008 that the State of North Carolina Standard Course of Study (SCOS) has **not been requiring teachers** to require elementary students to learn (memorize into their dna) multiplication tables, long division, or to multiply and divide fractions since 2000 when the State of North Carolina and DPI followed the recommendations of the National Council of Teachers of

Mathematics ("NCTM") setting out math standards that did proposed a math instruction curriculum that would "allow" all students to do high-level math without mastering "low level" problem solving skills. In short, the SCOS was changed to delete the requirement that our children were required to memorize and solidly learn their multiplication tables, algorithm long division or fractions. See ***University of North Carolina Education Schools: Helping or Hindering Potential Teachers? – Pope Center Series on Higher Education Policy, January, 2008 George K. Cunningham ("Pope Center Report, January, 2008").***

The ***Pope Center Report*** revealed that while the teachers were required to teach the math, the children were not required to really learn the basics. " Develop fluency with multiplication and division," which includes: "two-digit by two-digit multiplication [larger numbers by calculator] and "up to three-digit by two-digit division [larger number by calculator] ***Math Instruction in North Carolina, pages 4,5,6 & 10, Pope Center Report, January, 2008.***

The Court has learned that not all school systems dropped the requirement, despite the change in SCOS. Excellent school systems and schools with excellent leadership and excellent classroom teachers still taught the basics. Unfortunately teachers who were not so excellent and who had principal leadership that was not excellent did not require the "learning" of the basic math facts in multiplication, long division and fractions. In 2006, the **NCTM, reversed its recommendations and recognized that children in grade 4 need to know how to divide using the standard division algorithm, NOT BY CALCULATORS.** ***Pope Center Report, p 10.*** Yet, despite the reversal by the NCTM in 2006, it appears that DPI and the SBOE have not changed the SCOS to require children to memorize their multiplication tables and conform to the NCTM's "revised" recommendations from 2006.

This failure of too many of our elementary school children to learn the basics of multiplication, fractions and long division in lower performing schools and school districts has a direct link on their failure to be successful in high school algebra. One algebra teacher told the Court on a visit to Bertie County High last fall that her children who were ***not successful in algebra were unable to multiply in their heads. Instead, they were counting on their fingers under their desks when they were unable to use their calculators.*** This information was disturbing and it was corroborated by the ***Pope Center Report.***

In short, these children never achieved the necessary basic proficiency in multiplication, long division and fractions in elementary school. The disastrous result of this lack of proficiency is proven by the math test data. All you have to do is look at the 2007 math data in Halifax County for EOG and EOC in 2006-2007 and elsewhere around the State. See the UNC System's September 2007 report entitled ***Addressing Teacher Quality and Student Achievement in***

Middle Grades Mathematics- A Summary Report of Input from UNC Constituent Institutions.

North Carolina is not alone in having a math instruction problem. Mathematics instruction is a national educational problem which has been documented in a recently released federal report [March, 2008] on the deficiencies of mathematical instruction in the United States.

This federal panel of "experts" – the National Mathematics Advisory Council – found that "American students' math achievement is 'at a mediocre level' compared with that of their peers worldwide, according to a new report by a federal panel, which recommended that schools focus on key skills that prepare students to learn algebra.

A New York Times Article published after the release of the report indicated that the panel's unanimous report "said that pre-kindergarten- to – eighth grade math curriculums should be streamlined and put focused attention on skills like the handling of whole numbers and fractions and certain aspects of geometry and measurement." The panel suggested specific goals that students should master in order to be prepared for algebra. **By the end of grade 3 students should be proficient in addition and subtraction of whole numbers and by the end of grade 5 students should be proficient in multiplication and division of whole numbers.**

It appears that the bottom line --- knowing the basic math facts such as multiplication tables, long division and fractions --- is the linchpin to a child obtaining, in elementary school, a sound basic education in mathematics. Without this foundation in math, the child cannot have the equal opportunity to obtain a sound basic education in middle school math and thereafter high school algebra and thus, will ***lose out on the Leandro required opportunity to obtain a sound basic education in mathematics all the way through high school. To further exacerbate the problem in mathematics [and in other core subjects] instruction, we have learned that in far too many classrooms, the teachers are overlooking, or ineffectively employing, an essential element of instruction – the formative assessment.***

B. Lack of Effective Use [or the non-utilization] of the Formative Assessment as part of classroom instruction in mathematics and other subjects.

While it appears that there is a problem with the children being taught the basics of mathematics in elementary school, it also appears to the Court, after spending a year focusing on mathematics instruction problems, that there are too many classrooms in which an essential element in classroom instruction – the formative assessment – is either missing, or being ineffectively utilized. As a result there is a ***serious gap*** in the instructional process which, when combined

with the lack of basic math instruction, creates another major instructional barrier to children in becoming proficient in elementary and middle school math.

The gap in essential classroom instruction is the lack of the use of effective and diagnostic formative assessments by the classroom teacher [and by default – the failure of school leadership – the principal and assistant principal – to implement an effective formative assessment program in math and other courses – to measure the children's progress on a frequent basis.

While excellent principals and teachers use effective formative assessments, there are far too many educators who, based on the Court's questions to groups of principals of low performing and priority high schools and middle schools, etc., who have minimal knowledge, if any, of the benefit of formative assessments or their availability at the switch of the computer.

Chancellor Oblinger at NSCU, in response to President Bowles' request about diagnostic math tests in the UNC system, wrote a memo on November 26, 2007, which stated in pertinent part:

> In typical educational practice, there are two kinds of tests: 1) Summative or high-stakes testing, often end of year tests that document student mastery of standards, usually accompanied by consequences for students, teachers, schools and districts. Summative assessments are virtually never useful for diagnostic purposes because their focus is too broad. ***2) Formative assessments, routinely done on an ongoing basis, measure progress along a curriculum at the classroom level, often in concert with the use of pacing guides for state standards. Most formative assessment systems aim to assess student thinking or activity, but lack rigorous psychometric qualities and/or means for rapid and easy data gathering, accumulation and reporting.***
>
> Assessments must be coordinated with curricular progress or pacing guides, or the information they provide to teachers distracts from the curriculum and may lead to the teaching of skills and procedures at the expense of the concepts indicative of a true education.

The September 2007 report from the UNC System listed "promising ideas and practices" that should be considered. The first promising ideas and practices dealt with the subject of – Assessment, Evaluation and Research – Bullet point two on page 2 states:

"Consider revising the state testing program to include frequent **formative and diagnostic assessments so that the gaps in understanding can be identified before a student is completely lost in the educational system."**

To the Court's way of thinking, this is a critical point and explains in large measure, why too many North Carolina students are falling short in math and other instruction – the lack of frequent and meaningful assessments by the classroom teacher – so that the child who is "lost" does not get "lost" – assessments identify the problem and provide the teacher with the knowledge that the child needs propping up in the instruction in the SCOS.

While formative assessments are utilized in the "good" school systems and "good" schools, it has been the Court's experience traveling in the northeast and in talking with school personnel and UNC System education administrators that there is a great deal lacking in terms of effectively utilizing formative assessments and in many instances, there is a complete lack of knowledge about the available on-line formative assessment systems on the University side as well as the K-12 side of the education system in North Carolina despite the fact that the State Board of Education adopted 21st Century Professional Standards in 2007 which require this knowledge and the use of formative assessments in the public schools.

The North Carolina Professional Standards for Teachers, School Executives and Superintendents require the effective use of formative assessments.

The reason for looking at the standards in relation to formative assessments is to make the obvious point that if the DPI and SBOE require teachers, principals, assistant principals and superintendents to understand and use formative assessments to impact student instruction our colleges of education should be training prospective educators and administrators to be familiar with and effectively use formative assessment systems such as ClassScape, Blue Diamond, and MAP as well as training teachers and administrators in how to develop effective assessments from scratch. The Court wants to emphasize, however, that there are many effective educators who prepare their own formative assessments without the assistance of an on-line based 21st Century system such as ClassScape. The critical point ***is that formative assessments must be used, and effectively used, to inform instruction and measure educational progress for our children.***

In June, 2007, the State Board of Education (SBOE) adopted ***North Carolina Professional Teaching Standards*** aligned with the 21st Century mission that "every public school student will graduate from high school, globally competitive for work and postsecondary education and prepared for life in the 21st Century."

The SBOE also adopted Standards for Superintendents in September, 2007 and for Principals in December, 2007.

Professional Teaching Standards III and IV are of particular interest and importance with respect to instruction and assessment:

Standard III: Teachers know the content they teach.

**** Teachers align their instruction with the North Carolina Standard Course of Study.***

**** Teachers know the content appropriate to their teaching specialty.***

**** Teachers recognize the interconnectedness of content areas/disciplines.***

**** Teachers make instruction relevant to students.***

Standard IV: Teachers facilitate learning for their students.

**** Teachers know the ways in which learning takes place, and they know the appropriate levels of intellectual, physical, social, and emotional development of their students.***
Adapt resources to address the strengths and weaknesses of students.

**** Teachers plan instruction appropriate for their students.***
Use data for short and long range planning.

**** Teachers use a variety of instructional levels.***
Employ a wide range of techniques using information and communication technology, learning styles, and differentiated instruction.

**** Teachers integrate and utilize technology in their instruction.***
**** Teachers help students develop critical thinking and problem-solving skills.***

**** Teachers help students work in teams and develop leadership qualities.***

**** Teachers communicate effectively.***

****Teachers use a variety of methods to assess what each student has learned.***

Teachers use multiple indicators, including formative and summative assessments , to evaluate student progress and growth as they strive to eliminate achievement gaps. Teachers provide opportunities, methods, feedback and tools for students to assess themselves and each other. Teachers use 21st Century assessment

systems to inform instruction and demonstrate evidence of students' 21st Century knowledge, skills, performance and dispositions.

Use multiple indicators, both formative and summative, to evaluate student progress * Provide opportunities for self-assessment * Use assessment systems to inform instruction and demonstrate evidence of students' 21st Century knowledge, skills, performance and disposition.

Reduced to essentials, our teachers are supposed to be effectively using formative assessments and assessment systems to evaluate what their students know and do not know within the SCOS.

The North Carolina Standards for School Executives (Principals, etc) provide that school executives practice effective instructional leadership, which includes as a requirement, **the documented use of formative assessment instruments to impact instruction** under Standard 2 Instructional Leadership:

Standard 2 provides, in pertinent part, that the school executive practices effective instructional leadership when he or she:

Demonstrates knowledge of 21st century curriculum, instruction and assessment ..... Ensures that there is an appropriate and logical alignment between the curriculum of the school and the state's accountability program..... Creates processes for collecting and using student test data and other formative data from other sources for the improvement of instruction..... ***Standards***, pp 3,4.

The North Carolina Standards for Superintendents provide that Superintendents set high standards for the professional practice of 21st century instruction and assessment that result in an accountable environment and that the Superintendent, under Standard 2: Instructional Leadership: Ensures that there is an appropriate and logical alignment between the district's curriculum, 21st Century instruction and ***assessment***, and the state accountability program. Under the artifacts bullet points under Standard 2, the assessment practice states: Use of formative assessment to impact instruction.

The Mission Statement of the SBOE for 21st Century Students also provides for the use of an assessment system.

NC public schools will be led by 21st Century professionals.

*** ***Every teacher and administrator will use a 21st Century assessment system to inform instruction and measure 21st Century knowledge, skills, performance and dispositions.***

The Findings of the Blue Ribbon Commission on Testing and Accountability in its Report to the SBOE in January 2008 echoed the Standards adopted for 21st Century learning. Finding Number 6 states:

> ***6. Teachers need on-going formative assessments to ensure that all students graduate from high school globally competitive for work and postsecondary education and prepared for life in the 21st Century. Report, p. 4.***

Math skills are so critical to student success in high school, that the excellent ***North Carolina High School Resource Allocation Study – Final Report*** released in February, 2008 stated in pertinent part:

> The most direct measures of the resources that students bring to high school are their scores on reading and mathematics tests at the end of the eighth grade (EOG). These capture much of the learning that students have accumulated, in school and out, before entering high school. We also included additional measures that have been shown to place students at an academic disadvantage, such as poverty and minority status.
>
> The ***resources that have the greatest effect on high school performance are those that the students bring to high school – particularly their mathematics skills. Report pii.***

There can be no real dispute about this fact - Mathematics skills are critical and the SBOE standards require the use of an up to date assessment system to inform the teacher regarding the level of instruction of each student's skills and performance. As Chancellor Oblinger wrote:

2) Formative assessments, routinely done on an ongoing basis, measure progress along a curriculum at the classroom level, often in concert with the use of pacing guides for state standards..... ...

Reduced to essentials, the Court has learned that effective classroom instruction is a simple and clear path that if followed and effectively implemented will provide a child with the opportunity to obtain a sound basic education:

First, the teacher must know the content of the SCOS being taught and how to make the learning environment challenging and relevant.

Second, the teacher must know the students and how to differentiate the instruction between students that learn differently.

Third, the teacher must teach to the SCOS and use a pacing guide to help guide the pace of instruction so that the SCOS remains aligned and timely taught so

the course can reach the end of the year summative assessment – EOC or EOG tests with the course material covered.

Fourth, the teacher must use a formative assessment system in a timely and effective manner to measure each student's progress, or lack thereof, as the student progresses through the course. In other words, the teacher must assess how well the student is learning the material and be able to timely instruct a student who has not yet gotten the concept down. ClassScape and other 21st Century on line systems can provide this kind of assessment to the teacher.

Last, but not least, the teacher must be trained to properly understand the benefit of formative assessments and must be trained to use the 21st Century assessment system(s) available. If not available, the teachers and principal should develop formative assessments themselves as a team approach, or at a minimum the central office should develop formative assessments.

While the path is clear and simple, the math scores indicate that the path is not being followed in far too many schools and children are not being provided the equal opportunity for a sound basic education when it is not.

In conclusion, after focusing on these issues for over a year and talking to multiple educators and groups of educators, it appears to the Court that there are great gaps and disconnects all over the state and in our schools and colleges of education with respect to formative assessments and their importance, especially in mathematics instruction throughout all grade levels to an including high school.

C. Implementation of SBOE's Standards for 21st Century Assessments and Goals for 21st Century Mission and Goals, Content and Skills

The SBOE on June 5, 2008, adopted a written policy entitled "***Framework for Change: The Next Generation of Assessments and Accountability ("Framework for Change").***"

In the ***Framework for Change***, the SBOE declared in pertinent part on page 2:

> The State Board of Education believes that critical improvements can be made immediately to the current system that will lead to greater effectiveness, understanding and transparency for students, educators and the public at large. In addition, the Board if committed to building a next generation of standards, assessments and accountability to support student learning and quality teaching that reflect the 21st century assessment and accountability systems outlined in the ***Partnership for 21st Century Skills Milestones for Improving Learning and Education.*** The next generation must be characterized by: 1) ***assessments that are learner-centered, diagnostic, performance-based, and that provide evidence of student achievement in core subjects and 21st century***

skills; 2) accountability measures that focus on both student achievement and learning outcomes; and 3) transparency that provides parents, teachers and other stakeholders with meaningful information about the expectations, assessments and performance of students.

The bottom line is that North Carolina has adopted 21st Century standards for education and the SBOE, in its June 5, 2008 ***Framework for Change*** has adopted action be taken by DPI for immediate improvement and development of the next generation of standards, assessments and accountability.

However, the implementation of those action steps is set out over the next few years for changes in the EOC and EOG testing and content which are summative assessments, not formative assessments. In addition, the action plan for developing the next "generation" of standards, assessments and accountability, which includes the development of a "next generation assessment system which includes formative, benchmark and summative assessments based on the new standards. " ***Framework for Change, page 5, section 2.***

While it is undisputed that those standards acknowledge and require the use of formative assessments to inform instruction and assist the teacher and children in their journey through the SCOS so they can be proficient on the EOG and EOC summative assessments at the end of the year, it is also undisputed that in many schools, these essential educational ingredients are not present period and further, that mathematics instruction is now, and has been, in difficulty in elementary grades and thus, through middle grades into algebra 1.

The Court finds, based on the foregoing, that it is inexcusable for a child to get to the end of the fifth grade unable to recite the multiplication tables by memory through at least 12 and certainly through 15, unable to do fractions without the aid of a calculator and unable to do long division by hand using the standard algorithm. The failure to give the child the opportunity to master these skills in the elementary grades is a prima facie denial of their opportunity to obtain a sound basic education.

In addition, the standards now adopted and acknowledged as necessary for a 21st century education **have to be implemented in truth and in fact and as soon as practicable.**

On the University side of the equation, it appears that the UNC system that trains teachers, principals and superintendents should also be changing and aligning its courses to encompass the standards in their curriculum so that the teachers of tomorrow are not pushed into the classroom unprepared to effectively teach math, reading or other subjects because they have no real ability or knowledge about assessments when they arrive on the first day of school.

D. What is being done now to address the immediate need for instructional change in the SCOS and elementary math instruction to ensure that all children are being taught their multiplication tables, fractions and long division so that they are fluent in those areas before leaving elementary school?

While the new standards and the ***Framework for Change*** look to the future, the Court cannot close its eyes to the present and ignore the fact that students in too many elementary classrooms are not learning their multiplication tables by heart, not learning to deal with fractions and long division by hand versus the crutch calculator.

This instructional failure has led to, and will continue to lead to, children unprepared to be proficient in mathematics through elementary, middle and into algebra 1 because they have not been taught the basics in the third, fourth and fifth grades. As a result, they are being deprived of the equal opportunity to obtain a sound basic education in math.

Additionally, on the SBOE and DPI side, the State must enforce the standards that it has adopted for the presently employed and licensed teachers, principals and superintendents and see to it that these fine words that are only on paper actually come to life in every schoolroom in North Carolina.

E. What is being done to align the new standards with licensure requirements and the University curriculum for teachers, administrators and superintendents to insure that prospective teachers, administrators and superintendents are trained to properly and effectively utilize formative assessments to inform instruction in math as well as all subjects?

In the Court's view, the State of North Carolina should put into place strict licensure requirements that mandate each teacher and administrator and superintendent be fluent, trained and competent to effectively use formative assessments and 21st Century assessment systems in their instructional programs and classrooms before being licensed.

For those presently licensed that are not now fluent, trained and competent, the State should provide effective professional development and then assess each and every one in terms of their effective use of and knowledge of the assessment system so as to aid instruction. This should be mandated over a short period of time.

The purpose of this non-adversarial hearing will be to provide the State of North Carolina, acting through its Executive Branch, including but not limited to the State Board of Education, The Department of Public Instruction and the University System, the opportunity to report to the Court concerning the foregoing subjects and questions. information to the

Court and the parties on the foregoing subjects and answers to the foregoing questions.

Due to the number of items to be covered, there will be no further matters taken up at this hearing.

SO ORDERED this 2d day of July, 2008.

Howard E. Manning, Jr.
Superior Court Judge

look at the science test results. By these standards, multiple thousands of high school children have not obtained **a sound basic education as set forth *in Leandro.***

CONCLUSION

North Carolina's children, regardless of race, creed, color or national origin have a constitutional right the equal opportunity to obtain a sound basic education which has been defined by the North Carolina Supreme Court:

For purposes of our Constitution, a 'sound basic education' is one that will provide the student with at least:

1. **sufficient ability to read, write and speak the English language** and a sufficient knowledge of fundamental mathematics and physical **science to enable the student to function in a complex and rapidly changing society;**
2. sufficient fundamental knowledge of geography, history and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student's community, state and nation;
3. sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education and training; and
4. **sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further *formal education or gainful employment* in contemporary society.."** emphasis added; (*Leandro I p. 347*).....

The academic results of North Carolina's school children enclosed in this Report show that there are way too many thousands of school children from kindergarten through the 11th grade in high school who have not obtained the sound basic education mandated and defined above and reaffirmed by the North Carolina Supreme Court in November, 2013. *Hoke County Bd. of Educ. v. State (supra.)*

The bottom line is that the constitutional right belongs to the children. The right does NOT belong to the adults who are supposed to be ensuring that the children of North Carolina obtain a sound basic education in each and every classroom in this state by providing the following to be *Leandro compliant.*

SECOND*: Article I, Section 15 and Article IX, Section 2 of the North Carolina Constitution, as interpreted by Leandro,* guarantee to each and every child the right to an equal opportunity to obtain a sound basic education which requires that each child be afforded the opportunity to attend a public school which has the following educational resources, at a minimum

> *First, that every classroom be staffed with a competent, certified, well-trained teacher who is teaching the standard course of study by implementing effective educational methods that provide differentiated, individualized instruction, assessment and remediation to the students in that classroom.*
>
> *Second, that every school be led by a well-trained competent Principal with the leadership skills and the ability to hire and retain competent, certified and well-trained teachers who can implement an effective and cost-effective instructional program that meets the needs of at-risk children so that they can have the equal opportunity to obtain a sound basic education by achieving grade level or above academic performance.*

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.	NORTH CAROLINA STATE BOARD OF EDUCATION'S MOTION FOR RELIEF PURSUANT TO RULE 60 AND RULE 12

NOW COMES the North Carolina State Board of Education ("SBE"), and hereby submits, pursuant to Rule 60 and Rule 12, this Motion for Relief from the Judgment dated April 4, 2002, and any other applicable remedial Superior Court Orders. The Superior Court has retained remedial jurisdiction over this action for fifteen (15) years. The SBE requests that this Court relinquish this jurisdiction. In support of this Motion, the SBE shows the following:

1. On April 4, 2002, the Superior Court entered Judgment against the State. The Superior Court's 2002 Judgment arose from a complaint filed on May 25, 1994, and a trial held beginning in September of 1998, that focused on educational conditions in Hoke County. The Superior Court's Judgment pertained to the State's liability for the education of at-risk children. In paragraph 2 of the April 2002 Judgment, the Superior Court decreed:

> That there were children at-risk of educational failure who [were] not being provided the equal opportunity to obtain a sound basic education because their particular LEA, such as Hoke County Public Schools, is not providing them with one or more of the basic educational services set out in *paragraph 1, above*.

MDO at 110 (italics added). Paragraph 1 had three parts that read as follows:

- First, that every classroom be staffed with a competent, certified, well-trained teacher who is teaching the standard course of study by implementing effective educational methods that provide differentiated, individualized instruction, assessment and remediation to the students in that classroom.
- Second, that every school be led by a well-trained competent Principal with the leadership skills and the ability to hire and retain competent, certified and well-trained teachers who can implement an effective and cost-effective instructional program that meets the need of at-risk children to that they can have the equal opportunity to obtain a sound basic education by achieving grade level or above academic performance.
- Third, that every school be provided, in the most cost effective manner, the resources necessary to support the effective instructional program within that school so that the educational needs of all children, including at-risk children, to have the equal opportunity to a sound basic education can be met.

MDO at 109-110.

2. The Superior Court ordered the State of North Carolina to "remedy the Constitutional deficiency for those children who are not being provided the basic educational services set out in Paragraph 1, whether they are in Hoke County, or another county within the State." MDO at 111, paragraph 4. The Superior Court declined to involve itself in the "nuts and bolts" of how to accomplish the task, which the Court stated belonged to the Executive and Legislative Branches, at least initially. MDO at 111, paragraph 5.

3. The Superior Court "retain[ed] jurisdiction over this matter for the purposes of resolving any remaining issues, including, but not limited to, enforcement of this Judgment. ..." MDO at 112, paragraph 9.

4. The North Carolina Supreme Court affirmed the ruling that the State must act to correct the deficiencies. *Hoke Cty. Bd. of Educ. v. State*, 358 N.C. 605, 599 S.E.2d 365

(2004)("*Leandro II*"). The Supreme Court remanded proceedings as to the other plaintiff school districts. The Court stated:

> However, because this Court's examination of the case is premised on evidence as it pertains to Hoke County in particular, our holding mandates cannot be construed to extend to the other four rural districts named in the complaint. With regard to the claims of named plaintiffs from the other four rural districts, the case is remanded to the trial court for further proceedings that include, but are not necessarily limited to, presentation of relevant evidence by the parties, and findings and conclusions of law by the trial court.

Id. at 613, n.5, 599 S.E.2d at 375, n.5.

5. For over a decade, the Superior Court has retained and exercised jurisdiction in this case. This Superior Court has not, however, held a trial as to any other plaintiff school board.

6. In 2009, the North Carolina Court of Appeals summarized the results of the Superior Court's monitoring based on the post 2004 and pre-2009 record:

> In the years since *Leandro II*, the trial court has continued to monitor the progress of the State's efforts to comply with *Leandro I* and *Leandro II*. The State has established the Disadvantaged Student Supplemental Fund ("DSSF") to assist at-risk children, and has fully funded the Low Wealth Schools Fund ("LWF"). Additionally, the State has allocated funds to (1) expand the More-at-Four program which provides education to at-risk four-year-olds; (2) reduce class size; (3) increase resources to the Hoke County school system, including increased teacher salaries and creation of Learn to Earn High Schools; and (4) create new programs to adequately train school superintendents and administrators.

Hoke County Bd. of Educ. v. State, 198 N.C. App. 274, 276, 679 S.E.2d 512, 515 (2009).

7. From 2007 through 2009, the United States' economy experienced the "Great Recession." United States Bureau of Labor, "The Recession of 2007-2009," February 2012, available at https://www.bls.gov/spotlight/2012/recession/pdf/recession_bls_spotlight.pdf.

8. "On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (ARRA), historic legislation designed to stimulate the economy, support job creation, and invest in critical sectors, including education. ARRA provided $4.35

billion for the Race to the Top fund, of which approximately $4 billion was used to fund comprehensive statewide reform grants under the Race to the Top program." "Race to the Top, North Carolina Report, Year 2: School Year 2011-2012, Executive Summary," U.S. Department of Education, February 1, 2013, available at https://www2.ed.gov/programs/racetothetop/performance/north-carolina-year-2.pdf.

9. On May 27, 2010, the State of North Carolina, through the Office of Governor Beverley Perdue, State Superintendent June Atkinson, and President of the State Board of Education, William Harrison, submitted the Race to the Top Grant (RttT) Proposal to the United States Department of Education. The State proposed numerous educational reforms. Those reforms centered on: adopting rigorous college-and career-ready standards and assessments; recruiting, evaluating, and retaining highly effective teachers and principals; building longitudinal data systems to measure student success and inform teaching and learning; and turning around low-performing schools. The 261-page grant proposal is available at the North Carolina Department of Public Instruction website, http://www.dpi.state.nc.us/rttt/.

10. In September 2010, the State was awarded the RttT grant. "North Carolina received one of only 12 federal Race to the Top (RttT) competitive grants in 2010, bringing nearly $400 million to the state's public school system. This funding enabled [the State] to remodel [its] state system as part of an ambitious plan to increase student achievement, close achievement gaps and continue to increase the number of career- and college- ready graduates by making sure every student has an excellent teacher." http://www.dpi.state.nc.us/rttt/. (App. at 1) The RttT grant and the work related thereto was administered over a five-year period.

11. The United States Department of Education reported on the State's RttT implementation, noting a number of achievements, including the updated statewide Standard

Course of Study composed of the Common Core State Standards (CCSS). "Race to the Top, North Carolina Report, Year 3: School Year 2012-2013, Executive Summary," at 3, available at https://www2.ed.gov/programs/racetothetop/performance/north-carolina-year-3.pdf. (App. at 4)

12. When the Superior Court convened an annual status conference for this case on November 13-14, 2013, State witnesses testified that the original ABC's accountability and statewide testing model had been replaced. The READY Accountability model and new, rigorous curriculum standards were in place effective for the 2012-2013 school year.

13. School year 2012-2013 demarcates the end of the ABC's accountability era and the beginning of READY Accountability, which creates a new Statewide educational system. READY Accountability was not the subject of the Plaintiffs' 1994 pleadings, the parties' discovery, or the trial. Thus, it was not the subject of the Superior Court's 2002 Judgment.

14. Legislative changes, many of them also occurring in 2012 or thereafter, have further changed the Statewide educational system. These changes include not only the adoption of the READY Accountability model, but the adoption of the Read to Achieve Program, and other changes in the identification and support of at-risk students in this State. The result is a "future school system" that was not the subject of Plaintiffs' 1994 pleadings, discovery, the 1999 trial, or the Superior Court's 2002 Judgment.

15. Factual and educational circumstances in Hoke County have changed significantly since the 1999 trial.

16. Because the factual and legal landscapes have significantly changed, the original claims, as well as the resultant trial court findings and conclusions, are divorced from the current laws and circumstances; are stale; and are untethered to the new READY Accountability model and other legislative changes to the State's educational system. Continued status hearings on the

present system, which to date have primarily included constitutional attacks based on statewide test scores, exceed the jurisdiction established by the original pleadings in this action. Future trials as to the remaining plaintiff school boards would also exceed the scope of jurisdiction. The remaining plaintiff school boards' claims are stale and said claims should be dismissed pursuant to Rule 12(b)(1), (2), and (6).

17. The Superior Court did not specify the "nuts and bolts" of how to accomplish the task of remedying the Constitutional deficiency. The present educational system is, in part, the result of the RttT grant, as well as other legislative changes, many of which have occurred post-2012. The hearings held November 13-14, 2013; January 21-22, 2015; April 8-9, 2015; and July 21-22, 2015, tell the story of many of these changes. Other changes are a matter of statute. The cumulative effect of these changes is that the State's current educational system is so far removed from the factual landscape giving rise to the complaint, trial, and 2002 Judgment that the superior court is now retaining jurisdiction over a "future school system" which was not the subject of the original action. These changed circumstances support relief under Rule 60.

18. A Brief in Support of this Motion is submitted contemporaneously herewith. The Brief contains: citations to legislative reports; materials available on the North Carolina Department of Instruction website; and materials written and/or produced by the Hoke County Schools and also available online. These materials are produced for the Court's convenience in an Appendix also filed herein.

WHEREFORE, the SBE moves this Court for relief from the 2002 Judgment and requests that this Court relinquish its continuing jurisdiction over the SBE, or provide such other relief as this Court deems just and proper.

Respectfully submitted, this the 10th day of July, 2017.

Respectfully submitted, this the 24th day of July, 2017.

