

NORTH CAROLINA

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

WAKE COUNTY

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)

ORDER

THIS MATTER comes before the undersigned pursuant to the North Carolina Supreme Court's Opinion (*Hoke Cty. Bd. of Educ. v. State*, 382 N.C. 386, 2022-NCSC-108, 879 S.E.2d 193, No. 425A21-2) ("Opinion and Order"). Following an evidentiary hearing and after consideration of the record proper, testimony of expert witnesses, and arguments of counsel, the Court provides a procedural background for the matter, and makes the following Findings of Fact and Conclusions of Law.

PROCEDURAL BACKGROUND

1. This lawsuit, commonly referred to as the "*Leandro*" litigation, was filed almost twenty-nine (29) years ago and has resulted in four decisions by the North Carolina Supreme Court ("Supreme Court") including its most recent decision, issued on November 4, 2022. The majority and dissenting opinions set out the procedural history of the case in great detail. As a result, the Court recites here only the factual and procedural background necessary to provide context for this Order.
2. 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 ("CRP"). The CRP was developed by experts retained to assist the Court in determining the concrete steps (which the CRP calls "action items") necessary over an eight-year period, 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.
3. On June 7, 2021, this Court entered an order directing State Defendants to implement the CRP in full, in accordance with the timelines set forth therein, and to secure such funding and resources necessary to implement the CRP's programs and policies.
4. 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.
5. On November 10, 2021, this Court entered an order directing the transfer of funds, totaling \$1,753,153,000.00, to the North Carolina Department of Public Instruction ("DPI"), Department of Health and Human Services ("DHHS"), and University of North

Carolina System (the “UNC System”). The payments ordered by this Court were to fully fund the action items in Years 2 and 3 of the CRP.

6. 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”).
7. Soon after the Court’s November 2021 Order, the State Controller petitioned the North Carolina Court of Appeals (“Court of Appeals”) for a Writ of Prohibition, Temporary Stay, and Writ of Supersedeas blocking the November 2021 Order’s transfer directive.
8. On December 8, 2021, the Honorable Philip E. Berger, in his official capacity as the President Pro Tempore of the North Carolina Senate, and the Honorable Timothy K. Moore, in his official capacity as the Speaker of the North Carolina House of Representatives (collectively the “Legislative Intervenors”), intervened as a matter of right in the trial court proceeding pursuant to N.C.G.S. § 1-72.2(b). Defendant State and Legislative Intervenors each appealed the November 10, 2021 Order.
9. The Court of Appeals granted the writ sought by the State Controller, 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.
10. In February 2022, Defendant State petitioned the Supreme Court for discretionary review prior to review by the Court of Appeals.
11. On March 21, 2022, the Supreme Court granted Defendant 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.”
12. 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 action items in Years 2 and 3 of the CRP following the passage of the 2021 State Budget.

13. 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, this Court found that the 2021 State Budget left \$785,106,248.00 of the CRP unfunded as follows:

- a. DHHS: \$142,900,000.00;
- b. DPI: \$608,006,248.00; and
- c. UNC System: \$34,200,000.00.

14. 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.

15. All parties appealed this Court's April 26, 2022 Order.

16. 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").

17. On November 4, 2022, the Supreme Court issued its Opinion and Order in this case. The Supreme Court affirmed this Court's November 2021 Order directing state actors to transfer state funds necessary to implement Years Two and Three of the CRP. The Supreme Court 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, "not because the trial court erred," but because "those calculations ha[d] been functionally mooted by the State's subsequent enactment of the 2022 Budget Act." Finally, the Supreme Court remanded to this Court with the following directives:

On remand, we narrowly direct the trial court to recalculate the appropriate distributions in light of the State's 2022 Budget. Once that calculation is complete, we instruct the trial court to order the applicable State officials to transfer these funds as an appropriation under law. Accordingly, we stay the Court of Appeals' 30 November 2021 Writ of Prohibition. Finally, we order the trial court to retain jurisdiction over this matter to ensure the implementation of this order and to monitor continued constitutional compliance.