JOSH STEIN
Attorney General

Lauren M. Clemmons
Special Deputy Attorney General
State Bar No. 15987

Laura Crumpler
Special Deputy Attorney General
State Bar No. 8712
Attorneys for the State Board of Education

North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602

Telephone: (919) 716-6900
Facsimile: (919) 716-6763
lclemmons@ncdoj.gov
lcrumpler@ncdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing MOTION FOR RELIEF in the above-captioned matter upon all parties via United States mail or hand delivery addressed as follows:

VIA HAND DELIVERY
Melanie Black Dubis
Scott E. Bayzle
Parker, Poe, Adams & Bernstein L.L.P.
301 Fayetteville Street, Suite 1400
Post Office Box 389
Raleigh, North Carolina 27602-0389

U.S. MAIL, POSTAGE PREPAID
H. Lawrence Armstrong, Jr.
Armstrong Law, PLLC
119 Whitfield Street
Post Office Box 187
Enfield, North Carolina 27823

Counsel for Plaintiffs

VIA HAND DELIVERY
Deborah R. Stagner
Tharrington, Smith, L.L.P.
150 Fayetteville Street, Suite 1800
Post Office Box 1151
Raleigh, North Carolina 27602 1151
Counsel for Charlotte-Mecklenburg Board of Education, Plaintiff Intervenor and Realigned Defendants

U.S. MAIL, POSTAGE PREPAID
Mark Dorosin
Taiyyaba Qureshi
University of North Carolina School
of Law Center Center for Civil Rights
CB 3382
Chapel Hill, North Carolina 27599 3382
Counsel for Penn Intervenors

This the 24th day of July, 2017.

Lauren M. Clemmons
Special Deputy Attorney General

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

This cause coming on before the Honorable W. David Lee, Judge Presiding pursuant to Rule 2.1 of the General Rules of Practice at the February 15, 2018 special session of Wake County Superior Court upon motion of the North Carolina State Board of Education (hereinafter "SBE") pursuant to Rule 12 and Rule 60 of the Rules of Civil Procedure for relief from the judgment dated April 4, 2002 "and any other applicable remedial Superior Court Orders." The SBE seeks through this unusual request to be released "from the remedial jurisdiction of this Court."

Based upon the evidence, arguments and contentions presently before the Court, the Court makes the following findings of fact by at least a preponderance of the evidence:

1. The matters before this court are justiciable matters of a civil nature and this court exercises the subject-matter jurisdiction conferred by N.C.Gen.Stat. 7A-240. The Superior Court division is the proper division

where, as here, the principal relief prayed for is the enforcement or declaration of any claim of constitutional right. See N.C.Gen.Stat. 7A-245(a)(4). Moreover, personal jurisdiction over the person of the SBE has existed and has been exercised over the movant, with its active participation in these proceedings for more than twenty years.

2. The law of this case includes, *inter alia*, our Supreme Court's holding in *Leandro I* that there is a constitutional requirement that every child in this state have equal access to a sound basic education and that the state is required to provide children a qualitatively adequate education, i.e. an education that meets some minimum standard of quality.

3. The SBE is constitutionally empowered under Article IX, Section 5 of the North Carolina Constitution to supervise and administer the public school system and the educational funds referenced therein for the system's support. The SBE is also charged with making all needed rules and regulations related thereto. The Defendant State of North Carolina has the ultimate constitutional obligation to insure that every child has the opportunity to receive a sound basic education. Together, the actions and decisions of these defendants are indispensable in undertaking to deliver the *Leandro* right to every child.

4. At the commencement of this litigation the SBE, together with the State moved pursuant to 12 to dismiss the claims now before the court, which motion was denied by the trial court. This denial was affirmed on appeal. Principles of *res judicata* and collateral estoppel preclude a reexamination of the current motion strictly on Rule 12 grounds. This court is constrained, however, to consider the merits of the instant motion within the context of Rule 60 based upon the SBE's contentions that the circumstances have changed and that the claim to enforce the *Leandro* right is now moot.

5. Rule 60(b)(5) affords relief where the court's judgment has been satisfied, released or discharged or where it is no longer equitable that the judgment should have prospective application. There has been no final non-appealable judgment relating to the remediation and enforcement of the

Leandro constitutional right. The last Supreme Court pronouncement in this case (*Leandro II*) remanded the proceedings to the trial court and "ultimately into the hands of the legislature and executive branches" for remedial action, noting in the decision that "(W)hether the State meets this challenge remains to be determined." As to binding force of this right, the SBE acknowledged in July of 2013 in its brief to the North Carolina Supreme Court that it is "bound by its judicially mandated constitutional obligations." *New Brief of Defendant-Appellee State Board of Education* (N.C. Supreme Court, July 24, 2013). As to remediation and enforcement, Judge Manning's last order of March 17, 2015 concluded that "a definite plan of action is still necessary to meet the requirements and duties of the State of North Carolina with regard to its children having equal opportunity to obtain a sound basic education." Again, the SBE is constitutionally bound to administer and supervise the execution of such a plan.

6. *Leandro I* cautions that...."the courts of the state must grant every reasonable deference to the legislative and executive branches when considering whether they have established and are administering a system that provides the children...with a sound basic education." In *Leandro II* the trial court determined that such a showing had been made against the state defendants. The liability judgment then entered against the state defendants was affirmed in *Leandro II* and the defendants were ordered to address and correct the constitutional violations.

7. The SBE contends that the present circumstances of the educational system in Hoke County have so changed since the 2002 judgment that there is no longer a justiciable controversy before the court. The SBE supports this contention by summarizing changes and reforms, both legislative and executive in nature, that have occurred since 2002. However, the SBE has failed to present convincing evidence that either the *impact or effect* of these changes and reforms have moved the State nearer to providing children the fundamental right guaranteed by our State Constitution.

8. The statewide implications and applications of this case have been established throughout the course of this proceeding, as perhaps best

evidenced by the Judge Manning's comprehensive review as well as by the SBE's comprehensive list of statewide changes and reforms that SBE contends has eliminated a justiciable controversy with respect to *Leandro* compliance.

9. In terms of assessing compliance with *Leandro*, our Supreme Court has recognized that one metric for evaluation is education "outputs," i.e. test scores. Rather than demonstrating the absence of a justiciable controversy, a review of these outputs reveal an ebb and flow that at no time has demonstrated even remote compliance with the tenants of *Leandro*. As Judge Manning noted in his last order dated March 17, 2015, the results of the 2013-14 EOC, EOG, and ACT tests from the public schools indicate that "In way too many school districts across the state, thousands of children in the public schools have failed to obtain, and are not now obtaining a sound basic education as defined by and required by the *Leandro* decision." Judge Manning's order reviews in detail reading, math and biology results, generally within the 2012-2014 time frame, reflecting in each and every category that more than half of the students tested below grade level. Additional hard facts in evidence before this court in include the SBE admission in 2015 that the demand for new teachers is not being met; that there were then more schools rated "D" or "F" than can be served; that the federal funding ("Race to the Top") ended in 2014-15, resulting in (1) the State Department of Public Instruction losing over half the staff-from 147 to 57-dedicated to serving those low performing schools and (2) loss of critical funding used to develop and implement effective teaching. In Hoke County, the LSA has been forced to hire lateral entry candidates-people with no formal training to work with this most at-risk population-to fill these positions. Earlier submissions to this court also indicate that in 2014 North Carolina ranked 49th out of 50 states in terms of percentage of its eleventh graders meeting the ACT reading benchmark. These are but a few examples revealing that the SBE is not supervising and administering a public school system that is *Leandro* compliant. The court record is replete with evidence that the *Leandro* right continues to be denied to hundreds of thousands of North Carolina children.

10. Rule 60(b)(6) affords relief "for any other reason justifying relief from the operation of a judgment." Our appellate courts have called this provision of the Rule "a grand reservoir of equitable power to do justice in a particular case." Norton v. Sawyer, 30 N.C.App 420, 426 (1976). Further, a determination under Rule 60 rests in the sound discretion of the trial judge. Harris v. Harris, 307 N.C. 684 (1983).

11. The SBE argues that legislation enacted by both Congress and our General Assembly now adequately address those criteria that our Supreme Court has decreed constitute a "sound basic education" (See *Leandro I*) and that the legislation also addresses the educational resources to which every child has the right of access-competent, certified, well-trained teachers, a well-trained competent Principal, and resources necessary the effective instructional program (See *Leandro II*). The SBE further argues that these enactments must be presumed by this court to be constitutional.

12. This court indeed indulges in the presumption of constitutionality with respect to each and every one of the legislative enactments cited by the SBE. That these enactments are constitutional and seek to make available to children in this State better educational opportunities is not the issue before the court. The issue is whether the court should continue to exercise such remedial jurisdiction as may be necessary to safeguard and enforce the much more fundamental *constitutional right* of every child to have the opportunity to receive a sound basic education. Again, the evidence before this court upon the SBE motion is wholly inadequate to demonstrate that these enactments translate into substantial compliance with the constitutional mandate of *Leandro* measured by applicable educational standards.

13. The SBE's motion was filed in July, 2017 and to the extent that it is based on changed circumstances is untimely, the SBE's brief hearkening to changes made in 2012, some five years before the filing of its motion.

Based on the foregoing findings of fact the Court makes the following conclusions of law:

1. The changes in the factual landscape that have occurred during the pendency of this litigation do not serve to divest the court of its jurisdiction to address the constitutional right at issue in this cause. The court has jurisdiction over the subject matter and over the person of the defendant. To the extent that the SBE seeks dismissal pursuant to Rule 12(b)(1) or (2) the motion should be denied. To the extent that the SBE seeks dismissal pursuant to Rule 12(b)(6), the trial court's previous denial of that motion having been affirmed on appeal in *Leandro I*, the re-assertion of that motion should be denied.

2. There is an ongoing constitutional violation of every child's right to receive the opportunity for a sound basic education. This court not only has the *power* to hear and enter appropriate orders declaratory and remedial in nature, but also has a *duty* to address this violation. This court retains both subject matter jurisdiction and jurisdiction over the parties as it undertakes this duty. Both state defendants have been proper parties to this litigation since its inception and each remain so.

3. The State recognizes its continuing constitutional obligations and has most recently joined with the plaintiffs in an effort to adopt a comprehensive approach to address those obligations. The successful delivery of the *Leandro* right necessarily requires the active participation of the SBE in the discharge of its constitutional duty to supervise and administer the school system and its funding. The SBE has a significant non-delegable role in affording the constitutional entitlements of *Leandro* to every child. The SBE has been and continues to be in the better position than the court to identify in detail those curricula best designed to ensure that a child receives a sound basic education.[1]

4. These state defendants have the burden of proving that remedial efforts have afforded substantial compliance with the constitutional directives of our Supreme Court. To date, neither defendant has met this burden. Both

law and equity demand the prospective application of the constitutional guarantee of *Leandro* to every child in this State.

5. The Rule 60 motion is untimely, the same not having been filed within a reasonable time as required by Rule 60(b) (6). Further, the movant has failed to demonstrate that such extraordinary circumstances exists that justice demands relief from the previous rulings of the court or from the burden of the movant to establish that it has presented a remedial plan of action that addresses the liability of the movant established by the law of this case.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, in the Court's discretion, that the motion of the defendant SBE should be and the same is hereby DENIED.

This the 7th day of March, 2018.

W. David Lee, Judge Presiding

[1] In *Leandro I*, the Supreme Court recognized that "judges are not experts in education and are not particularly able to identity in detail those curricula best designed to ensure that a child receives a sound basic education." *Leandro I* reminded the trial court that judicial intrusion into the area of expertise as to what course of action will lead to a sound basic education is justified only upon a showing that the right is being denied, it initially being the province of the legislative and executive branches of government to take appropriate action. This court notes that both branches have had more than a decade since the Supreme Court remand in *Leandro II* to chart a course that would adequately address this continuing constitutional violation. The clear import of the *Leandro* decisions is that if the defendants are unable to do so, it will be the *duty* (emphasis mine) of the court to enter a judgment "granting declaratory relief and such other relief as needed to correct the wrong while minimizing the encroachment upon the other branches of government." (*Leandro I*)

This trial court has held status conference after status conference and continues to exercise tremendous judicial restraint. This court is encouraged by Governor Cooper's creation of the Governor's Commission on Access to Sound Basic Education. Concurrent with the entry of this Order, this court has also appointed, with the consent of the plaintiffs, the Penn Intervenors and the State of North Carolina a consultant. This consultant has court approval to work with the Commission with a view toward submitting recommendations to the parties, the Commission and this Court of specific actions to achieve *Leandro* compliance. The time is drawing nigh, however, when due deference to both the legislative and executive branches of government must yield to the court's duty to adequately safeguard and actively enforce the constitutional mandate on which this case is premised. It is the sincere desire of this court that the legislative and executive branches heed the call.

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.	FILED DATE:March 13, 2023 TIME: 03/13/2023 9:47:32 AM WAKE COUNTY SUPERIOR COURT JUDGES OFFICE BY: Kellie

SCHEDULING ORDER AND NOTICE OF HEARING

THIS MATTER came before the Court on March 10, 2023 for a status conference. After hearing from all parties, this Court orders as follows:

1. A hearing in this matter will be held on Friday, March 17, 2023 at 10:00 a.m. at the Wake County Superior Courthouse on the following issue on remand from the Supreme Court: "On remand, we narrowly direct the trial court to recalculate the appropriate distributions in light of the State's 2022 Budget." *See Leandro IV* Decision at ¶240. The Courtroom will be assigned by the Trial Court Administrator.

2. In advance of that hearing, the parties will have until 12:00 p.m. (noon) on March 15, 2023 to submit briefing and/or affidavit evidence addressing the above issue.

IT IS SO ORDERED.

This the 13th day of March 2023.

3/13/2023 9:20:17 AM

James Floyd Ammons, Jr.
Superior Court Judge Presiding

STATE OF NORTH CAROLINA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 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.

PROPOSED ORDER

PROPOSED ORDER

1. **THIS MATTER** is before this Court following the North Carolina Supreme Court's decision in *Hoke County Board of Education v. State*, 382 N.C. 386, 879 S.E.2d 193 (2022) (*Leandro IV*). There, the Supreme Court affirmed this Court's November 10, 2021 order directing state actors to transfer state funds necessary to implement Years Two and Three of the Comprehensive Remedial Plan (CRP). The Court also vacated in part and reversed in part this Court's April 26, 2022 order recalculating those funds to account for the 2021 State Budget. Finally, the Supreme Court remanded the case to this Court "for the narrow purpose of recalculating the amount of funds to be transferred in light of the State's 2022 Budget" and directing "State officials to transfer those funds to the specified State agencies." *Leandro IV*, 382 N.C. at 391, 879 S.E.2d at 199.

I. Procedural Background

2. This case has a history spanning nearly 29 years. Because *Leandro IV* details much of the extensive history of this case, the Court recites here only the factual and procedural background which may provide helpful context for this Order.

3. On March 15, 2021, the State of North Carolina and State Board of Education (collectively, State Defendants) submitted to the Court a Comprehensive Remedial Plan. The CRP was developed by experts retained to assist the Court in determining the concrete steps (which the CRP calls "action items") necessary to ensure that children in the State's K-12 public schools have the opportunity to obtain a "sound basic education" as required by the North Carolina Constitution.

4. The action items, which largely correspond to existing programs and purposes in the State Budget, build upon one another. Thus, for the CRP to be most effective, State Defendants must complete the action items in one year before moving to the next year's action items. The CRP

contains an appendix that identifies the resources necessary to implement those action items.

5. On June 7, 2021, the trial court ordered that the actions in the CRP were "necessary to remedy continuing constitutional violations and to provide the opportunity for a sound basic education to all public school children in North Carolina." (June 7, 2021 Or. at 7). The trial court further ordered the State Defendants to implement the CRP consistent with the CRP's timelines and to secure the funding necessary to implement the CRP.

6. Between June 7, 2021 and November 10, 2021, the North Carolina General Assembly did not pass, and the Governor did not sign, any legislation providing funding or resources necessary to implement the CRP as ordered by the trial court.

7. On November 10, 2021, this Court entered an order directing the transfer of funds totaling $1,753,153,000. The payments ordered by this Court were to fully fund action items in Years Two and Three of the CRP.

8. Based on the CRP's designation of the "responsible party" for each action item, the November 2021 Order determined that three entities, the Department of Public Instruction (DPI), the Department of Health and Human Services (DHHS) and the UNC System should receive the funding. The Court divided the funds among the entities as follows:

a. DHHS: $189,800,000;

b. DPI: $1,522,053,000; and

c. UNC System: $41,300,000.

9. On November 18, 2021, the General Assembly passed, and the Governor signed, the Current Operations and Appropriations Act of 2021, N.C. Sess. L. 2021-180 (the 2021 Appropriations Act).

10. Soon after the Court entered the November 2021 Order, the State Controller

petitioned the Court of Appeals for a Writ of Prohibition, Temporary Stay, and Writ of Supersedeas blocking the November 2021 Order's transfer directive. As the Controller has oft repeated, his quibble is with the transfer directive alone, he does not question the merits of the CRP or the necessity of the state funds to implement it.

11. The Court of Appeals granted the writ, prohibiting the trial court from enforcing the transfer directive. The Court of Appeals' order granting the writ did "not impact that trial court's finding that these funds are necessary" nor disturb "that portion of the judgment." *In re 10 Nov. 2021 Order*, No. P21-511 (N.C. Ct. App. Nov. 30, 2021). Plaintiffs appealed the Writ of Prohibition to the Supreme Court.

12. Meanwhile, the State appealed the November 2021 Order. The day after the State filed its notice of appeal, legislative leaders intervened and filed their own notice of appeal. In February 2022, the State petitioned the Supreme Court for discretionary review prior to review by the Court of Appeals.

13. On March 21, 2022, the Supreme Court granted the State's petition for discretionary review prior to determination by the Court of Appeals. In that same order, the Supreme Court remanded the case to this Court "to determine what effect, if any, the enactment of the State Budget has upon the nature and extent of the relief that the trial court granted in its" November 2021 Order. *Hoke Cnty. Bd. of Educ. v. State*, No. 425A21-2 (N.C. Mar. 21, 2022) (order granting State's petition for discretionary review prior to determination by the Court of Appeals). In a separate order, the Supreme Court ruled that it would hold in abeyance Plaintiffs' appeal of the Writ of Prohibition.

14. On remand, this Court accepted briefing and evidence from the parties regarding the effect of the 2021 Appropriations Act on the amounts transferred in the November 2021 Order.

On April 26, 2022, this Court issued an order that recalculated the amount of funds necessary to implement the Years Two and Three action items of the CRP following the passage of the 2021 State Budget.

15. The April 2022 Order found that the 2021 State Budget appropriated $968,046,752.00 to the action items in Years Two and Three of the CRP. Accordingly, the trial court found that the 2021 State Budget left $785,106,248 of the CRP unfunded, divided as follows:

a. DHHS: $142,900,000;

b. DPI: $608,006,248; and

c. UNC System: $34,200,000.

16. Relying on the Court of Appeals' Writ of Prohibition, this Court's April 2022 Order removed the November 2021 Order's transfer directive. The Court certified its Order to the Supreme Court for appellate review.

17. In July 2022, during the pendency of the parties' appeal, the General Assembly passed, and the Governor signed, the Current Operations Appropriations Act of 2022, N.C. Sess. L. 2022-73 (the 2022 Appropriations Act).

18. On November 4, 2022, the Supreme Court issued its decision in *Leandro IV*. *Leandro IV* affirmed this Court's November 2021 Order directing state actors to transfer state funds necessary to implement Years Two and Three of the CRP. *Leandro IV*, 382 N.C. at 468, 879 S.E.2d at 244.

19. *Leandro IV* also vacated in part and reversed in part this Court's April 26, 2022 Order recalculating the amount of state funds necessary to implement the CRP. *Id.* The Supreme Court reversed the trial court's conclusion—made in reliance on the Court of Appeals' Writ of Prohibition—that it lacked legal authority to issue the transfer directive. *Id.* The Supreme Court

also vacated the April 2022 Order because the State had enacted the 2022 Appropriations Act while that order was on appeal. *Id.* The 2022 Appropriations Act rendered the trial court's calculations of the amounts needed to fund the CRP moot. *Id.*

20. Finally, *Leandro IV* remanded the matter to this Court "for the narrow purpose of recalculating the amounts of funds to be transferred in light of the State's 2022 Budget." *Id.* at 391, 879 S.E.2d at 199. "Once that calculation is complete," the Court further stated, "we instruct the trial court to order the applicable State officials to transfer these funds as an appropriation under law." *Id.* at 476, 879 S.E.2d at 249. To permit the trial court to enter a transfer directive, the Supreme Court stayed the Writ of Prohibition. *Id.* The Supreme Court also ordered that this Court "retain jurisdiction over this matter to ensure the implementation of this order and to monitor continued constitutional compliance." *Id.*

21. On February 8, 2023, the Controller and Legislative Intervenors moved the Supreme Court to dissolve the stay of the Writ of Prohibition and order briefing on several issues that they assert remain unaddressed following *Leandro IV*. Among the issues raised by both the Controller and Legislative Intervenors is the reversion of funds transferred for the Year Two action items to the General Fund at the end of the 2021-2022 Fiscal Year.

22. On March 3, 2023, the Supreme Court granted the Controller's motion and reinstated the Writ of Prohibition, pending the Supreme Court's resolution of additional issues raised by the Controller. The Supreme Court denied Legislative Intervenors' motion.

23. As a result of *Leandro IV* and the Supreme Court's March 3, 2023 Order, this Court is now charged with the responsibility of recalculating the funds due for action items in Years Two and Three of the CRP in light of the enacted 2022 State Budget, but by virtue of the reinstated Writ of Prohibition, is prevented from enforcing an order to transfer those funds.

II. Findings of Fact[1]

24. Pursuant to the Supreme Court's narrow directive on remand, the Court makes the following findings of fact.

25. On March 10, 2023, the Court held a status conference. During the status conference, the Court ordered the parties to submit to the Court information about the amount of the CRP funded by the 2022 State Budget.

26. On March 17, 2023, the Court held an evidentiary hearing. Mr. Brian Matteson, Director of the General Assembly's Fiscal Research Division, and Ms. Anca Grozav, Chief Deputy Director of State Budget for the North Carolina Office of State Budget and Management, testified during the hearing.

27. Based on the Court's review of analyses provided to it by the North Carolina Office of State Budget and Management (OSBM) and the General Assembly's Fiscal Research Division (FRD), the testimony of Mr. Matteson and Ms. Grozav, and the arguments and submissions of the parties, the evidence demonstrates that significant necessary services for students, as identified in the CRP, remain unfunded or underfunded by the 2022 State Budget.[2]

28. This Court's November 2021 Order determined that it would cost approximately $1.75 billion to fund action items in Years Two and Three of the CRP. Based on the materials and evidence before it, the Court finds that the 2022 State Budget fails to provide nearly 40 percent of those total necessary funds. Specifically, the 2022 State Budget funds approximately 63% of the

[1] To the extent any proposed finding of fact is more properly considered a conclusion of law, the State intends it as such. Similarly, to the extent any proposed conclusion of law is more properly considered a finding of fact, the State intends it as such.

[2] The 2022 State Budget is comprised of the 2021 Appropriations Act and the 2022 Appropriations Act.

Year Two action items and 60% of the Year Three action items.

29. The parties submitted to the Court two competing spreadsheets purporting to show how much of each action item during Years Two and Three of the CRP the 2022 State Budget funded. *See* Trogdon Aff., Ex. A (FRD Chart); Grozav Aff., Exs. 1-4 (OSBM Chart).

30. The chart submitted by the State (the OSBM Chart) was prepared under the supervision of Ms. Grozav. The data and conclusions within the OSBM Chart are endorsed by the State, Plaintiffs, and Plaintiff intervenors.

31. The chart submitted by Legislative Intervenors (the FRD Chart) was prepared under the supervision of Mark Trogdon, Senior Advisor to the Legislative Services Officer at the Fiscal Research Division of the General Assembly.

32. The OSBM Chart and the FRD Chart largely agree on the funding status of the CRP action items for Years Two and Three, but ultimately diverge by roughly $48 million. Specifically, the FRD Chart includes $48 million in funding not included in the OSBM Chart. The differences are as follows:

a. The FRD Chart contains an additional $2 million for "New Teacher Support Programs" not included in the OSBM Chart;

b. The FRD Chart contains an additional $50,000 for an "Educator Compensation Study" not included in the OSBM Chart;

c. The FRD Chart contains an additional $26 million for "Disadvantaged Student Supplemental Funding (DSSF)" not included in the OSBM Chart;

d. The FRD Chart contains an additional $6.2 million for "Principal and Assistant Principal Salaries" not included in the OSBM Chart;

e. The FRD Chart contains an additional $14 million for "District and Regional

Support" not included in the OSBM Chart;

f. The FRD Chart contains an additional $260,000 for "Review and Adoption of Curricular Resources" not included in the OSBM Chart. However, the FRD Chart does not subtract the $260,000 from the total amount of the CRP unfunded by the 2022 State Budget; and

g. The FRD Chart contains an additional $730,000 for "Additional Cooperative Innovative High Schools" not included in the OSBM Chart. Again, the FRD Chart does not subtract the $730,000 from the total amount of the CRP unfunded by the 2022 State Budget;

See Trogdon Aff. at 5-6. The Court addresses each discrepancy in turn, using the OSBM Chart as its baseline.

33. With respect to the "New Teacher Support Program," the CRP provides that:

> I.G.ii.1 - Provide comprehensive induction services through the NC New Teacher Support Program to beginning teachers in low performing, high poverty schools.

The UNC System is the entity responsible for this action item.

34. FRD's Chart includes an additional $2 million in appropriations for this action item not included in the OSBM Chart.[3] FRD Chart Mr. Matteson testified that the additional $2 million reflects allocations to the UNC System made by the Governor from the Governor's Emergency Education Relief Fund ("GEER") in August 2022. **[Draft T pp 16-17].**[4] Ms. Grozav, meanwhile,

[3] *Compare* FRD Chart, Row 4, *with* OSBM Chart (Ex. 4 – UNC), Row 6.

[[4] The State cites to the draft transcript of the March 17, 2023 evidentiary hearing only for the Court's benefit in reviewing the State's proposed order. Because the draft transcript is only for use by attorneys and the Court, the State has included its citations to the draft transcript in bracketed, bold text to assist the Court in removing the citations before issuing its Order.]

testified that OSBM omitted the $2 million because the General Assembly did not appropriate those funds to the Governor in the 2022 State Budget. **[Draft T pp 60-61].**

35. The General Assembly appropriated the GEER funds to the Governor in a March 2021 bill appropriating federal COVID-19 Relief Funds. *See* N.C. Sess. Law. 2021-3, § 1.1(a). Thus, the $2 million was not appropriated in the 2022 State Budget.

36. Although this $2 million was not directly funded in the 2022 State Budget, and was appropriately excluded in the OSBM chart, the State is paying for this item through federal GEER funds appropriated in 2021. Thus, the State has provided $2 million in funding for this action item.

37. Accordingly, the Court includes the $2 million in its calculations and reduces the amount owed to the UNC System by $2 million.

38. Next, with respect to the "Education Compensation Study," the CRP provides that:

> I.A.ii.2 - Develop a plan for implementing a licensure and compensation reform model designed to offer early, inclusive, clear pathways into the profession, reward excellence and advancement, and encourage retention. The plan should include a focus on restoring respect for the teaching profession, building a more diverse, quality teaching force, increasing instructional capabilities, enticing more young professionals, career switchers, and out-of-staters to teaching, and investing in teachers, students and NC's economy. This action step requires a non-recurring appropriation.

The CRP calls for $50,000 in appropriations for this action item.

39. The FRD Chart includes an additional $50,000 in appropriations for the action item not included in OSBM's Chart.[5] Mr. Matteson testified that FRD believed the 2022 State Budget fully funded this program because the 2021 Appropriations Act appropriated funds for evidence-

[5] *Compare* FRD Chart, Row 28, *with* OSBM Chart (Ex. 2 – DPI), Row 5.

based grants and OSBM awarded $109,909[6] of that appropriation to DPI in October 2022 to evaluate Advanced Teaching Roles. **[Draft T pp 18-19].**

40. Ms. Grozav, meanwhile, testified that OSBM did not consider the action item funded because the parameters of the Advanced Teaching Roles study are too narrow to satisfy the action called for in the CRP. **[Draft T pp 61-62, 67].** Specifically, the Advanced Teaching Roles study concerned only advanced teachers, while the CRP calls for a study on issues related to teacher licensure and compensation more broadly. **[*See* Draft T p 67].**

41. The Court concludes that the $50,000 is not properly credited to the Education Compensation Study. The Advanced Teaching Roles study does not reflect the study contemplated by the CRP. Accordingly, the Court does not include the $50,000 in its calculations.

42. Regarding the "Disadvantaged Student Supplemental Funding (DSSF)" program, the CRP provides that:

> II.B.ii.2 - Combine the DSSF and at-risk allotments and incrementally increase funding such that the combined allotment provides an equivalent supplemental weight of 0.4 on behalf of all economically-disadvantaged students. This action step requires incremental recurring increases in funding through fiscal year 2028.

43. The FRD Chart includes approximately $26 million in appropriations for this action item not included in the OSBM Chart.[7] Mr. Matteson testified that FRD included in its chart $26 million appropriated not to the DSSF allotment, but to the At-Risk allotment. **[Draft T pp 19-20].**

44. The CRP calls for the At-Risk allotment to be combined with the DSSF allotment so that funds appropriated to those allotments can be better targeted to benefit economically

[6] Mr. Matteson testified that FRD only included $50,000 of the $109,909 because the CRP only called for $50,000 and thus the additional $59,909 overfunds the action item. **[Draft T p 19].**
[7] *Compare* FRD Chart, Row 45, *with* OSBM Chart (Ex. 2 – DPI), Row 18.

disadvantaged students.

45. The At-Risk allotment does not target economically disadvantaged students in the same way as the DSSF allotment.

46. For one thing, funds appropriated to the At-Risk allotment cannot be used for all the purposes that funds appropriated to the DSSF allotment can be. The additional At-Risk allotment funds appropriated in the 2022 State Budget are primarily intended to increase salaries for school resource officers, rather than to support the educational needs of economically disadvantaged students. **[*See* Draft T p 20].** Indeed, Ms. Grozav testified that OSBM did not include the funds appropriated to the At-Risk allotment in its chart because FRD's Committee Report accompanying the 2022 Appropriations Act explained that the funds appropriated to the At-Risk allotment were for school resource officer salaries. **[Draft T p 63].**

47. Additionally, different criteria determine how much funding school districts receive from the two allotments, with the allotment formula for DSSF funds more strategically targeted to higher needs districts. **[Draft T p 54].**

48. As of the time of this Order, the At-Risk allotment has not been combined with the DSSF allotment. **[Draft T pp 28, 62].** Thus, the $26 million appropriated to the At-Risk allotment is not targeted to economically disadvantaged students as required by the CRP. Accordingly, the Court does not include the $26 million appropriated to the At-Risk allotment in its calculations.

49. With respect to the "Principal and Assistant Principal Salaries" program, the CRP calls for:

> II.D.ii.1 - Incrementally increase principal and assistant principal pay consistent with teacher salary increases. Cost estimates for later fiscal years for this action step will be determined on the basis of the wage comparability study . . . .

50. The FRD Chart includes approximately $6.2 million in appropriations for this action item not included in the OSBM Chart.[8] Mr. Matteson testified that the additional $6.2 million is from funds appropriated to provide stipends to students enrolled in a Masters of School Administration program who serve as interns in school districts. **[Draft T pp 20-21].**

51. The interns who receive these stipends, however, are not for principals or assistant principals. No witness testified that the interns are principals. **[*See* Draft T p 41].** Mr. Matteson testified that the interns are assistant principals. **[Draft T p 41].** But DPI requires assistant principals to have a North Carolina educator's license. *See Employee Salary and Budget Manual 2022-2023* at 6, N.C. DEP'T OF PUB. INST. (July 1, 2022).[**9**] Administrative interns, like those who would receive the stipend, are not required to hold a license. *Id.*

52. Nor do the stipends augment anyone's salary. Both Mr. Matteson and Ms. Grozav testified that the stipends are not a part of any employee's permanent salary but instead one-time payments. **[Draft T pp 42-43, 63-64].**

53. The CRP specifically calls for increases in principal and assistant principal salaries. Both because the interns are neither principals nor assistant principals, and because the stipends are not salary increases, the $6.2 million are not available to school districts to increase salaries for principals and assistant principals. Accordingly, the Court does not include the appropriation of $6.2 million in its calculations.

54. Next, regarding "District and Regional Support," the CRP provides:

---

[8] *Compare* FRD Chart, Row 56, *with* OSBM Chart (Ex. 2 – DPI), Row 27.

[9 To the extent the necessary, and pursuant to Rule 201(b) of the North Carolina Rules of Evidence, the State asks the Court to take judicial notice of the Department of Public Instruction's licensing requirements for Assistant Principals and Administrative Interns contained in the Department's *Employee Salary and Benefits Manual*. The State has attached the *Employee Salary and Benefits Manual* to its submission to the Court.]

> V.A.iii.1 - Implement the NC State Board of Education's District and Regional Support model (i.e. the plan described above) to provide direct, comprehensive, and progressive turnaround assistance to the State's chronically low-performing schools and low-performing districts by aligning systems, processes, and procedures in a unified system of support that results in every child having equitable access to a meaningful, sound basic education through:
>
> i. a regional structure coordinating academic supports statewide;
> ii. opportunities for educator recognition, advancement, and growth;
> iii. diagnostic services that identify areas of improvements for schools and districts;
> iv. strategic reform strategies that lead to innovation and student success; and
> v. effective partnerships to intervene on critical areas of need.

55. The FRD Chart includes an additional $14 million in appropriations for this action item not included in the OSBM Chart.[10] Mr. Matteson testified that the $14 million represents funds appropriated to regional literacy and early learning specialists. Mr. Matteson further testified the $14 million was not targeted to low performing schools but was instead "[b]roadly applicable to all school districts." **[Draft T p 46].**

56. The CRP calls for a program targeted specifically to "chronically low-performing schools and low-performing districts." Although laudable, the legislative appropriation of $14 million serves the well-being of all students, and does not make special provision improving the educational opportunities for students in low-performing schools. Accordingly, the Court does not include the appropriation of $14 million in its calculations.

57. Finally, the FRD Chart includes $260,000 for "Review and Adoption of Curricular Resources" and $730,000 for "Additional Cooperative Innovative High Schools" not included in

[10] *Compare* FRD Chart, Row 60, *with* OSBM Chart (Ex. 2 – DPI), Row 28.

the OSBM Chart.[11] Importantly, although the FRD Chart identifies these amounts as funded by the 2022 Budget, the FRR Chart does not subtract those amounts from the total amount of the CRP unfunded by the 2022 State Budget.

58. The CRP's appendix states that the amounts necessary for these two action items are "TBD," or to be determined. Ms. Grozav testified that the OSBM Chart omits the amounts included in the FRD Chart because the CRP lists the funding needed for the action items as TBD and thus, at this time, any funds appropriated to those action items necessary overfund the item. **[Draft T pp 65-66].**

59. Mr. Matteson and Ms. Grozav both testified that, because the FRD Chart did not subtract those amounts from the total amount of the CRP unfunded by the 2022 State Budget, this discrepancy does not contribute to the discrepancy between the FRD Chart and the OSBM Chart regarding the total amount of the CRP unfunded by the 2022 State Budget. **[Draft T pp 23, 66].** Thus, the Court need not resolve this dispute to make the calculations that the Supreme Court ordered on remand.

60. Legislative Intervenors also argue that the Court should not consider any of the recurring funding called for by the CRP for the Year Two action items. *See* Leg. Intervenors' Br. at 14-16. Legislative Intervenors omit these funds because Fiscal Year 2021-2022, which corresponds to Year Two of the CRP, concluded on June 30, 2022. Leg. Intervenors' Br. at 14-16. They argue that any recurring funds called for in Year Two of the CRP would have reverted back to the State's General Fund upon the end of Fiscal Year 2021-2022. Leg. Intervenors' Br. at 15.

61. That issue is not before this Court. The North Carolina Supreme Court "reinstate[d]

[11] *See* FRD Chart, Rows 62, 70.

the trial court's November 2021 Order directing certain State officials to transfer available state funds to implement years two and three of the Comprehensive Remedial Plan" and remanded the case to this Court "for the narrow purpose of recalculating the amount of funds to be transferred in light of the State's 2022 Budget." *Leandro IV*, 382 N.C. at 198-99, 879 S.E.2d at 391.

62. The Court was no doubt aware when it issued its decision in November 2022 that Fiscal Year 2021-2022 concluded on June 30, 2022. The Court nevertheless ordered this Court to recalculate the amount to be transferred in both years.

63. Additionally, the North Carolina Supreme Court recently decided that it would address issues raised by the Controller in proceedings regarding the Writ of Prohibition. *See Hoke Cnty. Bd. of Educ. v. State*, No. 425A21-1 (N.C. Mar. 3, 2023) (order granting Controller's motion to dissolve stay of Writ of Prohibition). Among the issues raised by the Controller is the reversion of funds transferred for the Year Two action items. Legislative Intervenors have asked to participate in those appellate proceedings. The Supreme Court's decision to take up the Controller's issues affirms what the Supreme Court's narrow remand established: Legislative Intervenors arguments about Year Two recurring funds exceeds the scope of this Court's authority on remand.

64. In short, the Supreme Court asked this Court to answer a simple, mathematical question: how much of the Years Two and Three action items of the CRP did the 2022 State Budget fund. Eliminating the Year Two action items requiring recurring funding from the Court's calculations would result in the Court reaching an inaccurate conclusion in response to that question. Accordingly, the Court considers the Year Two action items calling for recurring appropriations.

III. Conclusions of Law

65. Based on the foregoing Findings of Fact, the Court makes the following Conclusions of Law.

66. Based on the Supreme Court's remand order in *Leandro IV*, this Court is "narrowly" tasked with "recalculating the amount of funds to be transferred in light of the State's 2022 Budget."

67. The 2022 State Budget, as enacted, partially but not totally funds Years Two and Three of the CRP. Specifically, of the $1,753,153,000.00 necessary to fund the programs called for in the CRP during the two years in question, the 2022 State Budget funds $1,077,351,293.00. As a result, the total underfunding of CRP action items during Years Two and Three is $675,801,707.00.

68. The underfunding of the Years Two and Three action items of the CRP on a per-entity basis are as follows:

a. Underfunding of programs for which DHHS is responsible: $133,900,000.00;

b. Underfunding of programs for which DPI is responsible: $509,701,707.00; and

c. Underfunding of programs for which the UNC System is responsible: $32,200,000.00.

69. In *Leandro IV*, the Supreme Court ordered this Court to direct state officials to transfer these funds. In its March 3, 2023 Order, however, the Supreme Court dissolved its stay of a Writ of Prohibition entered by the Court of Appeals that prohibits this Court from issuing a transfer directive as ordered by the Supreme Court.

70. In light of the Supreme Court's competing and conflicting orders, this Court orders immediate transfer of the funds identified above, subject to the Writ of Prohibition. Accordingly,

when the writ of prohibition is vacated or otherwise lifted, the State Controller, State Treasurer, and Director of OSBM are directed to immediately begin the process of transferring these funds.

IV. Order

71. It is THEREFORE ORDERED that:

a. The amount of the Year Two and Year Three action items of the Comprehensive Remedial Plan unfunded by the 2022 State Budget is as follows:

i. Programs for which DHHS is responsible: $133,900,000;

ii. Programs for which DPI is responsible: $509,701,707; and

iii. Programs for which the UNC System is responsible: $32,200,000.

b. Subject to the Supreme Court's resolution of the appeal concerning the Writ of Prohibition, the State Controller, State Treasurer, and Director of OSBM are to transfer these funds as directed by this Court's November 10, 2021 Order.

c. To the extent any other actions are necessary to effectuate the Years Two and Three programs in the Comprehensive Remedial Plan, any and all other State actors and their officers, agents, servants, and employees are authorized and directed to do what is necessary to fully effect Years Two and Three of the Comprehensive Remedial Plan.

d. This Court retains jurisdiction of this case to ensure the implementation of this order and to monitor continued constitutional compliance.

SO ORDERED, this __th day of _____, 2023.

_____
James F. Ammons, Jr.
Senior Resident Superior Court Judge

CERTIFICATE OF SERVICE

I do hereby certify that on this day a copy of this proposed email was served upon the following parties by email to the addresses shown below:

Melanie Black Dubis
Scott E. Bayzle
PARKER POE ADAMS & BERNSTEIN LLP
301 Fayetteville Street, Suite 1400 (27601)
P.O. Box 389
Raleigh, NC 27602-0389
melaniedubis@parkerpoe.com
scottbayzle@parkerpoe.com

H. Lawrence Armstrong, Jr.
ARMSTRONG LAW, PLLC
119 Whitfield Street
Enfield, NC 27823
hla@hlalaw.net

Neal Ramee
David Nolan
THARRINGTON SMITH, LLP
P.O. Box 1151
Raleigh, NC 27602
nramee@tharringtonsmith.com
dnolan@tharringtonsmith.com

David Hinojosa
LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW
1500 K. Street NW, Suite 900
Washington, DC 20005
ehaddix@lawyerscommittee.org
dhinojosa@lawyerscommittee.org

Matthew Tulchin
Tiffany Lucas
NORTH CAROLINA DEPARTMENT OF JUSTICE
114 W. Edenton Street
Raleigh, NC27603
MTulchin@ncdoj.gov
TLucas@ncdoj.gov

Thomas J. Ziko
Legal Specialist
STATE BOARD OF EDUCATION
6302 Mail Service Center
Raleigh, NC 27699-6302
Thomas.Ziko@dpi.nc.gov

Matthew F. Tilley
Russ Ferguson
WOMBLE BOND DICKINSON (US) LLP
One Wells Fargo Center, Suite 3500
301 S. College Street
Charlotte, NC 28202-6037
Matthew.tilley@wbd-us.com
Russ.ferguson@wbd-us.com

Christopher A. Brook
PATTERSON HARKAVY LLP
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
cbrook@pathlaw.com

Michael Robotti
BALLARD SPAHR LLP
1675 Broadway, 19th Floor
New York, New York 10019
robottim@ballardspahr.com

Robert N. Hunter, Jr.
HIGGINS BENJAMIN, PLLC
301 North Elm Street, Suite 800
Greensboro, NC 27401
rnhunterjr@greensborolaw.com

Jane Wettach
CHILDREN'S LAW CLINIC DUKE UNIVERSITY LAW SCHOOL
P.O. Box 90360 Durham, NC 27708
wettach@law.duke.edu

John Charles Boger
104 Emerywood Place
Chapel Hill, NC 27516
johncharlesboger@gmail.com

This the 24th day of March, 2023.

/s/ Amar Majmundar
Amar Majmundar
Senior Deputy Attorney General
NC State Bar No. 24668
NORTH CAROLINA DEPARTMENT OF JUSTICE
P.O. Box 629
Raleigh, North Carolina 27602
AMajmundar@ncdoj.gov
Counsel for State of North Carolina

ADDENDA

Cases **Page**

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Only the Westlaw citation is currently available.
United States District Court, M.D. North Carolina.

Lloyd BUFFKIN, Kim Caldwell, and Robert Parham, et al., Plaintiffs,

v.

Erik HOOKS, Abhay Agarwal, Kenneth Lassiter, Paula Smith, and North Carolina Department of Public Safety, Defendants.

1:18CV502

|

Signed 03/20/2019

Attorneys and Law Firms

Christopher A. Brook, Cristina M. Becker, American Civil Liberties Union of North Carolina, Michele R. Luecking-Sunman, North Carolina Prisoner Legal Services, Inc., Daniel K. Siegel, N. C. Prisoner Legal Services, Inc., Emily E. Seawell, Aclu of North Carolina, Raleigh, NC, for Plaintiffs.

Amar Majmundar, Joseph Finarelli, Orlando L. Rodriguez, N.C. Department of Justice, Corrine L. Lusic, Ann W. Matthews, N.C. Dept. of Justice Office of the Attorney General, Raleigh, NC, for Defendants.

MEMORANDUM OPINION AND ORDER

William l. Osteen, Jr., United States District Judge

***1** This matter is before this court for review of the Memorandum Opinion and Recommendation ("Recommendation") filed on November 30, 2018 by the Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 38.) In the Recommendation, the Magistrate Judge recommends that Plaintiffs' motion to certify class, (Doc. 3), be granted and that "the class be defined as 'all current and future prisoners in DPS custody who have or will have chronic hepatitis C virus and have not been treated with direct-acting antiviral drugs.' " (Doc. 38 at 32.) The Magistrate Judge further recommends that Lloyd Buffkin and Robert Parham be named class representatives, that Plaintiffs' counsel be appointed class counsel, and that Plaintiffs' motion for preliminary injunction, (Doc. 26), be granted. (Recommendation (Doc. 38) at 32–33.)

Finally, the Magistrate Judge recommends that this court issue a preliminary injunction that:

> order[s] Defendants to: (1) provide universal opt-out HCV screening to all persons who are or will be in DPS custody; (2) cease denying DAA treatment for the contraindications, other than patient refusal, set out in Step 4a of DPS Policy #CP-7; and (3) treat Plaintiffs and all members of their class with DAAs according to the current standard of medical care set out in the AASLD/IDSA Guidance, regardless of an individual's fibrosis level.

(Id. at 33.)

The Recommendation was served on the parties to this action on November 30, 2018. (Doc. 39.) Defendants timely filed objections, (Defs.' Resp. and Objs. to Recommendation ("Defs.' Objs.") (Doc. 40)), and Plaintiffs replied, (Doc. 43.)

Defendants object to the following three findings in the Recommendation: (1) that Plaintiffs have standing, (2) that Plaintiffs are adequate class representatives, and (3) that Plaintiffs can demonstrate a high likelihood of success on the merits, as required for this court to issue a preliminary injunction. (Defs.' Objs. (Doc. 40) at 2.) [1]

This court has appropriately reviewed the portions of the Recommendation to which objections were made. This court adopts the Magistrate Judge's findings and recommendation regarding Plaintiffs' motion for class certification (as supplemented herein), and this motion will be granted. Because this court finds that Plaintiffs have not demonstrated a likelihood of success on the merits as to certain aspects of their requested class-wide injunction, this court declines to adopt the Magistrate Judge's findings regarding this issue and Plaintiffs' motion for a preliminary injunction will be granted in part and denied in part, as set forth herein.

I. BACKGROUND

A detailed factual background is clearly and succinctly set forth in the Recommendation, (see (Doc. 38) at 1–7), and this court will not repeat those facts here. Plaintiffs are state prisoners who receive medical care from the North Carolina Department of Public Safety, or DPS. (Complaint ("Compl.") (Doc. 1) ¶¶ 1, 13–15.) Plaintiffs have been diagnosed with and requested treatment for the hepatitis C virus ("HCV"), "a highly communicable disease that scars the liver and presents" other health risks. (Id. ¶ 1.) Plaintiffs allege that they are currently not receiving HCV treatment. (Id. ¶ 3.) The individual Defendants are all employed by the North Carolina state prison system. (Id. ¶¶ 17–20.)

***2** Plaintiffs bring claims under 42 U.S.C. § 1983, alleging: (1) that Defendants' policy of screening only those prisoners with certain risk factors, rather than screening all prisoners under an opt-out system, is deliberately indifferent to the risk that prisoners with HCV will evade detection and will not receive the necessary treatment, (id. ¶¶ 36, 80–82), and (2) that Defendants' policy of providing direct-acting antiviral ("DAA") drug treatment only to certain prisoners based on FibroSure test scores and contraindications is deliberately indifferent to the risk that individuals who do not meet the policy criteria may still suffer serious health consequences from HCV. (See id. ¶¶ 95–98, 108.) Plaintiffs further allege that Defendants violated the Americans with Disabilities Act ("ADA") by discriminatorily withholding medical treatment from Plaintiffs while providing treatment to prisoners with other health issues. (Id. ¶¶ 112–17.)

II. PROCEDURAL HISTORY

Plaintiffs moved to certify a class on June 15, 2018, (Doc. 3), and filed a brief in support of their motion, (Doc. 4). Defendants responded in opposition, (Defs.' Resp. in Opp'n to Pls.' Mot. to Certify Class ("Defs.' Opp'n Resp.") (Doc. 31)), and Plaintiffs replied. (Pls.' Reply to Defs.' Resp. in Opp'n to Pls.' Mot. to Certify Class ("Pls.' Reply") (Doc. 35).) Plaintiffs moved for a preliminary injunction on September 14, 2018, (Doc. 26), and filed a brief in support of their motion. (Pls.' Br. in Supp. of Mot. for Prelim. Inj. ("Pls.' Inj. Br.") (Doc. 27).) Defendants responded in opposition, (Defs.' Resp. to Pls.' Mot. for Prelim. Inj. ("Defs.' Inj. Resp.") (Doc. 32)), and Plaintiffs replied, (Doc. 34). The Magistrate Judge held hearings on these motions on October 29, 2018, and November 5, 2018. (Docs. 41, 42.) This court then conducted an additional hearing on the motion for a preliminary injunction on March 8, 2019. (See Minute Entry 03/08/2019; Doc. 50.)

III. STANDARD OF REVIEW

This court is required to make "a de novo determination of those portions of the [Magistrate Judge's] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [M]agistrate [J]udge ... or recommit the matter to the [M]agistrate [J]udge with instructions." Id.

This court applies a clearly erroneous standard to any part of the Magistrate Judge's recommendation not specifically objected to by the parties. Diamond v. Colonial Life Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005). "A finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm

conviction that a mistake has been committed." United States v. U.S. Gypsum Co., 333 U.S. 364, 395 (1948) (internal quotations omitted).

IV. STANDING

A. Arguments

Defendants first object to the Magistrate Judge's conclusion that Plaintiffs have standing to challenge the HCV screening process. (Recommendation (Doc. 38) at 18.) The Magistrate Judge found that, although Plaintiffs are already infected with HCV, they still have standing to challenge HCV screening because there is a higher risk of re-infection if the entire prison population is not screened. (Id. at 17.) Further, the Magistrate Judge found that precluding Plaintiffs from challenging screening would "create[ ] a catch-22 quandary in that a prisoner would have to know of his or her HCV diagnosis to have standing to challenge [the DPS policy generally], but that same knowledge would preclude a challenge to the HCV screening protocol." (Id. at 18 (footnote omitted).) In objection, Defendants argue that any risk to Plaintiffs of future injury from the current screening policy is simply too speculative and attenuated and does not amount to a substantial or imminent risk. (Defs.' Objs. (Doc. 40) at 6.) Defendants further state that, in their opinion, unscreened inmates (or, presumably, inmates who were improperly diagnosed) would have standing to challenge the screening process specifically, thus eliminating the quandary identified by the Magistrate Judge. (Id. at 8.)

***3** Defendants further argue that, because all named Plaintiffs either received an initial HCV screening prior to the filing of the complaint or were already aware of their HCV diagnosis, they lack standing to challenge the initial step one screening process. (See id. at 7.) Indeed, the Magistrate Judge found that each named Plaintiff had either received an initial diagnostic screening or otherwise been diagnosed with HCV, but had not received a FibroSure screening for possible DAA treatment, at the time of filing. (See Recommendation (Doc. 38) at 16; Pls.' Reply (Doc. 35) at 7 n.3.) Plaintiffs, however, assert that the two stages of screening should be viewed as a single unitary process and that, because certain named Plaintiffs had not received DAA-specific screening at the time of filing, there is standing to challenge the screening process. (Pls.' Reply (Doc. 35) at 7–8.)

B. Legal Framework

To demonstrate standing, Plaintiffs "must have ... suffered an injury in fact." Kenny v. Wilson, 885 F.3d 280, 287 (4th Cir. 2018) (internal quotation marks omitted). "An allegation of future injury may suffice if the threatened injury is certainly impending, or there is a substantial risk that the harm will occur." Susan B. Anthony List v. Driehaus, 573 U.S. 149, 158 (2014) (internal quotation marks omitted). This "requirement [ ] cannot be met where there is no showing of any real or immediate threat that the plaintiff will be wronged again." City of L.A. v. Lyons, 461 U.S. 95, 111 (1983).

In a class action, it is well-established that "the named plaintiff may litigate the class certification issue despite loss of his personal stake in the outcome of the litigation" so long as that plaintiff still adequately represents and protects class interests. U.S. Parole Comm'n v. Geraghty, 445 U.S. 388, 398, 406 (1980). In Geraghty, the Supreme Court held that Geraghty's subsequent release from prison mooted his personal claim but that he could nonetheless continue to pursue class certification. See id. at 404 ("[A]n action brought on behalf of a class does not become moot upon expiration of the named plaintiff's substantive claim, even though class certification" is still pending.). This court interprets the Geraghty holding to mean that, if class certification were denied in this case, Plaintiffs would then be entitled to appeal that determination even if some or all of their individual claims had been mooted. It follows that potential mootness should not be a bar to class certification in the first instance. There must, however, "be a named plaintiff who has ... a [live] case or controversy at the time the complaint is filed." Sosna v. Iowa, 419 U.S. 393, 402 (1975); see also Pashby v. Delia, 709 F.3d 307, 316 (4th Cir. 2013).

C. Analysis

The Magistrate Judge found standing based primarily on two factors: (1) a "broad application of Policy #CP-7" that makes the policy subject to a class-wide challenge, and (2) the "significant risk of reinfection by virtue of the prison

environment." (Recommendation (Doc. 38) at 17.) This court agrees with the Magistrate Judge that Policy #CP-7 is correctly viewed as a unitary screening policy designed to both diagnose HCV and provide treatment to certain prisoners. In other words, just as the Magistrate Judge did, this court finds persuasive Plaintiffs' argument that the screening process as a whole may be challenged based upon denial of either step 1 or step 2 screening at the time of filing. (See Pls.' Reply (Doc. 35) at 6–7, 7 n.3.) Therefore, this court finds that the named Plaintiffs do have standing to challenge the HCV screening process.

The Magistrate Judge further relied upon the alleged re-infection risk to both Plaintiffs and potential class members due to inadequate screening to find standing. (Id. at 8; see also Recommendation (Doc. 38) at 17.) Current estimates place the percentage of North Carolina state prison inmates infected with HCV at approximately 17 to 33 percent. (Compl. (Doc. 1) ¶ 48.) The Magistrate Judge found that the risk of re-infection was substantial, [2] that the named Plaintiffs were "realistically threatened by a repetition" of this harm because it potentially recurs each time an unscreened inmate enters the prison population, Lyons, 461 U.S. at 109, and that this potential "threat of future harm is imminent and a direct result of Policy #CP-7." (Recommendation (Doc. 38) at 18.)

***4** Defendants respond to the alleged re-infection risk by invoking Clapper v. Amnesty Int'l USA, 568 U.S. 398 (2013), where the Supreme Court held that the plaintiffs lacked standing to challenge government email and phone surveillance because a plaintiff "cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending." 568 U.S. at 416; see also A.C.L.U. v. Nat'l Sec. Agency, 493 F.3d 644, 662 (6th Cir. 2007) ("[T]he plaintiffs still allege only a subjective apprehension and a personal (self-imposed) unwillingness to communicate."). For example, the plaintiffs in Clapper could not "create" standing by spending money on travel to conduct in-person meetings (to avoid possible surveillance) and then claiming that they had been injured by this expenditure, because such an injury was not "fairly traceable" to the challenged statute. Clapper, 568 U.S. at 414–15. Here, Defendants argue that there is in fact no risk of re-infection unless Plaintiffs "choose to engage in a behavior that could result in HCV transmission." (Defs.' Objs. (Doc. 40) at 9.)

This court finds some merit in Defendants' argument, but also does not accept the contention that a person would ever affirmatively choose to become re-infected with HCV rather than simply acting in a negligent or reckless manner toward that risk. Defendants point to no binding case law to support a finding that acting negligently or recklessly with regard to a risk of future harm vitiates standing. Using the facts in Clapper as an example, plaintiffs there could have negligently or recklessly exposed themselves to surveillance by failing to encrypt their communications or otherwise making their communications in an open and obvious manner. Had the plaintiffs then suffered some cognizable injury, this court finds that the analysis in Clapper would not necessarily preclude standing because the injury was not intentionally self-inflicted.

This court adopts the Magistrate Judge's conclusion that Plaintiffs have standing to challenge the entirety of Policy #CP-7, including the HCV screening process. However, this court does so based upon a slightly different analysis and relies primarily on the fact that the two screening tests are properly viewed as a single, unitary process to determine eligibility for DAA treatment. Having concluded that Plaintiffs have standing for that reason, this court finds it unnecessary to determine whether the risk of future re-infection alone provides standing.

V. ADEQUACY

The Magistrate Judge found that Plaintiffs are adequate representatives of the proposed class, pursuant to Fed. R. Civ. P. 23(b)(4). (Recommendation (Doc. 38) at 14.) Defendants now argue, for the first time, that Plaintiffs do not adequately represent the interests of undiagnosed class members challenging the screening process because Plaintiffs either were properly diagnosed through DPS screening or had been diagnosed prior to their incarceration. (Defs.' Objs. (Doc. 40) at 10–11.) Putting aside the issue of whether Defendants have waived this objection by failing to raise it in their first responsive pleading, this court agrees with the Magistrate Judge's conclusion that Plaintiffs are adequate class representatives.

First, the above analysis applies with equal force here. Because the risk of re-infection exists equally for Plaintiffs and unnamed class members, the claims of these two groups are sufficiently aligned. See Deiter v. Microsoft Corp., 436 F.3d 461, 466–67 (4th

Cir. 2006) (stating that adequacy, commonality, and typicality "tend[ ] to merge"). Second, this court finds no conflict of interest between Plaintiffs and the unnamed potential class members because the same remedy, an injunction requiring universal opt-out screening, could redress the alleged harm suffered by each group.

VI. LIKELIHOOD OF SUCCESS ON THE MERITS

A. Legal Framework

Plaintiffs have moved for a preliminary injunction. [3] (See Doc. 26.) "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). Such an injunction "is an extraordinary remedy intended to protect the status quo and prevent irreparable harm during the pendency of a lawsuit." Di Biase v. SPX Corp., 872 F.3d 224, 230 (4th Cir. 2017). To demonstrate a likelihood of success on the merits, "[a] plaintiff need not establish a certainty of success, but must make a clear showing that he is likely to succeed at trial." Id.

***5** Plaintiffs allege a violation of the Eighth Amendment prohibition of cruel and unusual punishment, under 42 U.S.C. § 1983. To make out this claim, "a prisoner must show that he had a serious medical need, and that officials knowingly disregarded that need and the substantial risk it posed." DePaola v. Clarke, 884 F.3d 481, 486 (4th Cir. 2018). The deliberate indifference prong is subjective: "a prison official may be held liable ... only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it." Farmer v. Brennan, 511 U.S. 825, 847 (1994); see also id. at 844 ("[P]rison officials who lacked knowledge of a risk cannot be said to have inflicted punishment."). The Fourth Circuit has emphasized "that considerations of separation of powers and institutional competence suggest the need for judicial restraint before reaching the stern conclusion that prison administrators' conduct constitutes deliberate indifference." Lopez v. Robinson, 914 F.2d 486, 490 (4th Cir. 1990).