18. On December 29, 2022, the Honorable Paul Martin Newby, Chief Justice of the North Carolina Supreme Court, issued an order assigning this case to the undersigned pursuant to Rule 2.1 of the North Carolina Rules of General Practice. Thus, the undersigned became at least the fifth and possibly the sixth Superior Court Judge assigned to this case over the course of the last twenty-eight (28) years.
19. The first directive to this Court is: “On remand, we narrowly direct the trial court to recalculate the appropriate distributions in light of the State’s 2022 Budget.” That is the factual issue presently before this Court.
20. In order to allow this Court to perform the second directive, to “order the applicable State officials to transfer these funds as an appropriation under law,” the Supreme Court stayed the Court of Appeals’ November 30, 2021 Writ of Prohibition that “restrain[ed] the trial court from enforcing the portion of its order” requiring the transfer of funds as an appropriation under law. On March 3, 2023, however, the Supreme Court lifted the stay imposed. Accordingly, this Court will not consider that directive at this time.

Now, pursuant to the Supreme Court’s instructions, this Court hereby enters the following order, which amends and supplements the November 10, 2021 Order entered by the Honorable W. David Lee, Superior Court Judge; and the April 26, 2022 Order entered by the Honorable Michael L. Robinson, Superior Court Judge.

Pursuant to the Supreme Court’s narrow directive on remand, the Court makes the following findings of fact after having considered the record proper, pleadings, affidavits, and testimony of the witnesses as well as the briefs, exhibits, and arguments of counsel.

FINDINGS OF FACT

1. On March 10, 2023, the Court held a status conference with all of the parties. After hearing from all parties, considering the Supreme Court’s remand, and the Supreme Court’s Order reinstating the Court of Appeals Writ of Prohibition, this Court concluded

that its current task on remand must be limited to recalculating the additional amounts required to fund the action items called for in Years 2 and 3 of the CRP, and that this Court is without jurisdiction to reinstate the transfer provisions. The Court requested, and the parties later provided, calculations showing the additional amounts necessary to fund the action items called for in Years 2 and 3 of the CRP. As a result, the parties submitted two competing charts purporting to show which action items called for in Years 2 and 3 of the CRP remain unfunded or underfunded.

2. The chart submitted by Defendant State (the OSBM Chart) was prepared under the supervision of Ms. Anca Elena Grozav, Chief Deputy Director of State Budget for the North Carolina Office of State Budget and Management (“OSBM”). The data and conclusions within the OSBM chart are not disputed by Plaintiffs—including, Cumberland County Board of Education, Halifax County Board of Education, Hoke County Board of Education, Robeson County Board of Education, and Vance County Board of Education—Plaintiff Penn Intervenors, and Plaintiff Intervenor Charlotte-Mecklenburg Board of Education.
3. The chart submitted by Legislative Intervenors (the FRD Chart) was prepared under the supervision of Mark Trogdon, former Director and current Senior Analyst at the Fiscal Research Division (“FRD”), which serves as nonpartisan staff to the General Assembly.
4. In addition to the affidavits submitted with the OSBM and FRD Charts, on March 17, 2023, the Court held an evidentiary hearing, at which all parties were represented through counsel, at which it took evidence and argument concerning the recalculation of the remaining amounts required to fund the action items called for in the CRP in light of the 2022 State Budget. Mr. Brian Matteson, Director of the General Assembly’s Fiscal Research Division, and Ms. Anca Grozav testified at the March 17, 2023 hearing. The Court was present for the entire presentation of evidence.
5. The Court was able to see, hear, and understand each witness. The Court was able to observe the demeanor and comportment of each witness. The Court listened to the testimony of the experts, questioned the experts, and came to conclusions about each expert’s believability, credibility, reliability, and qualifications. The Court weighed, evaluated, and judged the evidence.