The Magistrate Judge found that Plaintiffs established they are likely to succeed on the merits. He first determined that HCV is a serious medical need and then concluded that Defendants had likely been deliberately indifferent to that need. (Recommendation (Doc. 38) at 23–29.) This court agrees with the Magistrate Judge that the ultimate issue is whether, apart from any professional medical standard or prevailing practice, Defendants' procedures "provide[ ] prisoners with constitutionally adequate treatment." (Id. at 26.) However, this determination is ordinarily made at a later stage of litigation, either on a motion for summary judgment or by a jury. As the Supreme Court has observed, it is the rare and special case where the evidence is so overwhelming in one direction that a temporary injunction may issue. See Mazurek v. Armstrong, 520 U.S. 968, 972 (1997) (describing a preliminary injunction as "an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion") (quoting 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2948 (2d ed. 1995)). Defendants must have subjective knowledge of a substantial risk of serious harm, and whether this knowledge exists is ordinarily a jury question that requires detailed evidence of Defendants' thought process and risk assessment. See, e.g., Torraco v. Maloney, 923 F.3d 231, 234 (1st Cir. 1991).

B. Injunction as to the Named Plaintiffs

This court finds, based upon the testimony of Plaintiffs' expert witness, Dr. Andrew Joseph Muir, that the three individual named Plaintiffs have demonstrated a likelihood of success on the merits sufficient to justify a preliminary injunction. These Plaintiffs have presented evidence to show that they have HCV and that they have sought and continue to seek treatment. Dr. Muir testified, both in his affidavit and before this court, that Plaintiffs' medical records demonstrate they are candidates for DAA treatment and should receive DAA treatment beginning immediately. (See Pls.' Inj. Br., Amended Affidavit of Dr. Andrew Joseph Muir ("Muir Aff."), Ex. A (Doc. 27-1) ¶¶ 40–50; Tr. of Prelim. Inj. Hr'g (Doc. 51) at 6.) Even at this late stage of the proceedings — following the filing of the Complaint, a hearing on the motion for a preliminary injunction, a Recommendation, and now a second hearing on the preliminary injunction — Defendants present no evidence to contradict Dr. Muir's testimony that Plaintiffs need and have not received treatment. Defendants have offered no explanation for their failure to treat the named

Plaintiffs. In all candor, simply failing to treat Plaintiffs for HCV after the presentation of evidence in this case appears to constitute deliberate indifference standing alone, without regard to events prior to the filing of this lawsuit. Therefore, this court will issue a preliminary injunction ordering Defendants to treat the named Plaintiffs with DAAs.

C. Class-Wide Injunctive Relief

***6** Plaintiffs also seek an injunction requiring Defendants to screen and treat all members of the proposed class with DAAs according to the standard of medical care set out in the AASLD/IDSA Guidance, regardless of an individual's fibrosis level. (See Recommendation (Doc. 38) at 33.)

1. Medical Standard of Care

Plaintiffs and their expert witness, Dr. Muir, repeatedly reference the American Association for the Study of Liver Diseases/ Infectious Diseases Society of America ("AASLD/IDSA") Guidance [4] as "the current standard of care." (See Recommendation (Doc. 38) at 25–26; Pls.' Inj. Br. (Doc. 27) at 24.) For example, Dr. Muir testified that the AASLD/IDSA recommendations "are the standard of care for [ ] practices [in North Carolina]." (Tr. of Motions Hr'g (Doc. 41) at 53.) Dr. Muir proceeded to testify, without citing to any authority, that "typical screening strategies would include all incarcerated individuals, ... [that] they should be testing everybody[, and that] ... expecting people to admit to risk factors is a flawed strategy." (Id. at 55.)

However, the choice between competing treatment options is "a matter for medical judgment" that does not constitute deliberate indifference. See Estelle v. Gamble, 429 U.S. 97, 106 (1976) ("A medical decision not to order an X-ray, or like measures, does not represent cruel and unusual punishment. At most it is medical malpractice ...."). Further, an aspirational standard does not necessarily identify the deliberate indifference necessary to a § 1983 claim. Defendants' expert, Dr. Anita Wilson, states that "[t]he AASLD/IDSA Guidance does not create a standard of care" and notes that:

> AASLD/IDSA provides a Medical Information Disclaimer, which reads, in part, "[n]othing contained at HCVguidelines.org [where the guidance is published] is intended to constitute a specific medical diagnosis, treatment, or recommendation. The information should not be considered complete, nor should it be relied on to suggest a course of treatment for a particular individual."

(Defs.' Inj. Resp., Affidavit of Anita Wilson, M.D. ("Wilson Aff.") (Doc. 32-1) ¶ 16.) The AASLD/IDSA Guidance itself refers to "Recommended" treatment approaches as opposed to mandatory treatment methods. (Pls.' Inj. Br., Ex. E (Doc. 27-5) at 14.) Therefore, to the extent that Plaintiffs and Dr. Muir rely upon the AASLD/IDSA Guidance, this court finds that the guidance provides some evidence of a preferred public health policy but does not necessarily constitute the standard for judging deliberate indifference.

Further, Dr. Muir candidly acknowledged in testimony before this court and in testimony before the Magistrate Judge that his opinion is the product of two distinct interests: patient care for prison inmates and a public policy effort to eradicate HCV as a disease. (See, e.g., Tr. of Prelim. Inj. Hr'g (Doc. 51) at 90, 93 ("This is one of the best and strongest opportunities we really have to move towards elimination of hepatitis C in North Carolina.").) This court finds Dr. Muir credible and has no doubt that Dr. Muir's testimony accurately reflects his beliefs and opinions. Deliberate indifference, however, means indifference to inmate care, not to treatment methods intended to benefit society as a whole (for example, by accomplishing the public policy aspiration of eradicating HCV).

***7** At this stage of the proceedings, this court is left with a definite concern regarding Dr. Muir's opinion that the prison's refusal to implement universal opt-out screening or to administer DAAs to all inmates with HCV is a breach of the correctional standard of care. Specifically, that opinion results not only from considerations of necessary patient care but also from general public health concerns and Dr. Muir's aspiration of eliminating HCV. Therefore, this court finds that Dr. Muir's testimony is not entitled to as much weight as Plaintiffs argue. Because deliberate indifference is directed to the Plaintiffs' individual treatment,

this court is not persuaded that Plaintiffs have shown a likelihood of success on the merits, based on Dr. Muir's testimony, sufficient to support the broad injunctive relief requested.

In addition, the AASLD/IDSA Guidance itself also reflects, at least in part, the laudable medical goal of eradicating HCV in society as a whole. For example, the Guidelines state that "the success of the national HCV elimination effort will depend on identifying chronically infected individuals in jails and prisons, linking these persons to medical care for management, and providing access to antiviral treatment." (Wilson Aff., Ex. B (Doc. 48-2) at 11.) Similarly, the Guidelines state that "HCV DAA therapy for chronic HCV is now logistically feasible within the prison setting and would aid the HCV elimination effort." (Id. at 13.) While these goals are commendable and desirable, they are also aspirational objectives and thus do not provide a standard for evaluating deliberate indifference in the prison system.

Dr. Muir also acknowledges that he has no experience practicing medicine in a correctional setting. (Tr. of Motions Hr'g (Doc. 41) at 62.) This is an important fact, because Dr. Muir is attempting to take the standard of care applicable to individuals who voluntarily seek treatment and apply this standard to universal screening and treatment of a prison population. Universal screening of any discrete population is a public health policy decision, not a basis for deliberate indifference under § 1983. Plaintiffs may ultimately prove that Dr. Muir's opinions and the AASLD/IDSA Guidance require certain levels of treatment in North Carolina prisons. However, this court is not persuaded as to whether this treatment standard constitutes what is necessary for appropriate medical care because the opinions are offered based upon two goals: optimal patient care and eradication of the disease in society as a whole.

2. Availability of Medical Resources

This court finds that the limited availability of medical resources in the prison context has at least some bearing on the deliberate indifference inquiry. [5] Cost and resource scarcity is not a complete defense to a deliberate indifference claim "because prison officials may be compelled to expand the pool of existing resources in order to remedy continuing Eighth Amendment violations." Peralta v. Dillard, 744 F.3d 1076, 1083 (9th Cir. 2014); see also Wilson v. Seiter, 501 U.S. 294, 300 (1991). Some courts, however, have recognized that evidence of resource scarcity may properly be considered to determine knowledge or intent. See, e.g., Peralta, 744 F.3d at 1085 ("The jury had sufficient evidence on which to base a finding that a lack of resources caused any delay in providing dental care."); Ralston v. McGowan, 167 F.3d 1160, 1162 (7th Cir. 1999) ("[T]he civilized minimum is a function both of objective need and of cost.").

***8** Here, both Defendants and Plaintiffs' own expert witness concede that the provision of new medicines and treatment options, especially when these medicines are costly, is always dependent to some degree on resource availability. Dr. Muir testified before the Magistrate Judge that Medicaid modified its coverage to include treatment of HCV with DAAs in 2017, but previously reimbursed for DAA treatment only if the patient had a FibroSure score of F2 or higher. (Tr. of Motions Hr'g (Doc. 41) at 42.) Before this court, Dr. Muir explained that he has participated in DAA clinical trials since approximately 2009 and regularly treated clinic patients with DAAs since approximately 2014, in accordance with his stated standard of care. (Tr. of Prelim. Inj. Hr'g (Doc. 51) at 11.) Dr. Muir then candidly acknowledged that, although he did not treat Medicaid patients with a fibrosis level below F2 with DAAs until Medicaid approved coverage for that treatment in 2017, Dr. Muir himself believes that his treatment of those pre-2017 Medicaid patients fell below the applicable standard of care. (Id. at 13.)

While this court appreciates Dr. Muir's candor, his testimony merely reflects what is generally true: patient treatment is often a product of resources and circumstances. In an ideal setting, all individuals with HCV could and would be treated with DAAs upon receiving a diagnosis. However, medical care in the prison setting must be adequate, not necessarily ideal, and HCV treatment in the prison system is dependent upon the availability of resources. As the AASLD/IDSA Guidance recognizes:

> To expand HCV testing and prevention counseling and increase access to HCV therapy in correctional institutions, it will be necessary to overcome several important barriers. First, appropriately trained staff are needed to screen inmates for HCV

> infection and, depending on the result, provide counseling on HCV prevention, linkage to care, and access to antiviral treatment....
>
> Second, unplanned transfers and releases could disrupt ongoing HCV treatment. Most state correctional facilities do not have a process in place to smoothly transition a patient receiving DAA treatment in a prison setting to continuing community-based care without a lapse in antiviral therapy....
>
> Finally, the costs of HCV testing and antiviral treatment in correctional facilities are also formidable barriers.

(Wilson. Aff., Ex. B (Doc. 48-2) at 13–14.) These barriers are consistent with Dr. Wilson's observation that "[i]mplementing the preliminary relief requested by Plaintiffs would require an extensive overhaul of the Department's health services operations, including logistical considerations, such as patient travel and housing assignments, physical facility capabilities and human resource capabilities." (Wilson. Aff. (Doc. 32-1) ¶ 8.) These considerations, coupled with Dr. Muir's testimony recognizing the limits of his own ability to properly treat Medicaid patients for a period of time, all suggest Plaintiffs' evidence does not establish that implementing the requested relief of universal opt-out screening and DAA treatment within the North Carolina prison system is either reasonable or feasible at this time.

Further, Dr. Muir's testimony as to the appropriate standard of care within the prison system as a whole is of limited applicability in this preliminary proceeding because, as previously mentioned, Dr. Muir has no experience treating patients in a correctional setting. This court also accords very limited weight to Dr. Muir's testimony regarding the potential cost of providing DAAs to a large group of prison patients. Dr. Muir testified before the Magistrate Judge that the wholesale cost of Mavyret, a common DAA drug used to treat HCV, "is in the 25,000-dollar range." (Tr. of Motions Hr'g (Doc. 41) at 45.) Before this court, Dr. Muir further testified that, based on his experience overseeing and providing guidance to pharmacy benefit managers, "it is well known that [the price of DAAs] is lower than [$25,000 per course of treatment]." (Tr. of Prelim. Inj. Hr'g (Doc. 51) at 88.) However, Dr. Muir conceded on cross-examination that he did not have any basis for concluding that Defendants specifically would be able to obtain any DAA medication at an amount below $25,000. (Id. at 94.) At the current stage of these proceedings, this court finds that Plaintiffs have provided no credible evidence to suggest that the cost to Defendants is anywhere below $25,000 per course of treatment.

3. Prioritization

***9** Plaintiffs next contend that the DPS "policy permit[ting] DAA treatment only for patients at stage F2 and higher, with one exception: patients with a lower level of fibrosis but who are also infected with HIV or hepatitis B may also receive treatment," is deliberately indifferent to a serious medical need. (Compl. (Doc. 1) ¶ 95.) Dr. Muir asserts that the "[s]tandard of care now would be for [DAA] treatment of all patients regardless of fibrosis stage." (Tr. of Motions Hr'g (Doc. 41) at 56.) Defendants' policy of prioritizing certain patients, however, is generally consistent with the AASLD/IDSA Guidance, which recognizes that "in certain settings ... clinicians may still need to decide which patients should be treated first." (Pls.' Inj. Br., Ex. E (Doc. 27-5) at 14.) This is especially true in the prison setting, where other complicating factors may require such an approach. Further, Dr. Wilson states that the standard of care for DAA treatment allows for the "necessity of prioritizing patients for treatment" and notes the importance of using "patient specific data, including drug interactions" to determine whether DAA treatment is appropriate. (Wilson Aff. (Doc. 32-1) ¶¶ 28, 32.)

Plaintiffs argue, and the Recommendation finds, that "Policy #CP-7 does not create a priority list, but rather determines who will or will not receive treatment at all. An inmate that has a fibrosis level below F2 is ineligible for DAAs." (Recommendation (Doc. 38) at 27.) Plaintiffs are correct that Policy #CP-7 states that only those prisoners with FibroSure scores of F2 or higher "should be referred for treatment" and that other prisoners with HCV should be continuously monitored but should not receive treatment. (See Pls.' Inj. Br., Ex. B. (Doc. 27-2) at 8.) This language is certainly not drafted in the form of a priority list. However, the policy is also not a final determination of who will or will not receive treatment. Instead, Policy #CP-7 is prefaced with the following directive:

> DOP Primary Care Providers are expected to follow this guideline except when in their professional judgment on a case-by-case basis there is reason to deviate from these guidelines. If a deviation is made the PCP will document in the medical record any deviations from this guideline and the reasoning behind the need for any deviation.

(Wilson Aff., Ex. D (Doc. 32-6) at 1.)

Policy #CP-7 is consistent with both Dr. Muir's testimony and the AASLD/IDSA Guidance. Dr. Muir acknowledges that the attending physician must have discretion to deal with individual patient circumstances. (See Tr. of Prelim. Inj. Hr'g (Doc. 51) at 17 ("[Y]ou can't possibly predict all the different other medical issues or other things that may impact a recommendation for a specific patient.").) The AASLD/IDSA Guidance provides that "[n]othing contained at HCVguidelines.org is intended to constitute a specific medical diagnosis, treatment, or recommendation." (Wilson Aff., Ex. B-1 (Doc. 32-4) at 1.) Dr. Wilson states, consistent with the need for individualized treatment recognized by Dr. Muir, that "[t]he AASLD/IDSA Guidance does not create a standard of care to be used in place of individualized medical assessments." (Wilson. Aff. (Doc. 32-1) ¶ 16.)

This court declines to make a specific finding as to whether Policy #CP-7 constitutes a mandatory course of treatment rather than guidance that a physician may properly deviate from where necessary or appropriate in his or her medical judgment. As previously noted, this court is concerned by: (1) the use of aspirational public health goals to establish deliberate indifference in the prison context, and (2) the limited medical resources available to a correctional institution. For those reasons, this court finds that Plaintiffs have failed to prove a likelihood of success in showing that the current standard of care in the prison setting requires treatment of all prisoners with DAAs. Therefore, Plaintiffs have not justified their request for an injunction ordering Defendants to provide DAA treatment to all prisoners diagnosed with HCV.

However, Plaintiffs do raise substantial doubts about whether Policy #CP-7 is deliberately indifferent to the medical health of prisoners, without regard to the AASLD/IDSA Guidance. First, Plaintiffs contest the accuracy of the FibroSure test itself, (see, e.g., Tr. of Prelim. Inj. Hr'g (Doc. 51) at 72), and Defendants do not appear to defend the accuracy of the test. Further, the fact that Medicaid recently approved treatment with DAAs for all patients suffering from HCV, (see id. at 11), suggests a medical consensus in favor of broader DAA treatment. This court finds that Plaintiffs have failed to satisfy their burden of justifying a preliminary injunction that orders DAA treatment for all prisoners with HCV. However, to address the acknowledged issues with the current policy — including the fact that the policy might be construed to prohibit or prevent doctors from administering DAAs to any prisoner with HCV whose FibroSure score is below F2 — this court will enjoin Policy #CP-7 in its entirety.

4. Relevant District Court Decisions

***10** Under the specific facts of the case, this court does not find Defendants' current treatment approach to be so grossly inadequate that, standing alone, it justifies the sweeping injunctive relief requested by Plaintiffs. [6] This court is aware that another district court recently granted a preliminary injunction on a similar § 1983 claim. See Hoffer v. Jones, 290 F. Supp. 3d 1292 (N.D. Fla. 2017). However, the facts in that case were substantially worse: the Florida Department of Corrections (the "FDC") had allegedly provided DAAs to only thirteen out of approximately 7,000 inmates with HCV. Id. at 1294, 1298. Here, DPS has treated 589 inmates with DAAs, out of 1,543 total identified HCV cases. [7] (Compl. (Doc. 1) ¶¶ 48–49.) In Hoffer, the FDC's own expert witness testified that the FDC's HCV treatment program was inadequate and "that an injunction is necessary for FDC to respond to this problem with the requisite alacrity." 290 F. Supp. 3d at 1303. In a similar case, Abu-Jamal v. Wetzel, the court also issued a preliminary injunction but based its merits finding on the fact "that the DOC's own expert testified he would recommend" DAA treatment for prisoners not currently receiving such treatment. No. 3:16–CV–2000, 2017 WL 34700,

at *18 (M.D. Pa. Jan. 3, 2017). Crucially, in each case, this expert testimony was probative evidence of the defendant's subjective knowledge — an element not present here. [8]

Plaintiffs have not established a likelihood of success on the merits sufficient to require broad injunctive relief based upon deliberate indifference. Plaintiffs have raised legitimate concerns and may ultimately prevail, but this court is not able to say at this point that either (1) the lack of universal opt-out screening for HCV, or (2) a policy of providing DAA treatment only to certain prisoners, with discretion to the attending physician to alter treatment on an individualized basis, is so likely to constitute deliberate indifference that Plaintiffs have met the standard for a preliminary injunction on those requests.

5. Contraindications

While declining to grant the sweeping injunctive relief that Plaintiffs request, this court does find that Plaintiffs have established a likelihood of success in proving that certain specific aspects of Policy #CP-7 constitute deliberate indifference. First, Policy #CP-7 provides that HCV treatment is contraindicated if the "[i]nmate will be incarcerated for an insufficient period of time to complete treatment. Usually a twelve (12) month period would be required to complete assessment and treatment for Hepatitis C." (Pls.' Inj. Br., Ex. B (Doc. 27-2) at 6.) Under this policy, it appears that any prisoner, including a prisoner with a FibroSure score of F2 or higher, is precluded from receiving treatment if HCV is diagnosed within one year of that prisoner's projected release date. However, there appears to be no dispute that DAA treatment is (1) necessary and appropriate for all prisoners with severe HCV (at the F2 or higher level), (2) capable of being fully administered within eight to twelve weeks with minimal required follow-up, and (3) highly effective. (See Tr. of Prelim. Inj. Hr'g (Doc. 51) at 18–19.) Therefore, this court finds that the current policy is likely deliberately indifferent in the sense that it denies treatment to prisoners with advanced HCV who could in fact complete a full course of DAA treatment before being released. Defendants acknowledged this fact during the March 8, 2019 preliminary injunction hearing. (See id. at 49 (stating that Defendants intend to shorten the release date contraindication).)

***11** This court further finds that the contraindication denying treatment to prisoners with "infractions related to the use of alcohol or drugs in the last twelve (12) months," (Pls.' Inj. Br., Ex. B (Doc. 27-2) at 6), is not justified by any medical reason or legitimate prioritization concern. (See Muir Aff. (Doc. 27-1) ¶ 37.) Defendants have provided nothing to refute Dr. Muir's statement that this contraindication is not justified. Therefore, Plaintiffs have shown a high likelihood of proving that this specific policy is deliberately indifferent to a serious medical need.

This court makes the same general finding with respect to the contraindications that deny treatment due to unstable medical or mental health conditions and life expectancy. Dr. Muir states that the medical or mental health contraindication is "a holdover from the days of treatment with interferon-based regimens" and is not appropriate for DAA treatment. (Id. ¶ 35.) Dr. Muir further attests that the ten-year life expectancy contraindication "is not the standard for treatment of HCV" and should be shortened. (Id. ¶ 34.) At the March 8, 2019 preliminary injunction hearing, Defendants did not attempt to justify these contraindications or argue that they in fact reflect the current standard of care in a prison context. Instead, Defendants implicitly admitted that all contraindications, except for patient refusal, are problematic under the deliberate indifference standard. (See Tr. of Prelim. Inj. Hr'g (Doc. 51) at 52 ("[T]he contraindications are an issue; that will soon no longer be an issue.").)

Defendants have submitted a copy of an updated HCV screening and treatment policy that is set to take effect on March 25, 2019. [9] (See Docs. 52, 52-1.) This policy appears, on initial review, to be based primarily on guidance promulgated by the Federal Bureau of Prisons. [10] This court finds it inappropriate at the current stage of proceedings to evaluate this new policy in terms of the requested preliminary injunction, especially because Plaintiffs have not had a chance to respond. Rather, this court will instead issue its order based on the existing Policy #CP-7, which has been extensively argued and briefed by the parties.

In light of the proposed new policy, this court will grant the requested class-wide preliminary injunction in part and enjoin Policy #CP-7 in its entirety to address the issues identified in this opinion — namely, the accuracy and reliability of the FibroSure test,

the use of contraindications (other than patient refusal), and the potential for the current policy to prevent treatment of prisoners below the F2 level. As previously stated, however, this court declines at this time to order Defendants to provide universal opt-out screening or to provide DAA treatment to all class members. While Plaintiffs have shown some possibility of success on these issues, this court is not persuaded that Plaintiffs have shown a likelihood of success in proving that adherence to the AASLD/IDSA Guidance is necessary to avoid deliberate indifference.

VII. CONCLUSION

***12** For the foregoing reasons, this court finds that the Magistrate Judge's analysis regarding Plaintiffs' class certification motion should be adopted and that motion will be granted. This court further finds that, while the named Plaintiffs are entitled to injunctive relief, Plaintiffs have not shown a likelihood of success on the merits as to certain aspects of their class-wide preliminary injunction request. Therefore, Plaintiffs' motion for a preliminary injunction will be granted in part and denied in part as set forth herein.

IT IS THEREFORE ORDERED that the Magistrate Judge's Recommendation, (Doc. 38), is **ADOPTED IN PART** in accordance with the foregoing analysis.

IT IS FURTHER ORDERED that Plaintiffs' Motion to Certify Class, (Doc. 3), is **GRANTED** and that the class be defined as "all current and future prisoners in DPS custody who have or will have chronic hepatitis C virus and have not been treated with direct-acting antiviral drugs."

IT IS FURTHER ORDERED that Lloyd Buffkin and Robert Parham are named as class representatives and that Plaintiffs' counsel is appointed as class counsel.

IT IS FURTHER ORDERED that Plaintiffs' Motion for Preliminary Injunction, (Doc. 26), is **GRANTED IN PART AND DENIED IN PART** as set forth herein, in that Plaintiffs' request for a preliminary injunction ordering Defendants to provide DAA treatment to the named Plaintiffs is **GRANTED**, Plaintiffs' request for an injunction ordering Defendants to cease denying DAA treatment based on contraindications, other than patient refusal, and to cease denying DAA treatment based solely on a prisoner's FibroSure score, is **GRANTED** in that Policy #CP-7 is hereby **ENJOINED** in its entirety, and Plaintiffs' request for a preliminary injunction ordering Defendants to institute universal opt-out screening and to treat all class members with DAAs regardless of fibrosis level is **DENIED**.

All Citations

Not Reported in Fed. Supp., 2019 WL 1282785

Footnotes

1 All citations in this Memorandum Order to documents filed with the court refer to the page numbers located at the bottom right-hand corner of the documents as they appear on CM/ECF.

2 This would be true even for inmates who already have HCV and have not been treated, because, according to Plaintiffs' allegations, the condition may "spontaneously clear itself from a patient's blood within six months of exposure." (Compl. (Doc. 1) ¶ 24.) If this occurs, the individual in question will immediately be at risk for re-infection.

3 Because Plaintiffs address only their deliberate indifference claim, and not their ADA claim, in their motion for a preliminary injunction, this court will not evaluate the question of whether a preliminary injunction should issue based on the ADA claim. (See generally Pls.' Inj. Br. (Doc. 27).)

4 It is not clear from the pleadings exactly when this guidance was amended to its current form; it appears that the guidance is continuously updated and that at least the DAA treatment recommendation dates to 2013. (See Compl. (Doc. 1) ¶ 30; see also Defs.' Opp'n Resp. (Doc. 31) at 3.)

5 While this factor also bears on the public interest prong of the preliminary injunction analysis, Defendants have not objected to that specific portion of the Recommendation. (See Recommendation (Doc. 38) at 31.) This court reviews any part of the Recommendation that is not objected to under a clearly erroneous standard. This court does not find that the Magistrate Judge's analysis of the public interest factors was clearly erroneous; rather, this court finds that resource availability or scarcity is relevant to the deliberate indifference analysis as well. Diamond, 416 F.3d at 315. Alternatively, this court finds that it may conduct a de novo review of the public interest analysis because the preliminary injunction inquiry is akin to a balancing test, see Amoco Prod. Co. v. Vill. of Gambell, 480 U.S. 531, 542 (1987), and all factors must be considered in arriving at a decision regarding the Magistrate Judge's ultimate recommendation to grant the injunction.

6 Of the two cases cited by the Magistrate Judge to support this assertion, one found no deliberate indifference by prison officials. Torraco, 923 F.2d at 235–36. The second case dealt with a prison doctor's unilateral decision to terminate an inmate's medication. Smith v. Jenkins, 919 F.2d 90, 92 (8th Cir. 1990). The situation here, where Defendants are actively treating prisoners under a policy that Plaintiffs contend is inadequate, is far removed from the facts in Smith. Smith also found deliberate indifference at the summary judgment stage; given the extraordinary nature of a preliminary injunction, it follows that the weight of evidence needed to establish success in this context is greater.

7 Defendants also argue that the DPS procedure for administering DAAs is "qualitatively different than either protocols at issue" in the Hoffer and Abu-Jamal cases, because DPS offers DAA treatment at an earlier stage. (Wilson. Aff. (Doc. 32–1) ¶ 40.) While reserving any judgment on the issue, this court finds the assertion by Defendants' expert suggests at least some disparity between the DPS policy and those at issue in other cases, moving this out of the realm where a preliminary injunction might be appropriate.

8 Neither the plaintiffs in Hoffer nor the plaintiffs in Abu-Jamal challenged the HCV screening process, only the process of determining which prisoners would receive DAAs.

9 This draft policy does not moot the claims presently pending before this court. First, the policy is not yet in effect. And, second, "a defendant's voluntary cessation of a challenged practice moots an action only if subsequent events ma[ke] it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." Wall v. Wade, 741 F.3d 492, 497 (4th Cir. 2014) (quoting Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 189 (2000)).

10 To the extent that Defendants endorse the Federal Bureau of Prisons as the source of the current medical standard of care in a prison setting, (see Doc. 52-1 at 3), Defendants should be prepared at a later stage of this case to justify their argument that universal opt-out screening is not required under this standard. See Evaluation and Management of Chronic Hepatitis C Virus (HCV) Infection, https://www.bop.gov/resources/pdfs/012018 _hcv_infection.pdf, at 2 ("Testing for HCV infection is recommended for ... all sentenced inmates.").

2022 WL 2610499 (N.C.Super.) (Trial Order)
Superior Court of North Carolina,
Superior Court Division.
Wake County

NORTH CAROLINA LEAGUE, of Conservation Voters, Inc., et al., Plaintiffs,
Common Cause, Plaintiff-Intervenor,
v.
REPRESENTATIVE DESTIN HALL, in his official capacity as Chair
of the House Standing Committee on Redistricting, et al., Defendants;
Rebecca Harper, et al., Plaintiffs,
v.
Representative Destin Hall, in his official capacity as Chair of the
House Standing Committee on Redistricting, et al., Defendants.

Nos. 21 CVS 015426, 21 CVS 500085.
February 23, 2022.

Order on Remedial Plans

A. Graham Shirley.
Nathaniel J. Poovey.
Dawn M. Layton, Judge.

***1** THIS MATTER comes before the undersigned three-judge panel pursuant to the February 4, 2022, Order of the Supreme Court of North Carolina ("Supreme Court Remedial Order) for review of Remedial Redistricting Plans to apportion the state legislative and congressional districts within North Carolina (hereinafter collectively referred to as the "Remedial Plans") enacted by the North Carolina General Assembly on February 17, 2022. 2022 N.C. Sess. Laws. 2 (also known as Senate Bill 744 and hereafter referred to as "Remedial Senate Plan"); 2022 N.C. Sess. Laws. 4 (also known as House Bill 980 and hereafter referred to as "Remedial House Plan"); 2022 N.C. Sess. Laws. 3 (also known as Senate Bill 745 and hereafter referred to as "Remedial Congressional Plan").

The Remedial Plans were enacted following entry of the Supreme Court Remedial Order. This Court entered a Judgment on January 11, 2022, wherein the Court upheld the constitutionality of the 2021 Enacted State Legislative and Congressional redistricting plans (hereinafter "Enacted Plans"). Thereafter, Harper Plaintiffs, North Carolina League of Conservation Voters Plaintiffs, and Plaintiff-Intervenor Common Cause (hereinafter collectively referred to as "Plaintiffs") appealed this Court's Judgment directly to the Supreme Court of North Carolina. On February 4, 2022, the Supreme Court of North Carolina entered its Remedial Order, with opinion to follow, adopting in full this Court's findings of fact in the January 11, 2022, Judgment; however, the Supreme Court concluded that the Enacted Plans are unconstitutional under N.C. Const., art. I, §§ 10, 12, 14, and 19 and remanded the action to this Court for remedial proceedings. On February 14, 2022, the Supreme Court filed its full opinion in this action. *Harper v. Hall,* 2022-NCSC-17 (Feb. 14, 2022).

Pursuant to the Supreme Court Remedial Order and full opinion, and after reviewing all remedial and alternative plans submitted to this Court, as well as additional documents, materials, and information pertaining to the submitted plans, including the report of this Court's appointed Special Masters and comments received from the parties, this Court sets out the following:

FINDINGS OF FACT

I. Summary of Requirements for Remedial Process

1. The Supreme Court's Order required the submission to this Court of remedial state legislative and congressional redistricting plans that "satisfy all provisions of the North Carolina Constitution"; both the General Assembly, and any parties to this action who chose to submit proposed remedial plans for this Court's consideration, were required to submit such plans, and additional information, on or before February 18, 2022, at 5:00 p.m.

2. The Supreme Court's Order also provided for a comment period in which parties to these consolidated cases were permitted to file and submit to this Court comments on any plans submitted for this Court's consideration by February 21, 2022 at 5:00 p.m.

3. The Supreme Court's Order also mandated that this Court must approve or adopt constitutionally compliant remedial plans by noon on February 23, 2022.

***2** 4. This Court subsequently entered an order on February 8, 2022, providing initial guidance on the remedial phase of the litigation before this Court, requiring written submissions containing the information the Supreme Court set forth in its Order pertaining to redistricting plans in general and the ordered Remedial Plans specifically. The written submissions were required to provide an explanation of the data and other considerations the mapmaker relied upon to create any submitted proposed remedial plan and to determine that the proposed remedial plan was constitutional-i.e., compliant with the Supreme Court Remedial Order. The full opinion of the Supreme Court, *Harper v. Hall,* 2022-NCSC-17, thereafter provided further guidance for the Remedial Plans.

5. On February 16, 2022, this Court entered an Order appointing three former jurists of our State appellate and trial courts-Robert F. Orr, Robert H. Edmunds, Jr., and Thomas W. Ross-to serve as Special Masters for the purposes of: 1) assisting this Court in reviewing any Proposed Remedial Plans enacted and submitted by the General Assembly or otherwise submitted to the Court by a party in these consolidated cases; and, 2) assisting this Court in fulfilling the Supreme Court's directive to this Court to develop remedial plans based upon the findings in this Court's January 11, 2022, Judgment should the General Assembly fail to enact and submit Proposed Remedial Plans compliant with the Supreme Court's Order within the time allowed. This Appointment Order also required the submission of additional information, data, and materials for review by the Court, the parties, and the Special Masters.

6. The Appointment Order further provided that the Special Masters were authorized to hire assistants and advisors reasonably necessary to complete their work. Pursuant to this authorization, the Special Masters hired the following advisors to assist in evaluating the Remedial Plans:

a. Bernard Grofman: PhD in political science from the University of Chicago, and currently the Jack W. Peltason Endowed Chair and Distinguished Professor at the University of California, Irvine, School of Social Sciences;

b. Tyler Jarvis: PhD in mathematics from Princeton University, and currently a Professor at Brigham Young University's College of Physical and Mathematical Sciences;

c. Eric McGhee: PhD in political science from the University of California, Berkeley, and currently a Senior Fellow at Public Policy Institute of California, a non-partisan, non-profit think tank; and,

d. Samuel Wang: PhD in Neurosciences from Stanford University, and currently a Professor of neuroscience at Princeton University and Director of the Electoral Innovation Lab.

7. The Court finds that these advisors were reasonably necessary to facilitate the work of the Special Masters to provide this Court with an analysis of the Remedial Plans. [1]

II. The General Assembly's Remedial Plans as a Whole

8. Pursuant to the Supreme Court's directive, the General Assembly enacted Remedial Plans and, through the Legislative Defendants, timely submitted the Remedial Plans to this Court on February 18, 2022.

A. Participants in the General Assembly's Drawing of Remedial Plans

***3** 9. The House participants involved in the drawing of the Remedial Plans consisted of twenty-one Republican members and one Democratic member, with five Republican staff members and two Democratic staff members.

10. The Senate participants involved in the drawing of the Remedial Plans consisted of four Republican members and five Democratic members, with four Republican staff members and one Democratic staff member.

11. The General Assembly members were also supported by fifteen Legislative Analysis and Bill Drafting Division staff members, as well as four Information Systems Division staff members.

12. Legislative Defendants, through counsel, also relied for limited purposes on their experts and non-testifying experts in this case, including Clark Bensen and Sean Trende for statistical analysis, Dr. Jeffrey Lewis to conduct a Racially Polarized Voting Analysis for both the 2021 and the 2022 districts, and Dr. Michael Barber for statistical analyses of the Remedial Plans and other BVAP-related information.

B. The General Assembly's Remedial Criteria for Drawing the Remedial Plans

13. The General Assembly's Remedial Criteria governing the remedial map drawing process were those neutral and traditional redistricting criteria adopted by the Joint Redistricting Committees on August 12, 2021, (received into evidence at trial as exhibit LDTX15) unless the criteria conflicted with the Supreme Court Remedial Order and full opinion.

14. Although expressly forbidden by the previously-used August 2021 Criteria, the General Assembly as part of its Remedial Criteria intentionally used partisan election data as directed by the Supreme Court's Remedial Order. The General Assembly did so by loading such data into Maptitude, the map drawing software utilized by the General Assembly in creating districting plans. The elections used by the General Assembly to evaluate the projected partisan effects of district lines were as follows: Lt.

Gov 2016, President 2016, Commissioner of Agriculture 2020, Treasurer 2020, Lt. Gov. 2020, US Senate 2020, Commissioner of Labor 2020, President 2020, Attorney General 2020, Auditor 2020, Secretary of State 2020, and Governor 2020.

15. The Court finds that the General Assembly's use of partisan data in this manner comported with the Supreme Court Remedial Order.

C. The General Assembly's Racially Polarized Voting Analysis

16. Paragraph 8 of the Supreme Court Remedial Order required the General Assembly to "assess whether, using current election and population data, racially polarized voting is legally sufficient in any area of the state such that Section 2 of the Voting Rights Act requires the drawing of a district to avoid diluting the voting strength of African-American voters."

17. The General Assembly conducted an abbreviated racially polarized voting ("RPV") analysis to determine whether racially polarized voting is legally sufficient in any area of the state such that Section 2 of the Voting Rights Act *requires* the drawing of a district to avoid diluting the voting strength of African American voters during the remedial process. Legislative Defendants' expert Dr. Jeffery B. Lewis ran an analysis and concluded that all three Remedial Plans provide African Americans with proportional opportunity to elect their candidates of choice.

***4** 18. The Court finds that the General Assembly satisfied the directive in the Supreme Court Remedial Order to determine whether the drawing of a district in an area of the state is required to comply with Section 2 of the Voting Rights Act.

D. Plaintiffs' Objections and Comments to the Plans

19. Pursuant to the Supreme Court's directive, Plaintiffs timely submitted comments on and objections to the Remedial Plans on February 21, 2022.

20. NCLCV Plaintiffs object to the Remedial Senate and Congressional Plans. NCLCV Plaintiffs do not specifically object to the Remedial House Plan but instead request the Court conduct its own analysis of the Remedial House Plan.

21. Harper Plaintiffs object to the Remedial Congressional Plan and Remedial Senate Plan. Harper Plaintiffs do not object to the Remedial House Plan.

22. Plaintiff Common Cause objects to all three Remedial Plans in general and specifically contends the Remedial Senate and House Plans must be redrawn for Senate District 4 and House District 10.

E. Report of Special Masters

23. Pursuant to this Court's Appointment Order, the Special Masters prepared a Report containing their analysis and submitted that Report to this Court for its consideration. The Report is attached to this Order as an exhibit and has been filed with the Court.

24. The Special Masters, and their advisors, conducted an analysis of the Remedial Plans using a variety of metrics to determine whether the submitted maps meet the requirements of the North Carolina Constitution as set out by the Supreme Court of North Carolina in its Remedial Order and full opinion.

25. The Special Masters' findings demonstrate that the Remedial House and Senate Plans meet the requirements of the Supreme Court's Remedial Order and full opinion.

26. The Special Masters' findings demonstrate that the Remedial Congressional Plan does not meet the requirements of the Supreme Court's Remedial Order and full opinion.

27. This Court adopts in full the findings of the Special Masters and sets out additional specific findings on the Remedial Plans' compliance with the Supreme Court Remedial Order below.

III. Remedial Congressional Plan

A. The General Assembly's Starting Point and Subsequently Proposed Amendments

28. In determining the base map for the Congressional Districts in the Remedial Congressional Plan that was eventually enacted, the Senate started from scratch.

29. There was a House Draft of a remedial congressional plan that was never voted on and therefore never considered by a committee or the full General Assembly.

30. Senator Clark offered one amendment to the Remedial Congressional Plan, a statewide plan, that was tabled.

31. The Remedial Congressional Plans passed the Senate by a vote of 25-19.

The “aye” votes in the Senate were solely by members of the Republican party, while the “no” votes in the Senate were solely by members of the Democratic Party. The Remedial Congressional Plan passed the House by voice vote along party lines.

B. Analysis of Partisanship Reflected in the Remedial Congressional Plan

32. The Remedial Congressional Plan reflects key differences from the 2021 Enacted Congressional Plan in the projected partisan makeup of certain districts.

a. Four congressional districts are some of the most politically competitive in the country (*i.e.,* presidential election differences of less than 5%): District 6, District 7, District 13, and District 14.

***5** b. Wake and Mecklenburg Counties are only split across two districts unlike in the 2021 Enacted Congressional Plan when each county was split across three districts.

33. The Supreme Court Remedial Order stated that a combination of different methods could be used to evaluate the partisan fairness of a districting plan; of those methods, the General Assembly used the “mean-median” test and the “efficiency gap” test to analyze the partisan fairness of the Remedial Plans.

34. The Court finds, based upon the analysis performed by the Special Masters and their advisors, that the Remedial Congressional Plan is not satisfactorily within the statistical ranges set forth in the Supreme Court's full opinion. *See Harper v. Hall,* 2022-NCSC-17, ¶166 (mean-median difference of 1% or less) and ¶167 (efficiency gap less than 7%).

35. The Court finds that the partisan skew in the Remedial Congressional Plan is not explained by the political geography of North Carolina.

IV. Remedial Senate Plan

A. The General Assembly's Starting Point and Subsequently Proposed Amendments

36. In determining the base map for the State Senate Districts, the Senate also started from scratch. The Senate altered two county groupings and adopted groupings for Senate Districts 1 and 2 that were preferred by Common Cause Plaintiffs. The remaining county groupings remained the same. As a result, the 13 wholly-contained single district county groupings in the Remedial Plan were kept from the Enacted Plan.

37. Alternative county groupings were proposed but not adopted.

a. The Senate considered the Democratic members' preferred alternate grouping for Forsyth County, which pairs it with Yadkin instead of Stokes County, but it was determined that the resulting districts in Alexander, Wilkes, Surry, and Stokes Counties would have been less compact. Additionally, Yadkin County is more Republican than Stokes County.

b. Alternative county groupings around Buncombe County were considered as well, but the Senate determined that any change from the chosen grouping would have resulted in districts that would have been significantly less compact.

38. The Remedial Senate Plan passed the Senate by a vote of 26-19. The “aye” votes in the Senate were solely by members of the Republican party, while the “no” votes in the Senate were solely by members of the Democratic Party. The Remedial Senate Plan passed the House by voice vote along party lines.

B. Analysis of Partisanship Reflected in the Remedial Senate Plan

39. The process for the development of the Remedial Senate Plan began with separate maps being drawn by the Senate Democratic Caucus and the Republican Redistricting and Election Committee members, respectively. The plans were then exchanged and discussed; however, after the two groups could not come to a resolution, the plan proposed by the Republican Redistricting and Election Committee members was then put to a vote by the Senate Committee and advanced to the full chamber.

40. The Remedial Senate Plan includes ten districts that were within ten points in the 2020 presidential race.

41. The Remedial Senate Plan reflects key differences from the 2021 Enacted Senate Plan in the projected partisan makeup of districts in certain county groupings.

***6** a. In the Cumberland-Moore County grouping, Senate District 21 is now more competitive.

b. In the Iredell-Mecklenburg County grouping, one district is more competitive.

c. In New Hanover County, the districts were made more competitive, resulting in a Senate District 7 that leans Democratic.

d. In Wake County, Senate Districts 17 and 18 are more Democratic leaning.

42. The Court finds, based upon the analysis performed by the Special Masters and their advisors, that the Remedial Senate Plan is satisfactorily within the statistical ranges set forth in the Supreme Court's full opinion. *See Harper v. Hall,* 2022-NCSC-17, ¶166 (mean-median difference of 1% or less) and ¶167 (efficiency gap less than 7%).

43. The Court finds that to the extent there remains a partisan skew in the Remedial Senate Plan, that partisan skew is explained by the political geography of North Carolina.

C. The General Assembly's Consideration of Incumbency Protection and Traditional Neutral Districting Criteria

44. For the Remedial Senate Plan, current members of either chamber who announced retirement or their intention to seek another office were not considered as "incumbents."

45. In the Senate, incumbency was considered evenly. No Senators are double bunked unless as a result of the mandatory county groupings, and no Democratic members are double bunked with other incumbents.

46. The Court finds that the measures taken by the General Assembly for the purposes of incumbency protection in the Remedial Senate Plan were applied evenhandedly.

47. The current membership of the General Assembly was elected under a districting plan that was approved by the trial court in *Common Cause v. Lewis* and, as stated above, the General Assembly began anew the process of drawing district lines after choosing county groupings for the remedial state legislative districts in this case.

48. The Court finds that the measures taken by the General Assembly for the purposes of incumbency protection in the Remedial Senate Plan do not perpetuate a prior unconstitutional redistricting plan.

49. The Court finds that the measures taken by the General Assembly for the purposes of incumbency protection in the Remedial Senate Plan are consistent with the equal voting power requirements of the North Carolina Constitution.

50. The Court finds that the General Assembly did not subordinate traditional neutral districting criteria to partisan criteria or considerations in the Remedial Senate Plan.

V. Remedial House Plan

A. The General Assembly's Starting Point and Subsequently Proposed Amendments

51. In determining the base map for the State House Districts, the House started from scratch after keeping only the 14 districts that were the product of single district county groupings.

52. The Remedial House Plan was ultimately amended by six amendments offered by Democratic Representatives.

a. Three amendments, drawn by Representative Reives, redrew certain districts in Wake, Mecklenburg, and Buncombe, which were already Democratic leaning, to be more Democratic leaning.

b. An additional amendment, also drawn by Representative Reives, added an additional district in Cabarrus County that is more Democratic leaning.

***7** c. An amendment offered by Representative Meyer swapped two precincts in Orange County in order to keep Carrboro whole.

d. An amendment offered by Representative Hawkins adjusted district lines in Durham County in order to better follow educational district lines.

53. The Remedial House Plan passed the House by a vote of 115-5 and was passed by the Senate by a vote of 41-3. The "aye" votes in the House and Senate were by members of both political parties. The "no" votes in the House and Senate were solely by members of the Democratic Party.

B. Analysis of Partisanship Reflected in the Remedial House Plan

54. The Remedial House Plan reflects key differences from the 2021 Enacted House Plan in the projected partisan makeup of districts in certain county groupings.

a. Buncombe County, which consisted of 1 Republican and 2 Democratic districts in the Enacted Plan, consists of 3 Democratic districts in the Remedial House Plan.

b. Pitt County, which consisted of 1 Republican and 1 Democratic district in the Enacted Plan, consists of 2 Democratic districts in the Remedial House Plan.

c. Guilford County now consists of 6 Democratic leaning districts.

d. Cumberland County now consists of 3 Democratic districts and 1 competitive district.

e. Mecklenburg and Wake Counties now consist of 13 Democratic leaning districts each.

f. New Hanover, Cabarrus, and Robeson Counties now contain an additional competitive district each.

55. The Court finds, based upon and confirmed by the analysis of the Special Masters and their advisors, that the Remedial House Plans are satisfactorily within the statistical ranges set forth in the Supreme Court's full opinion. *See Harper v. Hall,* 2022-NCSC-17, ¶166 (mean-median difference of 1% or less) and ¶167 (efficiency gap less than 7%).

56. The Court finds that to the extent there remains a partisan skew in the Remedial House Plan, that partisan skew is explained by the political geography of North Carolina.

C. The General Assembly's Consideration of Incumbency Protection and Traditional Neutral Districting Criteria

57. For the Remedial House Plan, current members of either chamber who announced retirement or their intention to seek another office were not considered as "incumbents."

58. In the House, incumbency was considered evenly. The only discretionary double bunking in the Remedial House Plan pairs two Republican members. There was no discretionary double bunking of Democratic members. The few double bunked members are double bunked solely as a result of the mandatory county groupings.

59. The Court finds that the measures taken by the General Assembly for the purposes of incumbency protection in the Remedial House Plan were applied evenhandedly.

60. The current membership of the General Assembly was elected under a districting plan that was approved by the trial court in *Common Cause v. Lewis* and, as stated above, the General Assembly began anew the process of drawing district lines after choosing county groupings for the remedial state legislative districts in this case.

61. The Court finds that the measures taken by the General Assembly for the purposes of incumbency protection in the Remedial House Plan do not perpetuate a prior unconstitutional redistricting plan.

***8** 62. The Court finds that the measures taken by the General Assembly for the purposes of incumbency protection in the Remedial House Plan are consistent with the equal voting power requirements of the North Carolina Constitution.

63. The Court finds that the General Assembly did not subordinate traditional neutral districting criteria to partisan criteria or considerations in the Remedial House Plan.

VI. Plaintiffs' Alternative Remedial Plans

64. The following alternative remedial plans for the Court's consideration were submitted by NCLCV Plaintiffs, Harper Plaintiffs, and Plaintiff-Intervenor Common Cause on February 18, 2022 (hereinafter referred to as "NCLCV Alternative Plans"; "Harper Alternative Plans"; "Common Cause Alternative Plans"; or collectively, "Alternative Plans").

65. Although Plaintiffs submitted Alternative Plans, because the Court is satisfied with the Remedial House and Senate Plans, the Court did not need to consider an alternative plan for adoption.

66. Furthermore, the Court, in following N.C.G.S. § 120-2.4(a1), has chosen to order the use of an interim districting plan for the 2022 North Carolina Congressional election that differs from the Remedial Congressional Plan to the extent necessary to remedy the defects identified by the Court.

VII. Special Masters' Interim Congressional Plan

67. As part of their Report, the Special Masters have developed a recommended congressional plan ("Interim Congressional Plan") for this Court to consider due to their findings, which the Court has adopted, that the Remedial Congressional Plan does not satisfy the requirements of the Supreme Court Remedial Order and full opinion.

68. The Court finds that the Interim Congressional Plan recommended by the Special Masters was developed in an appropriate fashion [2], is consistent with N.C.G.S. § 120-2.4(al), and is consistent with the North Carolina Constitution and the Supreme Court's full opinion.

Based upon the foregoing findings of fact, the Court makes the following:

CONCLUSIONS OF LAW

1. In *Harper v. Hall,* 2022-NCSC-17, the Supreme Court stated:

> We do not believe it prudent or necessary to, at this time, identify an exhaustive set of metrics or precise mathematical thresholds which conclusively demonstrate or disprove the existence of an unconstitutional partisan gerrymander. *Cf. Reynolds v. Sims,* 377 U.S. 533, 578 (1964) ("What is marginally permissible in one [case] may be unsatisfactory in another, depending on the particular circumstances of the case. Developing a body of doctrine on a case-by-case basis appears to us to provide the most satisfactory means of arriving at detailed constitutional requirements in the area of... apportionment."). As in *Reynolds,* "[l]ower courts can and assuredly will work out more concrete and specific standards for evaluating state legislative apportionment schemes in the context of actual litigation." *Id.* However, as the trial court's findings of fact indicate, there are multiple reliable ways of demonstrating the existence of an unconstitutional partisan gerrymander. In particular, mean-median difference analysis; efficiency gap analysis; close-votes, close-seats analysis; and partisan symmetry analysis may be useful in assessing whether the mapmaker adhered to traditional neutral districting criteria and whether a meaningful partisan skew necessarily results from North Carolina's unique political geography. If some combination of these

> metrics demonstrates there is a significant likelihood that the districting plan will give the voters of all political parties substantially equal opportunity to translate votes into seats across the plan, then the plan is presumptively constitutional.

***9** *Id.* at ¶163.

2. Plaintiffs have urged upon this court that we must adopt plans that "treat voters of both political parties fairly." They argue that the "LD Congressional and Senate Plans are not fair." Further, they argue that the Supreme Court ordered "fair maps" and that "[b]ecause the LD Congressional and Senate Plans are not fair maps, ... the Court should adopt one of the fairer maps before it - such as the NCLCV Maps." We see Plaintiffs' arguments as tantamount to urging this Court to adopt a proportional representation standard, which the Supreme Court, in its order, specifically disavowed. *Id.* at ¶169.

3. The Court concludes that the Remedial Senate Plan satisfies the Supreme Court's standards.

4. The Court concludes that the Remedial House Plan satisfies the Supreme Court's standards.

5. Because the Court concludes that the enacted Remedial Senate and House Plans meet the Supreme Court's standards and requirements in the Supreme Court Remedial Order and full opinion, the Remedial Senate and House Plans are presumptively constitutional.

6. Furthermore, no evidence presented to the Court is sufficient to overcome this presumption for the Remedial Senate and House Plans, and those plans are therefore constitutional and will be approved.

7. The Court concludes that the Remedial Congressional Plan does not satisfy the Supreme Court's standards.

8. Plaintiffs suggest that if we conclude that a Remedial Plan passed by the General Assembly does not satisfy the Supreme Court's standards, we should simply jettison that plan and adopt one of their plans. We do not believe that our conclusion on the Remedial Congressional Plan-that it fails to satisfy the Supreme Court's standards-automatically results in the adoption of an alternate plan proposed by Plaintiffs. Given that the ultimate authority and directive is given to the Legislature to draw redistricting maps, we conclude that the appropriate remedy is to modify the Legislative Remedial Congressional Plan to bring it into compliance with the Supreme Court's order. *See* N.C.G.S. § 120-2.4(al).

9. Because the Court concludes that the enacted Remedial Congressional Plan does not meet the Supreme Court's standards and requirements in the Supreme Court Remedial Order and full opinion, the Remedial Congressional Plan is not presumptively constitutional and is therefore subject to strict scrutiny.

10. The General Assembly has failed to demonstrate that their proposed Congressional map is narrowly tailored to a compelling governmental interest, and we therefore must conclude that the Remedial Congressional Map is unconstitutional.

11. The Interim Congressional Plan as proposed by the Special Masters satisfies the Supreme Court's standards and should be adopted by this Court for the 2022 North Carolina Congressional elections.

DECREE

BASED UPON THE FOREGOING findings and conclusions, the Court hereby ORDERS the following:

> 1. The Remedial Senate Plan and Remedial House Plan, enacted into law by the General Assembly on February 17, 2022, are hereby APPROVED by the Court.

***10** 2. The Remedial Congressional Plan, enacted into law by the General Assembly on February 17, 2022, is hereby NOT APPROVED by the Court.

3. The Interim Congressional Plan as recommended by the Special Masters is hereby ADOPTED by the Court and approved for the 2022 North Carolina Congressional elections.

4. As the Special Masters and their retained experts may be called upon to assist this Court in this matter should the need arise in the future, the prohibition in this Court's prior order appointing the Special Masters against contacting the Special Masters or their experts remains in full force and effect.

SO ORDERED, this the 23rd day of February, 2022.

<<signature>>

A. Graham Shirley, Superior Court Judge

<<signature>>

Nathaniel J. Poovey, Superior Court Judge

<<signature>>

Dawn M. Layton, Superior Court Judge

Footnotes

1 On February 20, 2022, counsel for Harper Plaintiffs submitted a notice of communications wherein the Court was informed that Dr. Wang and Dr. Jarvis had contacted some of Harper Plaintiffs' retained experts by email regarding their algorithms and analysis models. Legislative Defendants subsequently filed a motion to disqualify Dr. Wang and Dr. Jarvis from assisting the Special Masters. The Special Masters have provided additional review of the issues presented in this motion, as noted in the Report attached to this Order, and the Court will address the Motion in a separate order that will be filed contemporaneously herewith.

2 The data files (e.g., block equivalency, shape files, population deviation results) are included in the court file with this order in native format. The equivalent of the “stat pack” has been requested from the Special Masters' advisor and will be placed in the court file and provided to the parties as soon as available.

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19-CVS-2885

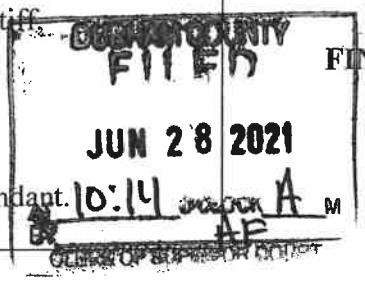
STATE OF NORTH CAROLINA, ex rel.
JOSHUA H. STEIN, Attorney General,

Plaintiff,

v.

JUUL LABS, INC.,

Defendant.



FINAL CONSENT JUDGMENT

Plaintiff, the State of North Carolina, by and through its Attorney General, Joshua H. Stein, (the "State" or "Plaintiff") has filed a Complaint for a permanent injunction, equitable monetary relief, and other relief in this matter pursuant to N.C.G.S. § 75-1.1 et seq., alleging that Defendant Juul Labs, Inc. ("JLI") violated the North Carolina Unfair or Deceptive Trade Practices Act, N.C.G.S. § 75-1.1 et seq. Plaintiff, with the advice and approval of its counsel, and JLI, with the advice and approval of its counsel, have agreed to the entry of this Final Consent Judgment ("Consent Judgment") by the Court without trial or resolution of any contested issue of fact or law, and without finding or admission of wrongdoing or liability of any kind.

IT IS HEREBY ORDERED THAT:

I. FINDINGS

1. The Parties (as defined below) agree that this Court has jurisdiction over the subject matter of this lawsuit and over the Parties with respect to this Action (as defined below) and Consent Judgment. This Consent Judgment shall not be construed or used as a waiver of any jurisdictional defense JLI may raise in any other proceeding.

2. The terms of this Consent Judgment shall be governed by the laws of the State of North Carolina.

3. Entry of this Consent Judgment is in the public interest and reflects a negotiated agreement among the Parties.

4. The Parties are willing to enter into this Consent Judgment to resolve Plaintiff's claims and JLI's defenses in the Action and thereby avoid significant expense, inconvenience, and uncertainty.

5. Pursuant to this Consent Judgment, and in consideration of the full release of claims and the other relief set forth herein, JLI will, on the terms and conditions set forth herein, among other things, commit to limits as specifically defined herein on its marketing, advertising, distribution, sale, and offering of JUUL Products (as defined below) in North Carolina and provide resources for the State to reduce and prevent underage usage of ENDS (as defined below) through cessation programs, education, research, and data collection.

6. JLI is entering into this Consent Judgment solely for the purpose of concluding this matter, and nothing contained herein may be taken as or construed to be an admission or concession of any alleged violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which JLI expressly denies. No part of this Consent Judgment, including its statements and commitments, shall constitute evidence of any liability, fault, or wrongdoing by JLI.

7. This Consent Judgment shall not be construed or used as a waiver or limitation of any defense otherwise available to JLI in any other matter, or of JLI's right to defend itself from, or make any arguments in, any other regulatory, governmental, private individual, or class claims, suits, or investigations relating to the subject matter or terms of this Consent Judgment.

This Consent Judgment is made without trial or resolution of any contested issue of fact or law or finding of liability. Notwithstanding the foregoing, the State may enforce the terms of this Consent Judgment.

8. No part of this Consent Judgment shall create a private cause of action or confer any right on any third party for violation of any federal or state statute except that the State may enforce the terms of this Consent Judgment. It is the intent of the Parties that this Consent Judgment shall not be binding or admissible in any other matter, including, but not limited to, any other regulatory, governmental, private individual, or class claims, suits, or investigations, other than in connection with the enforcement of the provisions of this Consent Judgment (including the Release). This Consent Judgment is not enforceable by any persons or entities besides the State, JLI, and this Court.

9. The Court approves the terms of this Consent Judgment and hereby adopts them as its own determination of this matter and the Parties' respective rights and obligations.