6. Based on the Court’s review of analyses provided to it by the OSBM and the 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. Additionally, the OSBM Charts and the FRD Chart are largely in agreement as to the amount of funding provided for the action items called for in Years 2 and 3 of the CRP. The FRD Chart, however, includes additional funding for several items that Legislative Intervenors contend should be included. Those items are as follows:
 - a. CRP Item I.G.ii.1 (New Teacher Support Program): an additional \$2,000,000.00 in Year 3;
 - b. CRP Item I.A.ii.2 (Educator Compensation Study): \$109,000.00 in Year 3;
 - c. CRP Item III.B.ii.2 (Disadvantaged Student Supplemental Funding/At Risk Allocation): an additional \$26,068,720.00 in Year 3;
 - d. CRP Item III.E.ii.3 (Principal and Assistant Principal Salaries): an additional \$6,236,038.00 in Year 3;
 - e. CRP Item V.A.iii.1 (District and Regional Support): 14,000,000.00 in Year 3;
 - f. CRP Item V.B.ii.1 (Review and Adoption of Core Curricular Resources): \$260,000.00 in Year 3; and
 - g. CRP Item VII.B.iv.2 (Additional Cooperative and Innovative High Schools): \$730,000.00 in Year 3.
7. The Court addresses each area of disagreement in turn:
 - a. CRP Item I.G.ii.1 (New Teacher Support Program): As to this CRP component, the difference between the Grozav Affidavit and the Trogdon Affidavit is that the Trogdon Affidavit included an additional credit of \$2,000,000.00. Mr. Matteson testified that the Governor directed \$2 million from the Governor’s Emergency Educational Relief (“GEER”) program to the North Carolina New Teacher Support Program (“NTSP”), and that he did so in August 2022. To the contrary, Ms. Grozav testified that OSBM omitted the \$2 million because the General Assembly did not appropriate those funds to the Governor in the 2022 State Budget.

- b. CRP Item I.A.ii.2 (Educator Compensation Study): As to this CRP component, the difference between the Grozav Affidavit and the Trogdon Affidavit is that the Trogdon Affidavit included an additional credit of \$109,000.00. Mr. Matteson testified that OSBM provided DPI with \$109,000.00 in funding for this item in FY 2022-23, from the North Carolina Evaluation Fund Grant. The money for this grant was provided to OSBM through the 2021 Appropriations Act to spend in either FY 2021-22 or 2022-23. However, OSBM did not award this money to DPI until FY 2022-23. To the contrary, Ms. Grozav testified that the General Assembly appropriated “a general pot of funding to provide agencies to perform program evaluations[.]”
- c. CRP Item III.B.ii.2 (Disadvantaged Student Supplemental Funding/At Risk Allocation): As to this CRP component, the difference between the Grozav Affidavit and the Trogdon Affidavit is that the Trogdon Affidavit included an additional credit of \$26,068,720.00. The CRP calls for the State to combine two allotments made to local school systems—the Disadvantaged Student Supplemental Fund (“DSSF”) allotment and what is now known as the At-Risk Student Services/Alternative Schools Fund (“At-Risk allotment”). However, the DSSF and the At-Risk allotment have not been combined as required by the CRP . Mr. Matteson testified that FRD included in its chart \$26 million appropriated not to the DSSF allotment, but to the At-Risk allotment. To the contrary, 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.
- d. CRP Item III.E.ii.3 (Principal and Assistant Principal Salaries): As to this CRP component, the difference between the Grozav Affidavit and the Trogdon Affidavit is that the Trogdon Affidavit included an additional credit of \$6,236,038.00. 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. Mr. Matteson further testified that the interns are assistant principals and the \$6.2 million appropriated for MSA interns is made available to districts as part of the State's School Building Administration allotment, which districts use to pay principal and assistant principal salaries. To the contrary, Ms. Grosav testified that Defendant State's Accounting did not include the \$6,236,038.00 for MSA stipends because it is not part of the salary for principal or assistant principals; rather the stipend is a one-time, non-recurring payment for interns, not for principals.