II. DEFINITIONS

10. For purposes of this Consent Judgment, the following terms shall have the following meanings:

a. "**Action**" means *State of North Carolina* ex rel. *Joshua H. Stein v. Juul Labs, Inc.*, 19 CVS 2885 (Durham Cty. Super. Ct.).

b. "**Advertising Channel**" means the location of the marketing or advertisement, including, but not limited to, movies, live performances, print media, radio, broadcast media, streaming media, Social Media Platforms, virtual reality platforms, internet-based chat and messaging applications, television, theatrical performances, video games, and

websites; provided that an Advertising Channel shall not include Outdoor Advertising, marketing or advertising on the property of North Carolina Retail Stores, or on JLI Owned Websites.

c. "**Authorization Order**" means a written marketing order from the FDA authorizing a PMTA submitted by JLI or other written authorization from the FDA to JLI (including an MRTPA).

d. "**Claims**" means any and all claims, demands, actions, suits, causes of action, damages, and liabilities and monetary impositions of any nature, as well as costs, expenses, and attorneys' fees, whether known or unknown, suspected or unsuspected, accrued or unaccrued, whether legal, equitable, statutory, regulatory, or administrative. For the avoidance of doubt, Claims does not include allegations of criminal liability.

e. "**Complaint**" means the complaint filed by the State in the Action.

f. "**Confidential Personal Information**" means individual Social Security or tax identification numbers, personal financial account numbers, passport numbers, driver license numbers, home addresses, home telephone numbers, personal email addresses, other personally identifiable information protected by law from disclosure, and personally identifiable information of consumers. "Confidential Personal Information" does not include the names and business or employment contact information of officers, directors, employees, agents, or attorneys of JLI or of a government agency.

g. "**Covered Conduct**" means any and all of the following:

i. All conduct related to age verification, product quantity limits, nicotine content, flavors, or the size, shape, operation, or appearance of the product in the design, manufacture, marketing, advertising, product description, promotion, distribution, sale, or offer of JUUL Products.

ii. All conduct that could have induced a person, including an Underage Individual, to use or purchase JUUL Products.

iii. All conduct that could have allowed a person, including an Underage Individual, to use or purchase JUUL Products without allegedly adequate age verification, product quantity limits, or other age-based limitations or procedures.

iv. Any other conduct related to the allegations by the State in the Complaint or otherwise asserted by the State in the Action that does not fall within subparagraphs (i)-(iii).

v. All conduct that may have violated federal, state, local laws, regulations, or rules, or that could give rise to any common law cause of action, relating to the conduct described in subparagraphs (i) - (iv).

vi. For the avoidance of doubt, Covered Conduct does not include any conduct relating to an undisclosed non-nicotine ingredient hazard in JUULpods resulting in personal injury to a consumer; any conduct giving rise to criminal, antitrust, tax-related, or state or federal securities-related violations; or any conduct after the

Effective Date other than continuing to manufacture or sell JUUL Products in a manner consistent with North Carolina law and this Consent Judgment.

vii. As used herein, "conduct" includes, without limitation, any act, failure to act, practice, omission, statement, or representation.

h. "**Effective Date**" means the date this Consent Judgment is entered by the Court.

i. "**ENDS**" means electronic nicotine delivery systems.

j. "**ENDS Cessation Programs**" means evidence-based or evidence-informed programs that provide cessation assistance to North Carolina residents who were exposed to ENDS while Underage Individuals, run by independent, third-party qualified professionals and service providers with significant experience in nicotine cessation.

k. "**ENDS Education Programs**" means evidence-based or evidence-informed public education or prevention programs that are designed to prevent or reduce use of ENDS by Underage Individuals and are run by independent, third-party qualified professionals and service providers with significant experience in nicotine education, including but not limited to school-based, community-based, or youth-focused programs or strategies that have demonstrated effectiveness in preventing use of ENDS by Underage Individuals.

l. "**ENDS Research**" means evidence-based or evidence-informed research in support of preventing ENDS use by Underage Individuals by

independent third parties with significant experience in nicotine research. Such research includes but is not limited to (1) monitoring, surveillance, data collection, and evaluation of ENDS Cessation Programs and ENDS Education Programs; (2) research on other efforts to prevent or deter ENDS use by Underage Individuals; and (3) qualitative and quantitative research regarding public health risks associated with the use of ENDS.

m. "**FDA**" means the United States Food and Drug Administration.

n. "**Federal Age-Verification Requirements**" means the requirements for verifying a purchaser's age pursuant to 21 C.F.R. § 1140.14.

o. "**Health Claim**" means a claim or representation about JUUL Products that suggests that JUUL Products reduce harm or a comparison between the health effects of JUUL Products and the health effects associated with commercially marketed tobacco products.

p. "**JLI**" means Juul Labs, Inc. and its successors and assigns.

q. "**JLI Compliance Check**" means an assessment of a North Carolina Retail Store's compliance with (a) Federal Age-Verification Requirements or (b) product quantity limits of up to one (1) JUUL Device and sixteen (16) JUULpods, sold individually or through JUULpod Packs, per transaction, or both.

r. "**JLI Owned Websites**" means www.juul.com, www.juullabs.com, and any other website operated by JLI under a JLI brand.

s. "**JUUL Device**" means any ENDS device sold or marketed by JLI in the United States.

t. "**JUULpod Packs**" means a package of JUULpods sold as one unit by JLI.

u. "**JUULpods**" means any disposable pods prefilled with a proprietary liquid solution containing nicotine at different concentrations and different flavorings that consumers use as part of the closed-pod, liquid-based, ENDS sold by JLI in the United States.

v. "**JUUL Products**" means any product sold by JLI in the United States, including a closed-pod, liquid-based ENDS product composed of one or all of the following components: JUUL Device, JUULpods, JUULpod Packs, and/or a charger.

w. **"MRTPA"** means a Modified Risk Tobacco Product Application that JLI has submitted or submits to the FDA related to JUUL Products.

x. "**North Carolina Depository**" means the depository established in Section IV.

y. "**North Carolina Retail Store**" means a physical retail location in North Carolina that is authorized by JLI to sell JUUL Products.

z. "**Other State**" means any of the states, commonwealths, and territories of the United States and the District of Columbia, other than North Carolina, by and through its attorney general.

aa. "**Outdoor Advertising**" means (1) billboards, (2) signs and placards in arenas, stadiums, and shopping malls, and (3) any other advertisements placed (A) outdoors, or (B) on the inside surface of a window facing outward; provided that "Outdoor Advertising" does not mean (1) an

advertisement on the outside of a JLI facility; (2) an individual advertisement that does not occupy an area larger than 14 square feet (and that neither is placed in such proximity to any other such advertisement so as to create a single "mosaic"-type advertisement larger than 14 square feet, nor functions solely as a segment of a larger advertising unit or series), and that is placed (A) on the outside of a North Carolina Retail Store, (B) outside (but on the property of) any such store, or (C) on the inside surface of a window facing outward in any such store; or (3) an advertisement inside a North Carolina Retail Store that sells JUUL Products that is not placed on the inside surface of a window facing outward.

bb. "**Parties**" or "**Party**" means the State and JLI, individually and collectively.

cc. "**PMTA**" means a Premarket Tobacco Product Application that JLI has submitted or submits to the FDA related to JUUL Products.

dd. "**Released Parties**" means (1) JLI, (2) JLI's past and present direct or indirect parents, subsidiaries, and affiliates listed in Exhibit A, in each case including their respective predecessors, successors, and assigns, and (3) each and all of the past and present principals, partners, officers, directors, supervisors, employees, stockholders, members, insurers, attorneys, agents, contractors, representatives, and assigns of each of the persons and entities listed in (1) and (2), but only to the extent that the person or entity was acting in such capacity on behalf of JLI.

Notwithstanding the foregoing, Released Parties shall not include those individuals that have been named, as of the Effective Date, in any action brought by an Other State that also names JLI.

ee. "**Releasors**" means the State and the Attorney General, as well as (1) any State department, agency, institution, commission, bureau, or other governmental or public entity to the full extent of the State's and the Attorney General's power to release Claims; (2) the successors of any of the foregoing; and (3) persons or entities acting in a *parens patriae*, sovereign, quasi-sovereign, private attorney general, qui tam, taxpayer, or other capacity seeking relief on behalf of or generally applicable to the general public with respect to the State.

ff. "**Social Media Platform**" means an internet-based public platform through which users are able to create and/or share content that is accessible to members of the public, and includes sites such as Facebook, Instagram, Snapchat, TikTok, Twitter, Clubhouse, Pinterest, Tumblr, Google+, and YouTube.

gg. "**Therapeutic Claim**" means a claim or representation in which JUUL Products have properties that are diagnostic, curative, mitigating, treatment-oriented, or can prevent disease (including that using JUUL Products can help the user transition off of nicotine use), including as defined in 21 U.S.C. § 321(g)(1).

hh. **"Underage Individuals"** means North Carolina residents who are under the legal age to purchase ENDS products in North Carolina pursuant to North Carolina or federal law.

ii. **"Verified"** means determined to be 21 years or older through the use of reliable and independent age-verification service(s) that cross-references the customer's name, address, and date of birth against independent, competent, and reliable data sources, such as official government records. Specifically, "Verified" requires: (1)(a) that each customer submit a non-expired government identification, or (b) that the name, address, date of birth, and last four digits of the customer's Social Security Number provided by the customer are cross-referenced against information obtained from official government records or similar independent, competent, and reliable data sources, and a phone number or other personal indicator provided by the customer is used for two-factor authentication; and (2) for the sale of JUUL Products only, that the billing address on the method of payment matches the shipping address for that order.

III. CONDUCT PROVISIONS

Promotional Activities

11. In connection with marketing or sales activities in North Carolina or directed at consumers in North Carolina, JLI shall not:

a. Use content (including but not limited to cartoons, caricatures, gifs, videos, images, vape tricks, or phrases) that, in the exercise of reasonable

diligence by JLI, is known or believed by JLI to appeal to, or to be likely to appeal to, Underage Individuals in any marketing or advertising materials for JUUL Products in North Carolina.

b. Use marketing or advertising for JUUL Products within North Carolina that, in the exercise of reasonable diligence by JLI, is known or believed by JLI to appeal to, or to be likely to appeal to, Underage Individuals.

c. Publish any marketing or advertising material for JUUL Products on any Social Media Platform; provided that JLI shall be permitted to use Twitter, LinkedIn, and YouTube for (i) hosting testimonial videos of the experiences of persons thirty-five (35) years of age or older who are or were habitual combustible cigarette smokers using JUUL Products, and (ii) other non-promotional communications.

d. Retain or encourage individuals, through payment or other consideration (including non-monetary consideration or discounted or free product), to promote JUUL Products on an individual's personal account, or any account controlled in whole or in part by that individual, on any Social Media Platform.

e. Retain or encourage individuals, through payment or other consideration (including non-monetary consideration or discounted or free product), to promote JUUL Products as "brand ambassadors," influencers, or affiliates:

   i. On any Social Media Platform, or

   ii. In person in North Carolina, unless the operator of the location of the in-person promotion represents to JLI that in connection with

such promotion it will undertake reasonable industry standard measures to prohibit access by Underage Individuals and JLI has a good-faith belief that the operator is adhering to such representation.

f. Create, advertise, or market any hashtags related to any JLI brand for use on any Social Media Platform.

g. Provide free JUUL Products to consumers residing within North Carolina.

h. Send direct-to-consumer marketing materials for JUUL Products to any individuals residing within North Carolina who are not Verified.

i. Include individuals residing within North Carolina who are not Verified on JLI's marketing distribution lists for JUUL Products.

j. Use any individual under the age of thirty-five (35) in any marketing or advertising materials for JUUL Products.

k. Market or advertise JUUL Products in Advertising Channels to consumers in North Carolina unless, according to data sources generally considered by the industry to be competent and reliable, 85% or more of the individuals comprising the audience of the Advertising Channel are not Underage Individuals. This provision does not apply to marketing or advertising on any online website that requires an individual residing in North Carolina to agree to be Verified before being able to further access the website.

12. JLI shall take reasonable efforts to monitor Social Media Platforms and third-party websites that resell JUUL Products to identify content promoting use of JUUL Products by

Underage Individuals, unauthorized sales of JUUL Products, or content that would otherwise be impermissible by JLI under the terms of this Consent Judgment, and will take reasonable steps to seek to have the content removed. The Parties agree that JLI shall be deemed to be in compliance with the foregoing sentence if it (i) engages a nationally recognized service provider to monitor Social Media Platforms and third-party websites that resell JUUL Products using the service provider's "web-scraping" or similar technology for effective monitoring, and (ii) maintains a process for diligently requesting that Social Media Platforms or owners of third-party websites that resell JUUL Products remove the content identified through such monitoring. JLI may follow any procedures that Social Media Platforms or websites have established for providing notice of the content. The Parties agree that compliance with this Paragraph does not create any liability for JLI for content posted by a third party or for the failure of a third party to remove posted content after being requested by JLI. JLI shall maintain records sufficient to document its compliance with this Paragraph.

13. JLI shall not place or cause to be placed Outdoor Advertising at any location that at the time of the placement, or renewal of the placement, of the Outdoor Advertising is within 1,000 feet of any elementary, middle, or high school or public playground in North Carolina.

14. JLI shall not place or cause to be placed any marketing or advertising materials in public transportation facilities in North Carolina, including, but not limited to, public buses or bus stations, public trains or train stations, and airports. This Paragraph shall not apply to any in-store materials at any North Carolina Retail Store located in a public transportation facility.

Sponsorships & Youth Education

15. JLI shall not sponsor any sports, entertainment (including, but not limited to, musical, artistic, social, or cultural), or charity events held in North Carolina; provided that:

a. JLI may provide financial support to non-profit or charitable entities, and

b. JLI may sponsor and/or provide financial support for charity events in North Carolina so long as:

i. JLI does not require JUUL Products branding to be displayed at the event,

ii. JLI does not reference the event (or any individual's involvement in such event) in any marketing or advertising activities, and

iii. JLI does not promote JUUL Products at the charity event and does not provide payment or consideration of any kind to any individual to promote JUUL Products at the charity event.

16. Without express prior permission from the North Carolina Attorney General's Office, JLI shall not (1) directly fund or operate any youth education campaigns or youth prevention activities in North Carolina, or (2) provide materials on youth education programs or events. For the purpose of this Paragraph, permission shall be deemed granted if the North Carolina Attorney General does not respond in writing to JLI's request for permission within thirty (30) days from the date of JLI's request.

Retail and Internet Sales

17. JLI shall not distribute, sell, offer, or otherwise provide any JUULpod in any flavor or in any nicotine concentration in North Carolina or to North Carolina Retail Stores that JLI does not distribute or sell in North Carolina as of the Effective Date unless and until JLI receives FDA authorization that permits the marketing of that JUULpod flavor or of that nicotine concentration.

18. JLI shall not sell JUUL Products to Underage Individuals in violation of federal or North Carolina law.

19. JLI shall not offer, sell, deliver, or in any manner directly provide JUUL Products to any consumers within North Carolina who are not verified in a manner consistent with North Carolina statutory requirements, which are currently set forth in N.C. Gen. Stat. § 14-313(b)–(b2).

20. In furtherance of this:

a. For all sales of JUUL Products to consumers in North Carolina on a JLI Owned Website, no online sales shall be made to a consumer who is not Verified.

b. For all sales of JUUL Products to North Carolina residents on a JLI Owned Website, JLI shall continue to recommend to credit card companies (through JLI's third-party payment gateways or processors) that the words "JUUL TOBACCO PRODUCT" be printed on the consumer's credit card statement.

c. JLI shall implement a process for placing a phone call after 5:00 pm ET to consumers who purchase JUUL Products from a JLI Owned Website within the preceding 24 hours of shipment to an address within North Carolina. Such phone calls will inform the consumer of the recently placed order prior to shipping the product.

21. JLI shall limit sales to North Carolina residents of JUUL Products on a JLI Owned Website to no more than two (2) JUUL Devices per month, ten (10) JUUL Devices per

calendar year, and sixty (60) JUULpods per month, sold individually or through JUULpod Packs, for online sales.

22. Prior to distributing JUUL Products to North Carolina residents through a consumer warranty program, JLI shall first confirm that the individual requesting the warranty replacement is Verified.

23. Prior to enrolling North Carolina residents in any auto-shipment program, JLI shall first confirm that the individual to be enrolled in the auto-shipment program is Verified.

24. JLI shall continue to include serial numbers on JUUL Devices that permit North Carolina residents to report the serial number of a JUUL Device confiscated from an Underage Individual through a website, currently https://www.juul.com/trackandtrace. Every six (6) months, JLI shall report to the North Carolina Attorney General and the Director of Tobacco Prevention of the North Carolina Department of Health and Human Resources's Division of Mental Health any and all information from the website relating to a North Carolina Retail Store that may have permitted Underage Individuals to purchase JUUL Products.

25. Within eight (8) months of the Effective Date, JLI shall require that all North Carolina Retail Stores selling or distributing JUUL Products implement automated sales controls by adopting an age-verification compliance system at the point-of-sale that includes at least the following capabilities or components:

a. A barcode scanner that is capable of electronically scanning a photographic and/or government-issued identification, including non-North Carolina identification, and automatically validating personal information contained in the identification.

b. Automated verification that the customer is at least 21 years of age and the identification is not expired by electronic ID scanning or other automated, software-based measure, based on the identification presented by the customer.

c. Requirement to visually confirm that the customer matches the individual represented on their identification.

d. Automated blocking of any transaction where the transaction involves more than one (1) JUUL Device and/or sixteen (16) JUULpods, sold individually or through JUULpod Packs.

e. Ability to automatically block any transaction that does not comply with (b)–(d).

f. For the avoidance of doubt, JLI shall not use data obtained through Paragraph 25(a) and (b) for marketing or any other purpose other than age-verification.

26. Once these automatic sales controls are adopted and implemented, JLI will instruct all North Carolina Retail Stores that individual employees may not override the automatic sales controls should a transaction not comply with the requirements in Paragraph 25(b)-(d).

27. JLI shall not expressly authorize or otherwise enter into any agreement with a North Carolina Retail Store to (1) display JUUL Products in a location other than behind a counter and (2) allow individuals to access JUUL Products without the assistance of a North Carolina Retail Store employee. If the State notifies JLI or JLI Customer Service is notified in writing that a North Carolina Retail Store is engaging in any activity that JLI is not permitted to

authorize in this Paragraph, JLI will promptly take commercially reasonable steps to investigate and halt any such activity.

28. JLI shall maintain a retailer-compliance program for North Carolina Retail Stores that requires:

a. JLI to send representatives between the ages of 21 and 27 to visit no fewer than 50 North Carolina Retail Stores per month to conduct JLI Compliance Checks. Any JLI Compliance Checks referenced in this Paragraph may be conducted by a service provider engaged by JLI.

b. Each year, JLI will conduct JLI Compliance Checks of at least 960 North Carolina Retail Stores. The representative conducting the JLI Compliance Check shall be required to complete a standardized form documenting the transaction(s) in which he or she participated in each store, which shall note any age-verification violations, if any, including failure to properly check the representative's identification. The representative's compensation will not be dependent on the results of the retailer-compliance inspections.

c. JLI shall implement the following penalties to North Carolina Retail Stores for violations of the JLI Compliance Checks referenced in (b) above:

i. First JLI Compliance Check Failure: JLI shall issue a letter notifying the North Carolina Retail Store of its first violation. The letter shall reiterate the requirements of the JLI Compliance Checks and the penalty escalation structure. For any North

Carolina Retail Store that commits a first violation, JLI shall perform a second JLI Compliance Check within sixty (60) days of the first violation, which shall be in addition to the above-stated monthly requirement of visiting at least 50 North Carolina Retail Stores.

ii. Second JLI Compliance Check Failure: If a second violation occurs within one year of the first violation, JLI shall issue a letter notifying the North Carolina Retail Store of the second violation. JLI shall suspend (or shall instruct any wholesaler, distributor, or sub-distributor through which JLI supplies the North Carolina Retail Store to suspend) the North Carolina Retail Store from any promotional activities for two promotional cycles (an estimated loss of $3,000 in profits) following the date of the second failed JLI Compliance Check. For any North Carolina Retail Store that commits a second violation, JLI shall perform a third JLI Compliance Check within sixty (60) days of the second violation, which shall be in addition to the above-stated monthly requirement of visiting at least 50 North Carolina Retail Stores. For any second age-verification failure, JLI shall communicate the age-verification non-compliance to the FDA.

iii. Third JLI Compliance Check Failure: If a third violation occurs within one year of the first violation, JLI shall issue a letter notifying the North Carolina Retail Store of the third violation. JLI

shall cease doing business with the North Carolina Retail Store for three (3) years from the date of the third failed JLI Compliance Check, and notify all applicable wholesalers, distributors, and sub-distributors to suspend sales of JUUL Products to the North Carolina Retail Store for the three-year period. For any North Carolina Retail Store that commits a third violation, JLI shall perform a fourth JLI Compliance Check within sixty (60) days of the third violation, which shall be in addition to the above-stated monthly requirement of visiting at least 50 North Carolina Retail Stores. For any third age-verification failure, JLI shall communicate the age-verification non-compliance to the FDA.

iv. Fourth JLI Compliance Check Failure: If a fourth violation occurs within one year of the first violation, JLI shall cease doing business with the North Carolina Retail Store and notify all applicable wholesalers, distributors, and sub-distributors to suspend sales of JUUL Products to the North Carolina Retail Store. For any fourth age-verification failure, JLI shall communicate the age-verification non-compliance to the FDA.

v. Nothing in this Paragraph 28 requires JLI to breach any existing contractual obligations with wholesalers, distributors, or sub-distributors.

d. If (i) JLI receives information pursuant to Paragraph 24 or (ii) JLI Customer Service receives information or complaints from North Carolina

residents or others, of North Carolina Retail Stores violating the requirements of a JLI Compliance Check, JLI will conduct a JLI Compliance Check of those retail stores within 60 days.

e. Every six (6) months, JLI shall provide the North Carolina Attorney General and the Director of Tobacco Prevention at the North Carolina Department of Health and Human Resources's Division of Mental Health with results of its JLI Compliance Checks of North Carolina Retail Stores, with the first set of results being provided six months after the Effective Date.

29. The Parties agree that JLI shall not be subject to any liability for any conduct by North Carolina Retail Stores arising out of or relating to JLI's creation and maintenance of the retailer-compliance program described in Paragraph 28.

Health Claims, Comparisons to Traditional Cigarettes, and Nicotine Content and Disclosures

30. JLI shall not make any Health Claims in marketing or advertising materials in North Carolina related to JUUL Products, unless JLI receives FDA authorization that permits such claims or representations.

31. JLI shall not make any Therapeutic Claims in marketing or advertising materials in North Carolina related to JUUL Products, unless JLI receives FDA approval that permits such claims or representations.

32. JLI shall not make any claims or representations in marketing or advertising materials in North Carolina comparing the quantification of the amount of nicotine in JUUL Products to that found in combustible cigarettes or any other ENDS, unless JLI receives FDA authorization that permits such claims or representations.

33. Beginning nine (9) months from the Effective Date, if JLI makes any statement about the nicotine content of JUUL Products in its promotional materials, JLI Owned Website, or in-store retail promotions other than through the JUUL Product packaging or label, JLI shall also disclose the amount of nicotine content by weight *and* by volume, in both milligrams and by a percentage in terms of total volume of a JUULpod. The obligations under this Paragraph are no longer in effect if (1) the FDA implements a uniform nicotine content disclosure standard for all promotional advertising, in-store or online, of ENDS products or (2) JLI receives FDA authorization for JUUL Products that permits JLI to use a specific nicotine content disclosure on its label or packaging or in the promotion of its products, on its website, or in-store.

Monitoring and Compliance

34. JLI shall, after diligent inquiry, annually certify compliance with this Consent Judgment to the North Carolina Attorney General's Office.

IV. DOCUMENT DEPOSITORY

35. Documents created on or before May 14, 2019 and produced to the State by JLI shall be made available to the public in the North Carolina Depository, in the manner provided as follows:

a. The public shall be given access to all documents contained in the North Carolina Depository. The following categories of information may be redacted from the documents in the North Carolina Depository by JLI before public disclosure; provided that documents may be withheld in their entirety from the North Carolina Depository by JLI before public disclosure if they contain only information in the following categories:

i. Privileged information or attorney work product, as defined by North Carolina law.

ii. Trade secret material, as defined by North Carolina law, including documents that could be used to create counterfeit or black market JUUL Products.

iii. Confidential Tax information, as defined by North Carolina law.

iv. Confidential Personal Information and JLI personnel files, so long as those personnel files do not contain information about any employee's Covered Conduct. For the avoidance of doubt, information related to compensation, purchase of shares, or financial details relating to company acquisition are not encompassed within the definition of Confidential Personal Information or JLI personnel files.

v. Information that may not be disclosed under federal, state, or local law.

vi. Information that cannot be disclosed without violating the contractual rights of third parties that JLI may not unilaterally abrogate.

vii. Information regarding personal or professional matters unrelated to JLI or ENDS, including but not limited to emails produced from the files of JLI custodians discussing vacation or sick leave, family, or other personal matters.

b. Within twelve (12) months of the Effective Date, JLI shall identify every document it seeks to redact or withhold and identify the category that forms the basis for redaction or withholding. JLI shall identify the first set of documents within three (3) months of the Effective Date, and continue to identify the remaining documents on the rolling basis through the end of the twelve (12) month period. Within three (3) months of JLI's identification of a document for redaction or withholding, the State shall confer with JLI about its redaction or withholding requests. The State may challenge such request on the ground that the information at issue does not fall within the categories in Paragraph 35(a)(i)-(vii) above. In the event differences remain between the Parties with regard to JLI's redaction or withholding requests, within 30 days after the deadline for the State and JLI to meet and confer, the Parties shall request that the Court appoint one or more special masters to review any disputed documents and determine whether the information that JLI requests to redact or withhold falls within the categories in Paragraph 35(a)(i)-(vii) above. The determination of the special master(s) shall be binding on the Parties. The costs and fees of the special master(s) shall be borne equally by the parties. For the avoidance of doubt, JLI's prior designation of any document under the Protective Order in this case shall not create any presumption as to the confidentiality of such document for purpose of the North Carolina Depository.

c. Unredacted versions of documents redacted in accordance with Paragraph 35(a) above shall be returned to JLI by the State as soon as practicable

after JLI produces a redacted copy of the document. The State shall retain the Bates stamp numbers of all documents produced to the State.

d. JLI's inadvertent failure to redact or withhold a document under Paragraph 35(a) shall not constitute a waiver of any confidentiality rights that JLI has under this Paragraph, nor shall it prevent JLI from later redacting or withholding the document, or requesting that the State return the inadvertently produced copy of the document.

36. The North Carolina Depository shall be maintained and operated by a North Carolina public university to be chosen by the State. The State shall notify JLI of the university that is chosen.

37. There shall be no prohibition on the use of the North Carolina Depository for conducting research or to develop and collect data on ENDS usage.

38. The State will cause the North Carolina Depository to be made available to the public on or after July 1, 2022. Should the State close the North Carolina Depository, the documents from the North Carolina Depository shall be transferred to the State archives or other appropriate state body, where they shall remain available for historical and research purposes.

V. MONETARY PAYMENT

39. JLI shall pay a total sum of $40,000,000 to the State, subject to the following terms and conditions:

a. JLI shall pay $40,000,000 over six years as follows:

i. JLI shall make the first payment of $13,000,000 within thirty (30) days of the Effective Date.

ii. JLI shall make the second payment of $8,000,000 by one year after the Effective Date.

iii. JLI shall make the third payment of $7,500,000 by two years after the Effective Date.

iv. JLI shall make the fourth payment of $7,000,000 by three years after the Effective Date.

v. JLI shall make the fifth payment of $2,250,000 by four years after the Effective Date.

vi. JLI shall make the sixth payment of $2,250,000 by five years after the Effective Date.

b. It is the intent of the State and JLI that the $40,000,000.00 payment be used, to the maximum extent practicable, to fund ENDS Cessation Programs, ENDS Prevention Programs, ENDS Research, and the North Carolina Depository, and to cover the costs of litigation of the Attorney General's Office.

c. The ENDS Cessation Programs, ENDS Education Programs, and ENDS Research funded pursuant to this Consent Judgment may not use any of the funding provided under this Consent Judgment directly or indirectly to disparage, or to support any Claims by any person or entity against, JLI, any Released Party, or other person or entity associated with JLI, including by using the funding to replace other funds reallocated to such uses.

d. After the fourth payment, JLI may apply for a waiver of the fifth and sixth payments by showing that its compliance with the terms of this Consent

Judgment and the programs funded through the payments required under Paragraph 39 and / or other actions have substantially contributed to a significant decline in usage of JUUL Products by Underage Individuals. The North Carolina Attorney General and North Carolina Department of Health and Human Services, using evidence-based and reasonable standards, will, in their sole discretion, exercise their good faith judgment on whether to grant the waiver based on their assessment of the progress towards Vision 2020 – North Carolina's Strategic Plan to Reduce the Health and Economic Burdens of Tobacco Use.

40. For the avoidance of doubt, JLI shall have no obligation to fund ENDS Cessation Programs, ENDS Education Programs, ENDS Research, or the North Carolina Depository beyond making the payments described in Paragraph 39.

VI. NOTICE

41. All notices required to be provided to a Party shall be sent electronically and by first class mail, postage pre-paid, as follows, unless a Party gives notice of a change to the other Party:

a. For JLI:

Tyler Mace
Chief Legal Officer
Juul Labs, Inc.
1000 F Street
Washington, D.C. 20004
tyler.mace@juul.com

With a copy to:

JB Kelly
Cozen O'Connor
1200 19th Street, NW

Washington, D.C. 20036
jbkelly@cozen.com

b. For State:

Kevin Anderson
Senior Deputy Attorney General
Director, Consumer Protection Division
North Carolina Department of Justice
Post Office Box 629
Raleigh, N.C. 27602
kander@ncdoj.gov

VII. ENFORCEMENT

42. For the purposes of resolving disputes with respect to compliance with Section III of this Consent Judgment, should the State have a reasonable basis to believe that JLI has engaged in a practice that may have violated the terms of this Consent Judgment, the State shall notify JLI in writing of the specific objection, and identify with particularity the provision of this Consent Judgment that the practice appears to violate, and state with particularity the State's bases for believing a violation has occurred. The Parties agree to confer in good faith regarding the alleged violation and, absent exigent circumstances necessitating expedited action in less time, JLI shall have a reasonable period of not less than twenty-one (21) days to provide a written response to the State and/or a proposed resolution to cure the alleged violation. The State may then accept the explanation and/or proposed resolution, or may take action to enforce the terms of this Consent Judgment (which, for the avoidance of doubt, shall remain in full force and effect). The State shall not unreasonably withhold a determination that JLI has cured the alleged violation.

43. Notwithstanding Paragraph 42, the State may take any action if it reasonably determines that, because of the specific practice, a threat to the health or safety of the public requires immediate action.

VIII. RELEASE

44. Releasors hereby release and forever discharge the Released Parties from any and all Claims that the State or any other Releasor has or could have asserted based on, arising out of, or in any way related to, the Covered Conduct prior to the Effective Date, including, without limitation, any and all Claims that the State has or could have asserted in the Action ("Released Claims"); provided, however, that the Released Claims shall not include any Claims to enforce the terms of this Consent Judgment.

45. The release in Paragraph 44 is intended by the Parties to be broad and shall be interpreted so as to give the Released Parties the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the State and the Attorney General to release claims. This Consent Judgment shall be a complete bar to any Released Claims.

46. Notwithstanding any term of this Consent Judgment, any and all of the following forms of liability are specifically reserved and not released under Paragraph 44:

a. Any criminal liability.

b. Any Claims by any Releasor as an investor for liability for state or federal securities violations.

c. Any liability for state or federal tax violations.

d. Any Claims (1) for conduct after the Effective Date, other than continuing to sell JUUL Products in a manner consistent with North Carolina law and this Consent Judgment, (2) for conduct that is not Covered Conduct, or (3) against any parties who are not Released Parties.

IX. FINAL JUDGMENT

47. Final judgment is hereby entered on all claims in the Action.

48. All motions in the Action not subject to a previously entered written order are hereby deemed withdrawn.

49. Each Party shall bear its own costs except as expressly set forth herein.

X. MOST-FAVORED NATION PROVISION

50. If, after the Effective Date but before March 31, 2025, JLI enters into any pre-trial and pre-judgment settlement or consent judgment with one or more Other States that resolves claims similar to the claims filed in the Action on overall terms that are more favorable to such Other State(s) than the overall terms of this Consent Judgment, then the State may elect to seek review of the overall payment terms or terms in Section III of this Consent Judgment so that the State may obtain from JLI overall terms as favorable as those obtained by the Other State(s). "Overall terms" refers to consideration of all terms of a settlement or consent judgment, taken together, including both monetary and conduct terms. Any terms will be compared based on the proportion of the population, as of the Effective Date, of North Carolina to the total population of the Other State(s) or Other States participating in the subsequent settlement or consent judgment. JLI shall provide the State with a copy of any pre-trial and prejudgment settlement or consent judgment with an Other State entered prior to March 31, 2025 within thirty (30) days of the effective date of such settlement or consent judgment.

51. In the event that the State believes that the overall terms of a settlement or consent judgment between JLI and one or more Other States covered by this Section X are more favorable to the Other State(s) than the overall terms of this Consent Judgment, the State and JLI shall engage in the following process:

a. The State shall provide notice to JLI of its intent to seek revision of the payment terms or the terms in Section III of this Consent Judgment. To the extent permissible under North Carolina law, such notice shall be confidential and not disclosed publicly. The notice shall state, in detail, the basis for the State's belief that it is entitled to revision of the Consent Judgment.

b. JLI shall, within thirty (30) days, provide a response to the State, explaining its position, in detail, as to whether the State is entitled to more favorable overall terms after which the State and JLI shall meet and confer over a period of thirty (30) days in good faith regarding their respective positions with the goal of reaching agreement and avoiding further dispute.

c. In the event the State and JLI do not reach agreement as to the application of Paragraph 50, the State will file a motion with this Court seeking to modify the payment terms or terms in Section III of this Consent Judgment under North Carolina law to reflect the application of this Paragraph. The Court shall consider submissions and arguments by the Parties.

d. If this Court finds that the State has demonstrated that the settlement or consent judgment with one or more Other States contains overall terms more favorable to the Other State(s) than the terms of this Consent Judgment, this Court may revise the payment terms or terms in Section III of this Consent Judgment so that the State obtains overall terms similar to

those entered by JLI with the Other State(s). Such revision will include any terms of the settlement or consent judgment with the Other State(s) that are less favorable to the Other State(s) than the terms of this Consent Judgment, including (in the case of payment terms that are less favorable to the Other State(s)) the reduction in any remaining payments due under this Consent Judgment. Any such decision of this Court shall be subject to appeal to the extent permitted by North Carolina law.

e. This Section X shall not apply to and the Consent Judgment shall not be revised based on (1) a settlement or consent judgment by an Other State with JLI that is after March 31, 2025; (2) a settlement or consent judgment by an Other State with JLI that is entered after (i) the impaneling of a jury (or, in the event of a non-jury trial, the commencement of trial) in litigation between such Other State and JLI, or (ii) any court order in such litigation that grants judgment as to liability against JLI (in whole or part); (3) terms in a settlement or consent judgment by an Other State with JLI that resolve or are based on claims that are not related to Covered Conduct; or (4) terms in a settlement or consent judgment by an Other State with JLI that resolve or are based on statutory claims or remedies not available to the State.

XI. MISCELLANEOUS

52. The State has raised concerns based on scientific and academic studies identifying certain determinants of youth vaping appeal and nicotine dependence, including flavors other than tobacco, nicotine concentration, and youth-appealing marketing techniques. JLI is

committed to a science and evidence-based process to combat underage use and supports further research aimed at advancing science-based interventions regarding underage use of nicotine products. Accordingly, JLI will use best efforts to cooperate with the State and other leading ENDS companies: (a) to develop, with the assistance of independent, third-party research, appropriate industry practices to address and mitigate any determinant effect to youth vaping appeal and resulting nicotine dependence in North Carolina, including but not limited to industry-wide agreement to conduct provisions of this Consent Judgment; and (b) to develop a process for, and to participate as part of, industry implementation of such appropriate practices.

53. Term: The term of Section III shall be as follows:

a. The provisions of Paragraphs 11(a), 11(b), 17-19, 30-32 shall not expire.

b. The remaining provisions of Section III of this Consent Judgment shall expire March 31, 2027 except that such provisions shall be superseded by an Authorization Order to the extent conduct by JLI that reasonably implements such Authorization Order conflicts with the requirements of any such provisions of Section III. Within 30 days, or such other time as the Parties may mutually agree, after FDA's issuance of an Authorization Order, the Parties shall meet and confer regarding the scope of the Authorization Order and JLI's plans to implement it.

c. In interpreting and enforcing those provisions of Section III of this Consent Judgment that remain in place following an Authorization Order, the State will not take the position that any generally applicable North Carolina or federal law or regulation requires conduct by JLI different

than the conduct the State requires from any other manufacturer or seller of ENDS products.

54. Denial and No Admission: JLI denies it and/or its employees, officers, directors, subsidiaries, founders, and/or owners have violated any statute, regulation, decision, or other source of law in connection with the Covered Conduct. The Parties are entering into this Consent Judgment for the purpose of compromising and to avoid the time, expense, burden, and uncertainty associated with continuing litigation, and to address the State's concerns with JLI's historical business practices with respect to JUUL Products. It is expressly agreed that this Consent Judgment is not admissible in any proceeding (except in a dispute between the State and JLI regarding compliance with the Judgment), and it is also expressly agreed and understood that nothing contained in this Consent Judgment may be taken as or construed to be an admission or concession of any liability, wrongdoing, or violation of any source of law, or of any other matter of fact or law. This Consent Judgment is not intended to be used or admissible in any unrelated administrative, civil, or criminal proceeding. JLI does not waive any defenses it may raise elsewhere in other litigation or matters.

55. Private Action: This Consent Judgment shall not confer any rights upon, and is not enforceable by, any persons or entities besides the State and the Released Parties. The State may not assign or otherwise convey any right to enforce any provision of this Consent Judgment.

56. Conflict with Other Laws: Nothing in this Consent Judgment shall impose an obligation on JLI that conflicts with JLI's obligations under federal, state, or local law, rule, regulation, or guidance. In the event there is a conflict between this Consent Judgment and the requirements of federal, state, or local laws, such that JLI cannot comply with this Consent Judgment without violating these requirements, JLI shall document such conflicts and notify the

State that it intends to comply with the requirements to the extent necessary to eliminate the conflict. Within thirty (30) days after receipt of a notification from JLI referenced above, the State may request a meeting to discuss the steps JLI has implemented to resolve the conflict, and JLI shall comply with any such reasonable request.

57. The provisions of this Consent Judgment are applicable only to actions taken (or omitted to be taken) in North Carolina or directed at North Carolina consumers. For the avoidance of doubt, the marketing, advertising, or sale of JUUL Products intended solely for consumers outside the United States shall not be deemed actions taken (or omitted to be taken) in North Carolina or directed at North Carolina Consumers.

58. This Consent Judgment applies only to JLI in its corporate capacity and acting through its respective successors and assigns, directors, officers, employees, agents, subsidiaries, divisions, or other internal organizational units of any kind or any other entities acting in concert or participation with them. The remedies, penalties, and sanctions that may be imposed or assessed in connection with a violation of this Consent Judgment (or any order issued in connection herewith) shall only apply to JLI, and shall not be imposed or assessed against any employee, officer, or director of JLI, or against any other person or entity as a consequence of such violation, and there shall be no jurisdiction under this Consent Judgment to do so.

59. This Consent Judgment is binding on the Parties' successors and assigns.

60. Except as expressly set forth herein, this Consent Judgment shall not be modified (by this Court, by any other court, or by any other means) without the consent of the State and JLI, or as provided for in Paragraph 51.

61. Calculation of time limitations will run from the Effective Date and be based on calendar days, except to the extent otherwise provided in this Consent Judgment.

62. JLI represents that, as of the Effective Date, it is not insolvent and intends to meet the injunctive and monetary obligations set forth in this Consent Judgment.

63. This Consent Judgment shall not be construed or used as a waiver or any limitation of any defense otherwise available to JLI in any pending or future legal, regulatory, or administrative action or proceeding, or JLI's right to defend itself from, or make any arguments in, any individual or class claims or suits.

64. Except to the extent as otherwise provided in this Consent Judgment, including but not limited to Paragraph 39, each party shall bear its own attorneys' fees and costs arising out of, related to, or in connection with entry of this Consent Judgment.

65. Except for the provisions in Section VIII, if any provision of this Consent Judgment shall, for any reason, be held illegal, invalid, or unenforceable, in whole or in part, such illegality, invalidity, or unenforceability shall not affect any other provision or clause of this Consent Judgment and this Consent Judgment shall be construed and enforced as if such illegal, invalid, or unenforceable provision, in whole or in part, had not been contained herein.

This the 28th day of June, 2021.

Hon. Orlando F. Hudson, Jr.
SENIOR RESIDENT SUPERIOR COURT JUDGE

CONSENTED TO BY:

THE STATE OF NORTH CAROLINA, BY AND THROUGH ITS ATTORNEY GENERAL, JOSHUA H. STEIN

By: _____ Date: June 27, 2021

Swain Wood
First Assistant Attorney General
General Counsel to Attorney General Joshua H. Stein

JUUL LABS, INC.

By: _____ Date: June 27, 2021

Tyler Mace
Chief Legal Officer
Juul Labs, Inc.

STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
	SUPERIOR COURT DIVISION
WAKE COUNTY	No. _____

STATE OF NORTH CAROLINA ex rel.
JOSHUA H. STEIN, ATTORNEY GENERAL,
Plaintiff,

v.

MCKINSEY & COMPANY, INC.
UNITED STATES,
Defendant.

FINAL CONSENT JUDGMENT

Plaintiff, the State of North Carolina, by and through Attorney General Joshua H. Stein, (the "State" or "Plaintiff") has filed a Complaint for a permanent injunction, equitable monetary relief, and other relief in this matter pursuant to N.C.G.S. § 75-1.1 *et seq.*, alleging that Defendant McKinsey & Company, Inc. United States ("McKinsey" or "Defendant"), committed violations of the North Carolina Unfair and Deceptive Trade Practices Act. Plaintiff, by its counsel, and McKinsey, by its counsel, have agreed to the entry of this Final Consent Judgment/Consent Order ("Judgment") by the Court without trial or adjudication of any issue of fact or law, and without finding or admission of wrongdoing or liability of any kind.

IT IS HEREBY ORDERED THAT:

I. FINDINGS

A. For purposes of this proceeding only, this Court has jurisdiction over the subject matter of this lawsuit and over the Parties (as defined below). This Judgment shall not be construed or used as a waiver of any jurisdictional defense McKinsey may raise in any other proceeding.

B. The terms of this Judgment shall be governed by the laws of the State of North Carolina.

C. Entry of this Judgment is in the public interest and reflects a negotiated agreement among the Parties.

D. The Parties have agreed to resolve the issues resulting from the Covered Conduct (as defined below) by entering into this Judgment.

E. McKinsey has cooperated with the Signatory Attorney General's (as defined below) investigation and is willing to enter into this Judgment regarding the Covered Conduct in order to resolve the Signatory Attorney General's claims and concerns under N.C.G.S. § 75-1.1 as to the matters addressed in this Judgment and thereby avoid significant expense, inconvenience, and uncertainty.

F. "MultiState Executive Committee" means the Attorneys General and staffs representing California, Colorado, Connecticut, Massachusetts, New York, North Carolina, Oregon, Oklahoma, Tennessee, and Vermont.

G. The Signatory Attorney General acknowledges McKinsey's good faith and responsible corporate citizenship in reaching this resolution.

H. McKinsey is entering into this Judgment solely for the purpose of settlement, and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which McKinsey expressly denies. McKinsey does not admit any violation of the State Consumer Protection Laws (as defined below and set forth in footnote 1) and does not admit any wrongdoing that was or could have been alleged by the Signatory Attorney General

before the date of the Judgment. No part of this Judgment, including its statements and commitments, shall constitute evidence of any liability, fault, or wrongdoing by McKinsey.

I. This Judgment shall not be construed or used as a waiver or limitation of any defense otherwise available to McKinsey in any other action, or of McKinsey's right to defend itself from, or make any arguments in, any other regulatory, governmental, private individual, or class claims or suits relating to the subject matter or terms of this Judgment. This Judgment is made without trial or adjudication of any issue of fact or law or finding of liability of any kind. Notwithstanding the foregoing, the Signatory Attorney General may file an action to enforce the terms of this Judgment.

J. No part of this Judgment shall create a private cause of action or confer any right to any third party for violation of any federal or state statute except that the Signatory Attorney General may file an action to enforce the terms of this Judgment. It is the intent of the Parties that this Judgment shall not be binding or admissible in any other matter, including, but not limited to, any investigation or litigation, other than in connection with the enforcement of this Judgment. This Judgment is not enforceable by any persons or entities besides the Signatory Attorney General, McKinsey and this Court.

II. DEFINITIONS

The following definitions shall be used in construing the Judgment:

A. "Covered Conduct" means any and all acts, failures to act, conduct, statements, errors, omissions, events, breaches of duty, services, advice, work, deliverables, engagements, transactions, or other activity of any kind whatsoever, occurring up to and including the Effective Date arising from or related in any way to (i) the discovery, development, manufacture, marketing, promotion, advertising, recall, withdrawal, distribution, monitoring, supply, sale, prescribing, reimbursement, use, regulation, or abuse of any opioid, or (ii) the treatment of

opioid abuse or efforts to combat the opioid crisis, or (iii) the characteristics, properties, risks, or benefits of any opioid, or (iv) the spoliation of any materials in connection with or concerning any of the foregoing.

B. "Effective Date" means the date on which a copy of the Judgment, duly executed by McKinsey and by the Signatory Attorney General, is approved by, and becomes a Judgment of the Court.

C. "McKinsey" means McKinsey & Company, Inc. United States, a Delaware Corporation, and all its current or former officers, directors, partners, employees, representatives, agents, affiliates, parents, subsidiaries, operating companies, predecessors, assigns and successors.

D. "Parties" means McKinsey and the Signatory Attorney General.

E. "Signatory Attorney General" means the Attorney General of North Carolina, or his/her authorized designee, who has agreed to this Judgment.

F. "Settling State" means the state that has agreed to this Judgment.

G. "State Consumer Protection Laws" means the consumer protection laws cited in footnote 1.[1]

[1]ALABAMA – Alabama Deceptive Trade Practices Act § 8-19-1 et seq. (2002); ALASKA – Alaska Unfair Trade Practices and Consumer Protection Act AS 45.50.471 – 45.50.561; AMERICAN SAMOA – Consumer Protection Act, A.S.C.A. §§ 27.0401 et seq.; ARIZONA - Consumer Fraud Act, A.R.S. §44-1521 et seq.; ARKANSAS – Arkansas Deceptive Trade Practices Act, Ark. Code Ann. § 4-88-101, et seq.; CALIFORNIA – Bus. & Prof Code §§ 17200 et seq. and 17500 et seq.; COLORADO – Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-101 et seq.; CONNECTICUT – Connecticut Unfair Trade Practices Act, Conn. Gen Stat. §§ 42-110a through 42-110q; DELAWARE – Delaware Consumer Fraud Act, Del. CODE ANN. tit. 6, §§ 2511 to 2527; DISTRICT OF COLUMBIA, District of Columbia Consumer Protection Procedures Act, D.C. Code §§ 28-3901 et seq.; FLORIDA – Florida Deceptive and Unfair Trade Practices Act, Part II, Chapter 501, Florida Statutes, 501.201 et. seq.; GEORGIA - Fair Business Practices Act, O.C.G.A. Sections 10-1-390 et seq.; GUAM - Trade Practices and Consumer Protection, 5 G.C.A. Ch. 32 et seq.; HAWAII – Uniform Deceptive Trade Practice Act, Haw. Rev. Stat. Chpt. 481A and Haw. Rev. Stat. Chpt. 480; IDAHO – Idaho Consumer Protection Act, Idaho Code § 48-601 et seq.; ILLINOIS – Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2 et seq.; INDIANA – Deceptive Consumer Sales Act, Ind. Code §§ 24-5-0.5-0.1 to 24-5-0.5-12; IOWA - Iowa Consumer Fraud Act, Iowa Code Section 714.16; KANSAS - Kansas Consumer Protection Act, K.S.A. 50-623 et seq.; KENTUCKY –

H. Any reference to a written document shall mean a physical paper copy of the document, electronic version of the document, or electronic access to such document.

III. INJUNCTIVE RELIEF

It is ordered that:

A. McKinsey shall not accept any future engagements relating to the discovery, development, manufacture, marketing, promotion, advertising, recall, withdrawal, monitoring, sale, prescribing, use or abuse of any Opioid or other opioid-based Schedule II or III controlled substance;

B. Nothing in Section III.A above is intended to prohibit McKinsey from offering its services to: (1) clients who, as part of their overall business, develop, manufacture, market, promote, advertise, recall, withdraw, distribute, monitor, supply, sell or prescribe opioids or

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Kentucky Consumer Protection Act, KRS Ch. 367.110, et seq.; LOUISIANA – Unfair Trade-Practices and Consumer Protection Law, LSA-R.S. 51:1401, et seq.; MAINE – Unfair Trade Practices Act, 5 M.R.S.A. § 207 et seq.; MARYLAND - Maryland Consumer Protection Act, Md. Code Ann., Com. Law §§ 13-101 et seq.; MASSACHUSETTS – Mass. Gen. Laws c. 93A, §§ 2 and 4; MICHIGAN – Michigan Consumer Protection Act, MCL § 445.901 et seq.; MINNESOTA – Minn. Stat. §§325D.44, 325F.69; MISSISSIPPI - Mississippi Consumer Protection Act, Miss. Code Ann.§ 75-24-1, et seq.; MISSOURI – Missouri Merchandising Practices Act, Mo. Rev. Stat. §§ 407.010 et seq.; MONTANA – Montana Consumer Protection Act §§ 30-14-101 et seq.; NEBRASKA – Consumer Protection Act, Neb. Rev. Stat. §§ 59-1601 et seq. and Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. §§ 87-301 et seq.;; NEW HAMPSHIRE – NH RSA §358-A et seq; NEW JERSEY – New Jersey Consumer Fraud Act, NJSA 56:8-1 et seq.; NEW MEXICO – NMSA 1978, § 57-12-1 et seq.; NEW YORK – General Business Law Art. 22-A, §§ 349-50, and Executive Law § 63(12); NORTH CAROLINA – North Carolina Unfair and Deceptive Trade Practices Act, N.C.G.S. § 75-1.1, et seq.; NORTH DAKOTA – Unlawful Sales or Advertising Practices, N.D. Cent. Code § 51-15-02 et seq.; NORTHERN MARIANA ISLANDS – Consumer Protection Act, 4 N. Mar. I. Code §§ 5201 et seq.; OHIO – Ohio Consumer Sales Practices Act, R.C. 1345.01, et seq.; OKLAHOMA – Oklahoma Consumer Protection Act 15 O.S. §§ 751 et seq.; OREGON – Oregon Unlawful Trade Practices Act, Or. Rev. Stat. § 646.605 et seq.; PENNSYLVANIA – Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. 201-1 et seq.; PUERTO RICO – Puerto Rico Antitrust Act, 10 L.P.R.A. § 259; RHODE ISLAND – Deceptive Trade Practices Act, Rhode Island Gen. Laws § 6-13.1-1, et seq.; SOUTH CAROLINA – South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 et seq.; SOUTH DAKOTA – South Dakota Deceptive Trade Practices and Consumer Protection, SDCL ch. 37-24; TENNESSEE – Tennessee Consumer Protection Act, Tenn. Code Ann. 47-18-101 et seq.; TEXAS – Texas Deceptive Trade Practices-Consumer Protection Act, Tex. Bus. And Com. Code 17.41, et seq.; UTAH - Consumer Sales Practices Act, Utah Code Ann. §§ 13-11-1 et seq.; VERMONT – Vermont Consumer Protection Act, 9 V.S.A. § 2451, et seq.; VIRGIN ISLANDS – Virgin Islands Consumer Protection Law, 12A V.I.C. §§ 101 et seq.; VIRGINIA-Virginia Consumer Protection Act, Va Code Ann. §59.1-196 et seq.; WISCONSIN – Wis. Stat. § 100.18 (Fraudulent Representations); WYOMING – Wyoming Consumer Protection Act, Wyo. Stat. Ann. §§ 40-12-101 through -114.

other opioid-based Schedule II or III controlled substances, so long as the subject matter of the engagement does not specifically relate to opioids or other opioid-based Schedule II or III controlled substances; or (2) health care providers, health plans, non-profit entities, governments, and quasi-governmental agencies, or any other client that is not a pharmaceutical manufacturer, for purposes of addressing a humanitarian health crisis, drug abuse prevention, treatment, and mitigation or abatement efforts, or other public health benefit;

C. Within eighteen months of the Effective Date for paragraph 4 below, and within twenty-four months of the Effective Date for paragraphs 1-3 below, McKinsey shall develop and implement a document retention policy that provides as follows:

1. McKinsey shall maintain a centralized document storage system ("Storage System") such as a document management system or a file sharing platform.

2. Unless prohibited by state, federal, or foreign law, McKinsey shall require its partners and employees, to the extent possible on a best-efforts basis, to create and maintain a final working papers file ("Final Working Papers File") relating to client engagements on the Storage System. The Final Working Papers File shall include, but not be limited to, letters of proposal, contracts, memoranda, invoices, contracted deliverables, and close-out memoranda.

3. McKinsey shall retain the Final Working Papers File for a minimum of seven years.

4. McKinsey shall retain all communications and documents exchanged on any electronic mail (including associated attachments) or instant message system that McKinsey authorizes its personnel to use for five years;

5. Nothing in this section shall prevent McKinsey from: (a) deleting documents or

data as required by any state, federal, or foreign law or regulation, or (b) deleting documents or data as contractually required by a third party where such contractual requirement is reasonably necessary to allow the third party to comply with any state, federal, or foreign law or regulation.

D. McKinsey shall implement a written policy requiring the termination of any employee that engages in the intentional spoliation of evidence for an improper purpose;

E. In the next calendar year after the Effective Date, McKinsey shall include in the annual acknowledgement that all McKinsey partners are required to certify a section describing the terms and conditions of this Judgment, and McKinsey shall further hold additional annual training for partners in the Pharmaceuticals & Medical Products practice concerning the terms and conditions of this Judgment;

F. Revisions to Client conflict policy pertaining to Government Clients (defined below), which shall be implemented within 60 days of the Effective Date:

1. McKinsey agrees to revise its conflict policy pertaining to potential engagements by any Settling State, county government, or municipal government (or any government agency of the aforementioned) ("Government Client") to require a written disclosure of any material conflict ("Conflict Disclosure") when (A) responding in writing to a request for proposal; (B) formally proposing work; (C) tendering an engagement letter to a Government Client; or (D) beginning work for a Government Client in the absence of an engagement letter, proposal, or request for proposal, whichever occurs first ("Triggering Event").

2. A material conflict exists for purposes of this Section III.F when, at the time of any Triggering Event, McKinsey is advising or in the past three years has

previously advised an industry client on work which, in the view of a neutral and detached observer, is or was materially adverse to the work McKinsey would perform for the Government Client, such that when McKinsey is working or has worked to advance the goals or interests of the industry client it is likely to harm the goals or interests it is working to advance of the Government Client.

3. Within 90 days of the Effective Date, McKinsey shall review each current engagement with a Government Client and provide a Conflict Disclosure where it would be otherwise required under this Section III.F for a new Government Client.

4. Nothing in this Section III.F shall supersede or affect any legal or contractual obligation McKinsey may have pertaining to confidentiality, conflicts, or engagement of clients ("Client Obligations"). The Conflict Disclosure shall not require McKinsey to violate any confidentiality obligations McKinsey has with its clients, and McKinsey satisfies its obligations under this section by providing a Conflict Disclosure (A) identifying the relevant industry; and (B) generally describing the work McKinsey performs for its industry client (without identifying its client). If for whatever reason McKinsey determines that its Client Obligations preclude a Conflict Disclosure, McKinsey agrees to decline the work for the Government Client.

G. McKinsey shall not use, assist, or employ any Third Party to engage in any activity that McKinsey itself would be prohibited from engaging in pursuant to this Judgment.

H. The foregoing injunctive terms may be amended by agreement between McKinsey and the Signatory Attorney General without this Court's approval or amendment of this Judgment.

IV. PUBLIC ACCESS TO MCKINSEY DOCUMENTS

It is ordered that:

A. **Documents Subject to Public Disclosure**

1. The following documents shall be produced by McKinsey to each Settling State and are subject to public disclosure in perpetuity as part of a document disclosure program, except for the redactions authorized by Section B:

All non-privileged documents McKinsey produced to any of the Settling States in response to investigative demands or other formal or informal requests related to opioids in 2019, 2020, or 2021, prior to the date of this Judgment, that fall within the following categories:

a. All communications with Purdue Pharma LP ("Purdue");

b. All documents reflecting or concerning McKinsey's work for Purdue;

c. All communications with Endo Pharmaceuticals ("Endo"), Johnson & Johnson, or Mallinckrodt Pharmaceuticals ("Mallinckrodt") related to opioids;

d. All documents reflecting or concerning McKinsey's work related to opioids for Endo, Johnson & Johnson, or Mallinckrodt;

e. All documents and communications sent or received by individual consultants agreed upon by McKinsey and the Settling States related to opioids or the opioid crisis;

f. All documents listed by Bates number in Appendix A.

2. All documents produced under this provision shall be provided in electronic format with all related metadata. McKinsey and the Settling States will work cooperatively to develop technical specifications for the productions.

B. Information That May Be Redacted

The following categories of information are exempt from public disclosure:

1. Information subject to trade secret protection. A "trade secret" is information, including a formula, pattern, compilation, program, device, method, technique or process, that (a) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure and use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Even if the information falls within the definition, "trade secret" does not include information reflecting opioid sales or promotional strategies, tactics, targeting, or data, or internal communications related to sales or promotion of opioids.

2. Confidential personal information. "Confidential personal information" means individual Social Security or tax identification numbers, personal financial account numbers, passport numbers, driver license numbers, home addresses, home telephone numbers, personal email addresses, and other personally identifiable information protected by law from disclosure. "Confidential personal information" does not include the names of officers, directors, employees, agents, or attorneys of McKinsey, Purdue, Endo, Johnson & Johnson, or Mallinckrodt, or of a government agency.

3. Information that is inappropriate for public disclosure because it is subject to personal privacy interests recognized by law (*e.g.*, HIPAA), or contractual rights of third parties (including McKinsey's clients) that McKinsey may not abrogate. McKinsey shall make its best

efforts to ensure that disclosure into the document repository is not limited or prohibited by contractual rights of Purdue with regard to any documents, or by contractual rights of Endo, Johnson & Johnson, or Mallinckrodt with regard to documents related to opioids.

4. Information regarding McKinsey partners' or employees' personal or professional matters unrelated to McKinsey or opioids, including but not limited to emails produced by McKinsey custodians discussing vacation or sick leave, family, or other personal matters.

C. Redaction of Documents Containing Protected Information

1. Whenever a document contains information subject to a claim of exemption pursuant to Section B, McKinsey shall produce the document in redacted form. Such redactions shall indicate that trade secret and/or private information, as appropriate, has been redacted. Redactions shall be limited to the minimum redactions possible to protect the legally recognized individual privacy interests and trade secrets identified above.

2. McKinsey shall produce to each Settling State a log noting each document redacted. The log shall also provide fields stating the basis for redacting the document, with sufficient detail to allow an assessment of the merits of the assertion. The log is subject to public disclosure in perpetuity. The log shall be produced simultaneously with the production of documents required by Section IV.F.

3. In addition to the redacted documents, McKinsey shall, upon any Settling State's request, also produce all documents identified in Section IV.A above in unredacted form to such Settling State at the same time. The redacted documents produced by McKinsey may be publicly disclosed in accordance with Section IV.E below. The unredacted documents produced by McKinsey to a Settling State shall be available only to such State unless McKinsey's claim of

exemption under Section IV.B is successfully challenged in accordance with Section IV.C.4 or the trade secret designation expires in accordance with Section IV.D.

4. Anyone, including members of the public and the press, may challenge the appropriateness of redactions by providing notice to McKinsey and a Settling State, which Settling State shall review the challenge and inform McKinsey of whether the challenge has sufficient merit to warrant triggering the remaining provisions of this paragraph. If the challenge is not resolved by agreement, it must be resolved in the first instance by a third party jointly appointed by the Settling State and McKinsey to resolve such challenges. The decision of the third party may be appealed to a court with enforcement authority over this Judgment. If not so appealed, the third party's decision is final. In connection with such challenge, a Settling State may provide copies of relevant unredacted documents to the parties or the decisionmaker, subject to appropriate confidentiality and/or in camera review protections, as determined by the decisionmaker.