- e. CRP Item V.A.iii.1 (District and Regional Support): As to this CRP component, the difference between the Grozav Affidavit and the Trogdon Affidavit is that the Trogdon Affidavit included an additional credit of \$14,000,000.00. 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." To the contrary, Ms. Grosav testified that, because the allotment was broadly available to every school district across the State rather than to low performing schools, the allotment was not targeted to the CRP requirements.
- f. CRP Item V.B.ii.1 and VII.B.iv.2 (Review and Adoption of Core Curricular Resources) and (Additional Cooperative and Innovative High Schools): As to this CRP component, the difference between the Grozav Affidavit and the Trogdon Affidavit is that the Trogdon Affidavit included additional credits of \$260,000.00 for "Review and Adoption of Curricular Resources" and \$730,000.00 for "Additional Cooperative Innovative High Schools." Mr. Matteson and Ms. Grosav 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.

The Court need not resolve this dispute to make the calculations that the Supreme Court ordered on remand.

8. With respect to the amount of underfunding for Year 3 of the CRP, the disagreements between State Defendant's Grozav Affidavit and Legislative-Intervenor's Trogdon Affidavit that are relevant to the issue before the Court are resolved as follows:
 - a. Item I.G.ii.1: Because this Court's limited directive on remand was to recalculate the appropriate distributions "in light of the 2022 Budget," this Court does not credit the additional \$2,000,000.00 that the Trogdon Affidavit credits.
 - b. Item I.A.ii.2: Because this Court's limited directive on remand was to recalculate the appropriate distributions "in light of the 2022 Budget," and further, because the funding credited by the Trogdon Affidavit was not targeted specifically to this action item, this Court does not credit the additional \$109,000.00 that the Trogdon Affidavit credits.
 - c. Item III.B.ii.2: Because the DSSF and the At-Risk allotment have not been combined (as is required by the CRP), this Court does not credit the additional \$26,068,720.00 that the Trogdon Affidavit credits.
 - d. Item III.E.ii.3: Because the testimony established that the additional \$6,236,038.00 was to be used for stipends for MSA interns, not for salaries of principal or assistant principals, this Court does not credit the additional \$6,236,038.00 that the Trogdon Affidavit credits.
 - e. Item V.A.iii.1: Because the additional amounts that the Trogdon Affidavit credits to this item were not specifically allocated to the State's chronically low-performing schools and low-performing districts as required by this component, this Court does not credit the additional \$14,000,000.00 that the Trogdon Affidavit credits.
9. With respect to Legislative-Intervenors' legal argument concerning recurring funding in Year 2, this Court will not disturb Judge Robinson's "diligent and precise" calculations for Year 2. The arguments of the Legislative-Intervenors would require the Court to make a

conclusion of law about an issue not presently before the Court on this limited remand, as set forth above.

Based on the foregoing Findings of Fact, the Court makes the following Conclusions of Law.

CONCLUSIONS OF LAW

1. Based on the Supreme Court's remand order, this Court is "narrowly" tasked with "recalculating the amount of funds to be transferred in light of the State's 2022 Budget."
2. Based on the Court's review of analyses provided to it by the OSBM and the FRD, the testimony of Mr. Matteson and Ms. Grozav, and the arguments and submissions of the parties, the Court concludes 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. **Recalculated to \$133,900,000.00** from \$142,900,000.00 for CRP components administered through the DHHS as previously calculated in the April 2022 Order;
 - b. **Recalculated to \$509,701,707.00** from \$608,006,248.00 for CRP components administered through the DPI as previously calculated in the April 2022 Order and;
 - c. \$34,200,000.00 [**no recalculation required from the April 2022 Order**] for CRP components administered through the UNC System.

IT IS THEREFORE ORDERED

1. 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.

2. That this Court retains jurisdiction of this case to ensure the implementation of this order and to monitor continued constitutional compliance.¹

SO ORDERED, this the 14th day of April, 2023.

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James Floyd Ammons, Jr.
Senior Resident Superior Court Judge

¹ This Court was directed to do three things. This Court has done the first, believes that it is prohibited from doing the second at this time, and stands ready to do the third if ordered to do so and given guidance as to the extent, if any, that the trial court should continue to monitor this case. The trial court shall await guidance as to how to proceed further.