D. Review of Trade Secret Redactions

Seven years after McKinsey completes the production of its documents in accordance with Section IV.F and upon notice by a Settling State, McKinsey shall review all trade secret assertions made in accordance with Section IV.B. The newly unredacted documents may then be publicly disclosed by a Settling State in accordance with Section IV.E. McKinsey shall produce to each Settling State an updated redaction log justifying its designations of the remaining trade secret redactions.

E. Public Disclosure through a Document Repository

Each Settling State may publicly disclose all documents covered by Section IV.A through a public repository maintained by a governmental, non-profit, or academic institution. Each

Settling State may specify the terms of any such repository's use of those documents, including allowing the repository to index and make searchable all documents subject to public disclosure, including the metadata associated with those documents. When providing the documents covered by Section IV.A to a public repository, no Settling State shall include or attach within the document set any characterization of the content of the documents. For the avoidance of doubt, nothing in this paragraph shall prohibit any Settling State from publicly discussing the documents covered by Section IV.A.

F. Timeline for Production

McKinsey shall produce all documents required by Section IV.A within nine months from the Effective Date.

G. Costs

The Settling States may allocate funds from the Settlement to fund the allocable share of all reasonable costs and expenses associated with the public disclosure and storage of McKinsey's documents through any public repository.

V. PAYMENT

1. McKinsey shall pay a total amount of $573,919,331 ("the Settlement Amount"). Of the Settlement Amount, $558,919,331 shall be allocated among the Settling States as agreed to by the Settling States. It is the intent of the Parties that the $558,919,331 paid to the participating States will be used, to the extent practicable, to remediate the harms caused to the Settling States and their citizens by the opioid epidemic within each State and to recover the costs incurred by the Settling State in investigating and pursuing these claims.[2] McKinsey shall

[2] Payments to North Carolina shall be used for Opioid-Remediation Purposes to the extent practicable. Opioid-Remediation Purposes shall be expenditures that have not already been incurred and are designed to (1) address the misuse and abuse of opioid products, (2) treat or mitigate opioid use or related disorders, or (3)

pay the $15,000,000 balance of the Settlement Amount to the National Association of Attorneys General ("NAAG Fund"). The NAAG Fund shall be used: first, to reimburse NAAG for the costs and expenses of the States' opioid investigations in the amount of $7,000,000, and second, to reimburse participating States for documented costs and expenses associated with the investigation of McKinsey submitted by or before March 1, 2021, subject to reasonable parameters to be set by NAAG. The remaining balance of the NAAG Fund shall be used to fund the establishment of an online repository of opioid industry documents for the benefit of the public.

2. McKinsey shall pay a total amount of $573,919,331 as follows: 1) the initial payment of $478,266,111 including the $15,000,000 payment to NAAG, shall be paid by 60 days after the Effective Date; 2) the second payment of $23,913,305 shall be paid no later than one year from the date of the initial payment; 3) the third payment of $23,913,305 shall be paid no later than two years from the date of the initial payment; 4) the fourth payment of $23,913,305 shall be paid no later than three years from the date of the initial payment; and 5) the fifth payment of $23,913,305 shall be paid no later than four years from the date of the initial payment.

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support other strategies to address the opioid epidemic, including prevention, treatment, recovery support, connections to care, and harm reduction. Expenditures may include reasonable related administrative expenses. The non-exclusive list of remediation strategies in Appendix B qualify as Opioid-Remediation Purposes. McKinsey's payments allocated to North Carolina under paragraphs V.1-V.2 shall be due as follows: (1) $15,735.496.23 by 60 days after the Effective date; (2) $812,249.62 no later than one year from the date of the initial payment; (3) $812,249.62 no later than two years from the date of the initial payment; (4) $812,249.62 no later than three years from the date of the initial payment, and (5) $812,249.62 no later than four years from the date of the initial payment.

3. McKinsey will not seek indemnification from any entity with respect to this Judgment, provided, however, that the foregoing limitation shall not be construed to apply to any claim by McKinsey under any policies or contracts of insurance insuring McKinsey.

VI. ENFORCEMENT

A. For the purposes of resolving disputes with respect to compliance with this Judgment, should any of the Signatory Attorneys General have a reasonable basis to believe that McKinsey has engaged in a practice that violates a provision of this Judgment subsequent to the Effective Date, then such Signatory Attorney General shall notify McKinsey in writing of the specific objection, identify with particularity the provision of this Judgment that the practice appears to violate, and give McKinsey 30 days to respond to the notification; provided, however, that a Signatory Attorney General may take any action if the Signatory Attorney General believes that, because of the specific practice, a threat to the health or safety of the public requires immediate action.

B. Upon receipt of written notice, McKinsey shall provide a good faith written response to the Signatory Attorney General's notification, containing either a statement explaining why McKinsey believes it is in compliance with the Judgment, or a detailed explanation of how the alleged violation occurred and a statement explaining how McKinsey intends to remedy the alleged breach. Nothing in this section shall be interpreted to limit the State of North Carolina's civil investigative demand ("CID") or investigative subpoena authority, to the extent such authority exists under applicable law, and McKinsey reserves all of its rights in responding to a CID or investigative subpoena issued pursuant to such authority.

C. The Signatory Attorney General may agree, in writing, to provide McKinsey with additional time beyond the 30 days to respond to a notice provided under section V.A. above without Court approval.

D. Upon giving McKinsey 30 days to respond to the notification described above, the Signatory Attorney General shall also be permitted reasonable access to inspect and copy relevant, non-privileged, non-work product records and documents in the possession, custody, or control of McKinsey that relate to McKinsey's compliance with each provision of this Judgment pursuant to that State's CID or investigative subpoena authority.

E. The Signatory Attorney General may assert any claim that McKinsey has violated this Judgment in a separate civil action to enforce compliance with this Judgment, or may seek any other relief afforded by law for violations of the Judgment, but only after providing McKinsey an opportunity to respond to the notification described in paragraph VI.A above; provided, however, that a Signatory Attorney General may take any action if the Signatory Attorney General believes that, because of the specific practice, a threat to the health or safety of the public requires immediate action.

VII. RELEASE

A. Released Claims. By its execution of this Judgment, the State of North Carolina releases and forever discharges McKinsey and its past and present officers, directors, partners, employees, representatives, agents, affiliates, parents, subsidiaries, operating companies, predecessors, assigns and successors (collectively, the "Releasees") from the following: all claims the Signatory Attorney General is authorized by law to bring arising from or related to the Covered Conduct, including, without limitation any and all acts, failures to act, conduct, statements, errors, omissions, breaches of duty, services, advice, work, engagements, events, transactions or other activity of any kind whatsoever occurring up to and including the effective date of the Judgment. Released claims will include, without limitation, claims that were or could have been brought by a Settling State under its State's consumer protection and unfair trade

practices law, RICO laws, false claims laws and claims for public nuisance, together with any related common law and equitable claims for damages or other relief.

B. Claims Not Covered: Notwithstanding any term of this Judgment, specifically reserved and excluded from the release in Paragraph VII. A. as to any entity or person, including Releasees are any and all of the following:

1. Any criminal liability that any person and/or entity, including Releasees, has or may have to the State of North Carolina.

2. Any civil or administrative liability that any person and/or entity, including Releasees, has or may have to the State of North Carolina not covered by the release in Paragraph V.A above, including the following claims:

   (a) state or federal antitrust violations;
   (b) any claims arising under state tax laws;
   (c) any claims arising under state securities laws;
   (d) any action to enforce this consent judgment and any subsequent related orders and judgments.

3. Any liability under the State of North Carolina's above-cited State Consumer Protection Laws which any person and/or entity, including Releasees, has or may have to individual consumers. Nothing herein precludes the Releasees from asserting any claims or defenses that may be available to it under the law in any court action.

VIII. ADDITIONAL PROVISIONS

A. Nothing in this Judgment shall be construed to authorize or require any action by McKinsey in violation of applicable federal, state, or other laws.

B. Modification. This Judgment may be modified by a stipulation of the Parties as approved by the Court, or by court proceedings resulting in a modified judgment of the Court, except to the extent as otherwise provided herein. For purposes of modifying this Judgment, McKinsey may contact any member of the MultiState Executive Committee for purposes of coordinating this process.

C. The acceptance of this Judgment by the State of North Carolina shall not be deemed approval by the State of North Carolina of any of McKinsey's business practices. Further, neither McKinsey nor anyone acting on its behalf shall state or imply, or cause to be stated or implied, that the State of North Carolina or any other governmental unit of North Carolina has approved, sanctioned or authorized any practice, act, or conduct of McKinsey.

D. Any failure by any party to this Judgment to insist upon the strict performance by any other party of any of the provisions of this Judgment shall not be deemed a waiver of any of the provisions of this Judgment, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Judgment.

E. Entire Agreement: This Judgment represents the full and complete terms of the settlement entered into by the Parties hereto, except as the parties have otherwise agreed. In any action undertaken by the Parties, no prior versions of this Judgment and no prior versions of any of its terms that were not entered by the Court in this Judgment, may be introduced for any purpose whatsoever.

F. Jurisdiction: This Court retains jurisdiction of this Judgment and the Parties hereto for the purpose of enforcing and modifying this Judgment and for the purpose of granting such additional relief as may be necessary and appropriate.

G. If any provision of this Judgment shall be held unenforceable, the Judgment shall be construed as if such provision did not exist.

H. Counterparts: This Judgment may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect as, an original signature.

I. Notice: All Notices under this Judgment shall be provided to the following via email and Overnight Mail:

Defendant:

c/o James Bernard, Esq.
Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, NY 10038

Signatory Attorney General:

c/o Consumer Protection Section
North Carolina Department of Justice
Post Office Box 629
Raleigh, NC 27602

APPROVAL BY COURT

APPROVED FOR FILING and SO ORDERED this 17 day of February, 2021

Superior Court Judge

Approved:

For Defendant McKinsey & Company, Inc. United States

Jonathan Slonim
Assistant Secretary
McKinsey & Company, Inc. United States

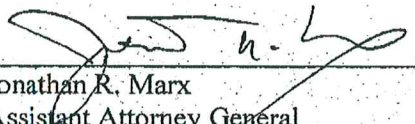
February 4, 2021
Date

Local Counsel for McKinsey & Company, Inc. United States

David A. Luzum
N.C. State Bar No. 41398
Erwin, Capitano & Moss, P.A.
4521 Sharon Road, Suite 350
Charlotte, North Carolina 28211
Phone: (704) 716-1208
dluzum@ebcmlaw.com

February 4, 2021
Date

For Plaintiff State of North Carolina



2/4/2021

Jonathan R. Marx
Assistant Attorney General
N.C. State Bar. No. 35248

Date

Appendix A

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Appendix B

PART ONE: TREATMENT

A. TREAT OPIOID USE DISORDER (OUD)

Support treatment of Opioid Use Disorder (OUD) and any co-occurring Substance Use Disorder or Mental Health (SUD/MH) conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:[3]

1. Expand availability of treatment for OUD and any co-occurring SUD/MH conditions, including all forms of Medication-Assisted Treatment (MAT) approved by the U.S. Food and Drug Administration.

2. Support and reimburse evidence-based services that adhere to the American Society of Addiction Medicine (ASAM) continuum of care for OUD and any co-occurring SUD/MH conditions.

3. Expand telehealth to increase access to treatment for OUD and any co-occurring SUD/MH conditions, including MAT, as well as counseling, psychiatric support, and other treatment and recovery support services.

4. Improve oversight of Opioid Treatment Programs (OTPs) to assure evidence-based or evidence-informed practices such as adequate methadone dosing and low threshold approaches to treatment.

5. Support mobile intervention, treatment, and recovery services, offered by qualified professionals and service providers, such as peer recovery coaches, for persons with OUD and any co-occurring SUD/MH conditions and for persons who have experienced an opioid overdose.

6. Treatment of trauma for individuals with OUD (e.g., violence, sexual assault, human trafficking, or adverse childhood experiences) and family members (e.g., surviving family members after an overdose or overdose fatality), and training of health care personnel to identify and address such trauma.

7. Support evidence-based withdrawal management services for people with OUD and any co-occurring mental health conditions.

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[3] As used in this Appendix B, words like "expand," "fund," "provide" or the like shall not indicate a preference for new or existing programs. Priorities will be established through the mechanisms described in the Term Sheet.

8. Training on MAT for health care providers, first responders, students, or other supporting professionals, such as peer recovery coaches or recovery outreach specialists, including telementoring to assist community-based providers in rural or underserved areas.

9. Support workforce development for addiction professionals who work with persons with OUD and any co-occurring SUD/MH conditions.

10. Fellowships for addiction medicine specialists for direct patient care, instructors, and clinical research for treatments.

11. Scholarships and supports for behavioral health practitioners or workers involved in addressing OUD and any co-occurring SUD or mental health conditions, including but not limited to training, scholarships, fellowships, loan repayment programs, or other incentives for providers to work in rural or underserved areas.

12. Provide funding and training for clinicians to obtain a waiver under the federal Drug Addiction Treatment Act of 2000 (DATA 2000) to prescribe MAT for OUD, and provide technical assistance and professional support to clinicians who have obtained a DATA 2000 waiver.

13. Dissemination of web-based training curricula, such as the American Academy of Addiction Psychiatry's Provider Clinical Support Service-Opioids web-based training curriculum and motivational interviewing.

14. Development and dissemination of new curricula, such as the American Academy of Addiction Psychiatry's Provider Clinical Support Service for Medication-Assisted Treatment.

B. SUPPORT PEOPLE IN TREATMENT AND RECOVERY

Support people in treatment for or recovery from OUD and any co-occurring SUD/MH conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Provide comprehensive wrap-around services to individuals with OUD and any co-occurring SUD/MH conditions, including housing, transportation, education, job placement, job training, or childcare.

2. Provide the full continuum of care of treatment and recovery services for OUD and any co-occurring SUD/MH conditions, including supportive housing, peer support services and counseling, community navigators, case management, and connections to community-based services.

3. Provide counseling, peer-support, recovery case management and residential treatment with access to medications for those who need it to persons with OUD and any co-occurring SUD/MH conditions.

4. Provide access to housing for people with OUD and any co-occurring SUD/MH conditions, including supportive housing, recovery housing, housing assistance programs, training for

housing providers, or recovery housing programs that allow or integrate FDA-approved medication with other support services.

5. Provide community support services, including social and legal services, to assist in deinstitutionalizing persons with OUD and any co-occurring SUD/MH conditions.

6. Support or expand peer-recovery centers, which may include support groups, social events, computer access, or other services for persons with OUD and any co-occurring SUD/MH conditions.

7. Provide or support transportation to treatment or recovery programs or services for persons with OUD and any co-occurring SUD/MH conditions.

8. Provide employment training or educational services for persons in treatment for or recovery from OUD and any co-occurring SUD/MH conditions.

9. Identify successful recovery programs such as physician, pilot, and college recovery programs, and provide support and technical assistance to increase the number and capacity of high-quality programs to help those in recovery.

10. Engage non-profits, faith-based communities, and community coalitions to support people in treatment and recovery and to support family members in their efforts to support the person with OUD in the family.

11. Training and development of procedures for government staff to appropriately interact and provide social and other services to individuals with or in recovery from OUD, including reducing stigma.

12. Support stigma reduction efforts regarding treatment and support for persons with OUD, including reducing the stigma on effective treatment.

13. Create or support culturally appropriate services and programs for persons with OUD and any co-occurring SUD/MH conditions, including new Americans.

14. Create and/or support recovery high schools.

15. Hire or train behavioral health workers to provide or expand any of the services or supports listed above.

C. CONNECT PEOPLE WHO NEED HELP TO THE HELP THEY NEED (CONNECTIONS TO CARE)

Provide connections to care for people who have – or at risk of developing – OUD and any co-occurring SUD/MH conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Ensure that health care providers are screening for OUD and other risk factors and know how to appropriately counsel and treat (or refer if necessary) a patient for OUD treatment.

2. Fund Screening, Brief Intervention and Referral to Treatment (SBIRT) programs to reduce the transition from use to disorders, including SBIRT services to pregnant women who are uninsured or not eligible for Medicaid.

3. Provide training and long-term implementation of SBIRT in key systems (health, schools, colleges, criminal justice, and probation), with a focus on youth and young adults when transition from misuse to opioid disorder is common.

4. Purchase automated versions of SBIRT and support ongoing costs of the technology.

5. Expand services such as navigators and on-call teams to begin MAT in hospital emergency departments.

6. Training for emergency room personnel treating opioid overdose patients on post-discharge planning, including community referrals for MAT, recovery case management or support services.

7. Support hospital programs that transition persons with OUD and any co-occurring SUD/MH conditions, or persons who have experienced an opioid overdose, into clinically-appropriate follow-up care through a bridge clinic or similar approach.

8. Support crisis stabilization centers that serve as an alternative to hospital emergency departments for persons with OUD and any co-occurring SUD/MH conditions or persons that have experienced an opioid overdose.

9. Support the work of Emergency Medical Systems, including peer support specialists, to connect individuals to treatment or other appropriate services following an opioid overdose or other opioid-related adverse event.

10. Provide funding for peer support specialists or recovery coaches in emergency departments, detox facilities, recovery centers, recovery housing, or similar settings; offer services, supports, or connections to care to persons with OUD and any co-occurring SUD/MH conditions or to persons who have experienced an opioid overdose.

11. Expand warm hand-off services to transition to recovery services.

12. Create or support school-based contacts that parents can engage with to seek immediate treatment services for their child; and support prevention, intervention, treatment, and recovery programs focused on young people.

13. Develop and support best practices on addressing OUD in the workplace.

14. Support assistance programs for health care providers with OUD.

15. Engage non-profits and the faith community as a system to support outreach for treatment.

16. Support centralized call centers that provide information and connections to appropriate services and supports for persons with OUD and any co-occurring SUD/MH conditions.

D. ADDRESS THE NEEDS OF CRIMINAL-JUSTICE-INVOLVED PERSONS

Address the needs of persons with OUD and any co-occurring SUD/MH conditions who are involved in, are at risk of becoming involved in, or are transitioning out of the criminal justice system through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Support pre-arrest or pre-arraignment diversion and deflection strategies for persons with OUD and any co-occurring SUD/MH conditions, including established strategies such as:

   a. Self-referral strategies such as the Angel Programs or the Police Assisted Addiction Recovery Initiative (PAARI);

   b. Active outreach strategies such as the Drug Abuse Response Team (DART) model;

   c. "Naloxone Plus" strategies, which work to ensure that individuals who have received naloxone to reverse the effects of an overdose are then linked to treatment programs or other appropriate services;

   d. Officer prevention strategies, such as the Law Enforcement Assisted Diversion (LEAD) model;

   e. Officer intervention strategies such as the Leon County, Florida Adult Civil Citation Network or the Chicago Westside Narcotics Diversion to Treatment Initiative; or

   f. Co-responder and/or alternative responder models to address OUD-related 911 calls with greater SUD expertise.

2. Support pre-trial services that connect individuals with OUD and any co-occurring SUD/MH conditions to evidence-informed treatment, including MAT, and related services.

3. Support treatment and recovery courts that provide evidence-based options for persons with OUD and any co-occurring SUD/MH conditions.

4. Provide evidence-informed treatment, including MAT, recovery support, harm reduction, or other appropriate services to individuals with OUD and any co-occurring SUD/MH conditions who are incarcerated in jail or prison.

5. Provide evidence-informed treatment, including MAT, recovery support, harm reduction, or other appropriate services to individuals with OUD and any co-occurring SUD/MH conditions who are leaving jail or prison have recently left jail or prison, are on probation or parole, are under community corrections supervision, or are in re-entry programs or facilities.

6. Support critical time interventions (CTI), particularly for individuals living with dual-diagnosis OUD/serious mental illness, and services for individuals who face immediate risks and service needs and risks upon release from correctional settings.

7. Provide training on best practices for addressing the needs of criminal-justice-involved persons with OUD and any co-occurring SUD/MH conditions to law enforcement, correctional, or judicial personnel or to providers of treatment, recovery, harm reduction, case management, or other services offered in connection with any of the strategies described in this section.

E. ADDRESS THE NEEDS OF PREGNANT OR PARENTING WOMEN AND THEIR FAMILIES, INCLUDING BABIES WITH NEONATAL ABSTINENCE SYNDROME

Address the needs of pregnant or parenting women with OUD and any co-occurring SUD/MH conditions, and the needs of their families, including babies with neonatal abstinence syndrome (NAS), through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Support evidence-based or evidence-informed treatment, including MAT, recovery services and supports, and prevention services for pregnant women – or women who could become pregnant – who have OUD and any co-occurring SUD/MH conditions, and other measures to educate and provide support to families affected by Neonatal Abstinence Syndrome.

2. Expand comprehensive evidence-based treatment and recovery services, including MAT, for uninsured women with OUD and any co-occurring SUD/MH conditions for up to 12 months postpartum.

3. Training for obstetricians or other healthcare personnel that work with pregnant women and their families regarding treatment of OUD and any co-occurring SUD/MH conditions.

4. Expand comprehensive evidence-based treatment and recovery support for NAS babies; expand services for better continuum of care with infant-need dyad; expand long-term treatment and services for medical monitoring of NAS babies and their families.

5. Provide training to health care providers who work with pregnant or parenting women on best practices for compliance with federal requirements that children born with Neonatal Abstinence Syndrome get referred to appropriate services and receive a plan of safe care.

6. Child and family supports for parenting women with OUD and any co-occurring SUD/MH conditions.

7. Enhanced family supports and child care services for parents with OUD and any co-occurring SUD/MH conditions.

8. Provide enhanced support for children and family members suffering trauma as a result of addiction in the family; and offer trauma-informed behavioral health treatment for adverse childhood events.

9. Offer home-based wrap-around services to persons with OUD and any co-occurring SUD/MH conditions, including but not limited to parent skills training.

10. Support for Children's Services – Fund additional positions and services, including supportive housing and other residential services, relating to children being removed from the home and/or placed in foster care due to custodial opioid use.

PART TWO: PREVENTION

F. PREVENT OVER-PRESCRIBING AND ENSURE APPROPRIATE PRESCRIBING AND DISPENSING OF OPIOIDS

Support efforts to prevent over-prescribing and ensure appropriate prescribing and dispensing of opioids through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Fund medical provider education and outreach regarding best prescribing practices for opioids consistent with Guidelines for Prescribing Opioids for Chronic Pain from the U.S. Centers for Disease Control and Prevention, including providers at hospitals (academic detailing).

2. Training for health care providers regarding safe and responsible opioid prescribing, dosing, and tapering patients off opioids.

3. Continuing Medical Education (CME) on appropriate prescribing of opioids.

4. Support for non-opioid pain treatment alternatives, including training providers to offer or refer to multi-modal, evidence-informed treatment of pain.

5. Support enhancements or improvements to Prescription Drug Monitoring Programs (PDMPs), including but not limited to improvements that:

a. Increase the number of prescribers using PDMPs;

b. Improve point-of-care decision-making by increasing the quantity, quality, or format of data available to prescribers using PDMPs, by improving the interface that prescribers use to access PDMP data, or both; or

c. Enable states to use PDMP data in support of surveillance or intervention strategies, including MAT referrals and follow-up for individuals identified within PDMP data as likely to experience OUD in a manner that complies with all relevant privacy and security laws and rules.

6. Ensuring PDMPs incorporate available overdose/naloxone deployment data, including the United States Department of Transportation's Emergency Medical Technician overdose database in a manner that complies with all relevant privacy and security laws and rules.

7. Increase electronic prescribing to prevent diversion or forgery.

8. Educate Dispensers on appropriate opioid dispensing.

G. PREVENT MISUSE OF OPIOIDS

Support efforts to discourage or prevent misuse of opioids through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Fund media campaigns to prevent opioid misuse.

2. Corrective advertising or affirmative public education campaigns based on evidence.

3. Public education relating to drug disposal.

4. Drug take-back disposal or destruction programs.

5. Fund community anti-drug coalitions that engage in drug prevention efforts.

6. Support community coalitions in implementing evidence-informed prevention, such as reduced social access and physical access, stigma reduction – including staffing, educational campaigns, support for people in treatment or recovery, or training of coalitions in evidence-informed implementation, including the Strategic Prevention Framework developed by the U.S. Substance Abuse and Mental Health Services Administration (SAMHSA).

7. Engage non-profits and faith-based communities as systems to support prevention.

8. Fund evidence-based prevention programs in schools or evidence-informed school and community education programs and campaigns for students, families, school employees, school athletic programs, parent-teacher and student associations, and others.

9. School-based or youth-focused programs or strategies that have demonstrated effectiveness in preventing drug misuse and seem likely to be effective in preventing the uptake and use of opioids.

10. Create of support community-based education or intervention services for families, youth, and adolescents at risk for OUD and any co-occurring SUD/MH conditions.

11. Support evidence-informed programs or curricula to address mental health needs of young people who may be at risk of misusing opioids or other drugs, including emotional modulation and resilience skills.

12. Support greater access to mental health services and supports for young people, including services and supports provided by school nurses, behavioral health workers or other school staff, to address mental health needs in young people that (when not properly addressed) increase the risk of opioid or other drug misuse.

H. PREVENT OVERDOSE DEATHS AND OTHER HARMS (HARM REDUCTION)

Support efforts to prevent or reduce overdose deaths or other opioid-related harms through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Increase availability and distribution of naloxone and other drugs that treat overdoses for first responders, overdose patients, individuals with OUD and their friends and family members, individuals at high risk of overdose, schools, community navigators and outreach workers, persons being released from jail or prison, or other members of the general public.

2. Public health entities that provide free naloxone to anyone in the community.

3. Training and education regarding naloxone and other drugs that treat overdoses for first responders, overdose patients, patients taking opioids, families, schools, community support groups, and other members of the general public.

4. Enable school nurses and other school staff to respond to opioid overdoses, and provide them with naloxone, training, and support.

5. Expand, improve, or develop data tracking software and applications for overdoses/naloxone revivals.

6. Public education relating to emergency responses to overdoses.

7. Public education relating to immunity and Good Samaritan laws.

8. Educate first responders regarding the existence and operation of immunity and Good Samaritan laws.

9. Syringe service programs and other evidence-informed programs to reduce harms associated with intravenous drug use, including supplies, staffing, space, peer support services, referrals to treatment, fentanyl checking, connections to care, and the full range of harm reduction and treatment services provided by these programs.

10. Expand access to testing and treatment for infectious diseases such as HIV and Hepatitis C resulting from intravenous opioid use.

11. Support mobile units that offer or provide referrals to harm reduction services, treatment, recovery supports, health care, or other appropriate services to persons that use opioids or persons with OUD and any co-occurring SUD/MH conditions.

12. Provide training in harm reduction strategies to health care providers, students, peer recovery coaches, recovery outreach specialists, or other professionals that provide care to persons who use opioids or persons with OUD and any co-occurring SUD/MH conditions.

13. Support screening for fentanyl in routine clinical toxicology testing.

PART THREE: OTHER STRATEGIES

I. FIRST RESPONDERS

In addition to items in sections C, D, and H relating to first responders, support the following:

1. Educate law enforcement or other first responders regarding appropriate practices and precautions when dealing with fentanyl or other drugs.

2. Provision of wellness and support services for first responders and others who experience secondary trauma associated with opioid-related emergency events.

J. LEADERSHIP, PLANNING AND COORDINATION

Support efforts to provide leadership, planning, coordination, facilitation, training and technical assistance to remediate the opioid epidemic through activities, programs, or strategies that may include, but are not limited to, the following:

1. Statewide, regional, local, or community regional planning to identify root causes of addiction and overdose, goals for reducing harms related to the opioid epidemic, and areas and populations with the greatest needs for treatment intervention services; to support training and technical assistance; or to support other strategies to remediate the opioid epidemic described in this opioid remediation strategy list.

2. A dashboard to share reports, recommendations, or plans to spend opioid settlement funds; to show how opioid settlement funds have been spent; to report program or strategy outcomes; or to track, share, or visualize key opioid-related or health-related indicators and supports as identified through collaborative statewide, regional, local, or community processes.

3. Invest in infrastructure or staffing at government or not-for-profit agencies to support collaborative, cross-system coordination with the purpose of preventing overprescribing, opioid misuse, or opioid overdoses, treating those with OUD and any co-occurring SUD/MH conditions, supporting them in treatment or recovery, connecting them to care, or implementing other strategies to remediate the opioid epidemic described in this opioid remediation strategy list.

4. Provide resources to staff government oversight and management of opioid remediation programs.

K. TRAINING

In addition to the training referred to throughout this document, support training to remediate the opioid epidemic through activities, programs, or strategies that may include, but are not limited to, the following:

1. Provide funding for staff training or networking programs and services to improve the capability of government, community, and not-for-profit entities to remediate the opioid crisis.

2. Support infrastructure and staffing for collaborative cross-system coordination to prevent opioid misuse, prevent overdoses, and treat those with OUD and any co-occurring SUD/MH conditions, or implement other strategies to remediate the opioid epidemic described in this opioid remediation strategy list (e.g., health care, primary care, pharmacies, PDMPs, etc.).

L. RESEARCH

Support opioid remediation research that may include, but is not limited to, the following:

1. Monitoring, surveillance, data collection, and evaluation of programs and strategies described in this opioid remediation strategy list.

2. Research non-opioid treatment of chronic pain.

3. Research on improved service delivery for modalities such as SBIRT that demonstrate promising but mixed results in populations vulnerable to opioid use disorders.

4. Research on novel harm reduction and prevention efforts such as the provision of fentanyl test strips.

5. Research on innovative supply-side enforcement efforts such as improved detection of mail-based delivery of synthetic opioids.

6. Expanded research on swift/certain/fair models to reduce and deter opioid misuse within criminal justice populations that build upon promising approaches used to address other substances (e.g. Hawaii HOPE and Dakota 24/7).

7. Epidemiological surveillance of OUD-related behaviors in critical populations including individuals entering the criminal justice system, including but not limited to approaches modeled on the Arrestee Drug Abuse Monitoring (ADAM) system.

8. Qualitative and quantitative research regarding public health risks and harm reduction opportunities within illicit drug markets, including surveys of market participants who sell or distribute illicit opioids.

9. Geospatial analysis of access barriers to MAT and their association with treatment engagement and treatment outcomes.